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Caring for Our Coast

♦ ♦ ♦
Gary Jones
Director

Kerry Silverstrom
Chief Deputy

Amy M. Caves
Deputy Director

Carol Baker
Deputy Director

September 27, 2022

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

APPROVAL OF OPTION TO ENTER INTO CONCESSION AGREEMENT WITH PCH BEACH ASSOCIATES, LLC, TO DEVELOP, MANAGE, AND OPERATE A FRANK GEHRY-DESIGNED/WOLFGANG PUCK-OPERATED RESTAURANT FACILITY AT COUNTY-OPERATED WILL ROGERS STATE BEACH (THIRD DISTRICT) (3 VOTES)

SUBJECT

Request for approval of an Option to enter into a Concession Agreement with PCH Beach Associates, LLC, to demolish the existing restaurant and reconstruct, manage, and operate a new Frank Gehry-designed/Wolfgang Puck-operated restaurant facility at County-operated Will Rogers State Beach. Exercise of the Option is contingent upon Concessionaire's fulfillment of the conditions set forth therein.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to a Class 2, Replacement or Reconstruction, categorical exemption as defined in Section 15302 of CEQA (Public Resources Code section 21000 et seq.), the State CEQA Guidelines (Title 14, Cal. Code Regs., Chapter 3, §§ 15000-15387) and the Environmental Document Reporting Procedures and Guidelines for the County.
2. Approve and authorize the Chair of the Board to: (i) execute the Option in substantially the form attached as Attachment "A" ("Option Agreement" or "Option").
3. Approve and authorize the Chair of the Board, upon confirmation by the Director of the Department of Beaches and Harbors ("Director") that the Concessionaire has fulfilled and satisfied

the conditions contained in the Option, to enter into and execute three (3) copies of each of the following: (a) Concession Agreement in the form of Exhibit "A" attached to the Option Agreement; and (b) a Memorandum of Concession Agreement as referenced in the Concession Agreement, in form approved by County Counsel to be recorded against the Property.

4. Delegate authority to the Director to negotiate and execute an extension to the current concession agreement with Sea View Restaurants, Inc. (or other short-term replacement agreement to ensure continued operation of the existing Gladstone's restaurant) for a period not to exceed three years, until Concessionaire is able to begin developing the Property as more fully described below.

5. Authorize the Director to execute and deliver such other ancillary documentation (including, without limitation, an Estoppel Certificate) as is necessary and acceptable to Director in connection with the Option Agreement and/or the Concession Agreement in order to effectuate the transactions contemplated thereby.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On April 3, 2018, your Board delegated authority to the Director of Beaches and Harbors ("Director") to enter into an Exclusive Negotiating Agreement ("ENA") to negotiate the material terms of the Option to enter into the Concession Agreement with Concessionaire". Concessionaire was the top-ranked proposer in response to the Request for Proposals for Concession Services at County-Operated Will Rogers State Beach issued on April 23, 2017 ("RFP"), to develop, construct, manage, and operate a new Frank Gehry-designed, Wolfgang Puck-operated restaurant at Will Rogers State Beach, located at 17300 Pacific Coast Highway in the City of Los Angeles ("Property"). This project will be the first ever ground-up Frank Gehry-designed/Wolfgang Puck operated restaurant in the world. It is anticipated that the restaurant will receive extensive U.S. and international earned media coverage when open because of the collaboration between these two internationally recognized icons.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Strategic Plan Goal II, Foster Vibrant and Resilient Communities, by promoting public-private partnerships, supporting vibrant communities, driving economic and workforce development in the County, supporting the wellness of our community, and making environmental sustainability our daily reality. The recommended actions are also consistent with the County's Strategies II.1.3, Coordinate Workforce Development, by requiring the project to engage local workforce and promote job opportunities, and Strategy II.3.5, Support a clean, flexible, and integrated multi-modal transportation system that improves mobility, by incorporating multi-modal transportation design into the project, and Strategy II.2.2, Expand Access to Recreational and Cultural Opportunities, by providing access for all County residents to high-quality food service and beach recreation.

FISCAL IMPACT/FINANCING

The proposed Concession Agreement reflects the County's current market rate Percentage Rents Rates for all relevant categories, subject to adjustment as provided in the proposed Concession Agreement. The grant of the Option will produce an option fee of \$100,000 to DBH, which revenue will be recognized in Fiscal Year 2022-23 as one-time over-realized revenue.

The Department has obtained an analysis from its economic consultant confirming that the revenues and rents payable to the County pursuant to the Concession Agreement, are at least equivalent to fair market value.

Costs of consultants and DBH's Director, Deputy Director and County Counsel involved in the negotiation and development of the Option and Concession Agreement are being reimbursed by the Concessionaire.

The Department anticipates no significant impact to the FY2022-23 Operating Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The proposed project is a new restaurant that will replace the existing restaurant, Gladstone's, located on Will Rogers State Beach, at 17300 Pacific Coast Highway in the City of Los Angeles, between the Pacific Ocean and Pacific Coast Highway. The existing facility consists of a 10,183 square-foot main restaurant building, 1,508 square-foot secondary restaurant building, a 400 square-foot accessory building, and a 7,900 square-foot patio and public viewing deck. The existing restaurant includes a total existing seating capacity of 707, appurtenant facilities, and a 212-space parking facility for both restaurant and beach parking.

Will Rogers State Beach is owned by the State of California, operated by the County, pursuant to a management agreement and located in the City of Los Angeles. The California Department of Parks and Recreation has approved the form of the proposed Concession Agreement.

Concessionaire's proposed project will involve demolition of all existing improvements at the site, replacing them with a new, approximately 12,500 square foot, 450-seat restaurant, and a new 2,700 square foot, 100-seat public viewing deck containing a 700 square-foot food and beverage service station. The proposed public viewing deck would be open to the public (i.e., for customers and non-customers of the restaurant) and would operate separately from the restaurant. In addition, Concessionaire will repave and reconfigure the existing public beach and restaurant parking lot and add a bus turnaround for Metro and Big Blue Bus Lines.

If the Option is approved, the Concessionaire must thereafter obtain all regulatory approvals and exercise the Option for the Concession Agreement within 18 months following grant of the Option; however, if the Concessionaire is delayed in satisfying the conditions to exercise the Option despite its diligent efforts, the Concessionaire may request up to five additional periods of six months each, each (other than the first six-month extension) accompanied by payment of an extension fee to County. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Existing Concession Agreement and Operation

The County's current concession agreement with Sea View Restaurants, Inc., for the operation of the Gladstone's restaurant at the site commenced on November 1, 1997. Its initial term was set to expire on October 31, 2017 but was extended for an additional five years through October 31, 2022. The proposed actions set forth herein would delegate authority to the Director to negotiate an extension of the current term (or other short-term replacement agreement) to provide continuous service and safe beach access for a period not to exceed three years (subject to the County's right to terminate the existing concession agreement upon providing ninety days (90) months prior notice) until the new

Concessionaire, is able to commence developing the Property.

The proposed Exclusive Negotiating Agreement, Option Agreement and Concession Agreement are authorized by Government Code 25907. Pursuant to Public Resources Code Section 5080.33, the State approved and consented to the proposed Option and Concession Agreements on July 12, 2022.

Essential Option and Concession Agreement Terms

I. Option

- a. Option Period plus extensions/fees, to extend exercise of Option
 - i. Option Period: 18 months plus 5 additional 6-month extensions
 - ii. 1st 6-month Extension: No Charge
 - iii. 2nd 6-month Extension: \$50,000
 - iv. 3rd 6-month Extension: \$120,000
 - v. 4th 6-month Extension: \$140,000
 - vi. 5th 6-month Extension: \$140,000
- b. Conditions for Concessionaire to satisfy to exercise Option
 - i. All regulatory approvals to be obtained
 - ii. Director's approval of Schematics and Preliminary Plans
 - iii. Director's approval of final Plans and Specs
 - iv. Permit-ready plans
 - v. Satisfactory evidence of financing for the entire project
 - vi. Provide Operating Agreement of Concessionaire showing all members of Concessionaire and their respective ownership interests
 - vii. Evidence of availability of all necessary utilities and approvals from appropriate governmental agencies
 - viii. Evidence of complete payment of all County costs for Option and Concession Agreement
 - ix. Not less than 45 days prior to Concessionaire's delivery of notice to exercise the Option, delivery of final site plan to Director for Director's approval.
 - x. Cost breakdown update consistent with Line Item Budget, as approved by Director
 - xi. Evidence of Concessionaire's executed agreement with Frank Gehry (including his firm Gehry Partners, LLC) for concept and basic architectural design with Frank Gehry as the "principal designer" for the design development phase, and for right for County to advertise in all media that Project is "designed by Frank Gehry."

II. Concession Agreement

- a. Scope of Work
 - i. Demolition of existing Gladstone's building.
 - ii. Construction of a new restaurant with approximately 450 seats, with exterior and interior dining, and 100-seat public deck/boardwalk that will include restrooms, a separate outlet offering reasonably priced food and beverages and other amenities as approved by the Director in its reasonable discretion.
 - iii. Redevelopment of: 1) parking lot with bus turnaround; 2) vehicle access from parking lot to beach for maintenance or emergency use; 3) ADA-compliant ramp access to the beach (if required); 4) satisfaction of all conditions imposed by Big Blue Bus, Metro and Caltrans on and off-site.
 - iv. Minimum Cost for entire Scope of Work shall not be less than \$27 million.
- b. Redevelopment Work Schedule
 - i. Work must commence within 90 days from Effective Date of Concession Agreement.
 - ii. Required Commencement of Construction Date may be extended for two additional six-month periods with no payment for the first extension and a \$100,000 payment for the second extension.

- iii. Work must be completed within 24 months of Effective Date.
- iv. Two six-month extensions for Required Completion of Construction Date may be purchased for payments of \$100,000 each.
- v. Any claimed force majeure delay period shall not exceed one year.
- c. Total Allowable Redevelopment Costs: \$42 Million indexed for inflation from Effective Date to Construction Completion Date
 - i. Total Allowable Redevelopment Costs will be a cap for purposes of calculating both TI Allowance and Maximum Rent Deferral.
 - d. Minimum Annual Rent (paid in advance in equal monthly installments)
 - i. Construction Period (Effective Date through Construction Completion Date):
 - 1. Years 1-3: \$50,000
 - 2. Year 4: \$400,000
 - 3. Year 5: \$1,000,000
 - ii. Operation Period (Commences first day following Construction Period through end of Term):
 - 1. Years 1-10: \$400,000
 - 2. Years 11-20: \$960,000
 - 3. Years 21-25: \$1,056,000
 - 4. Years 26-30: Greater of: 1) prior Annual Minimum Rent or 2) 50% of the average Annual Rent plus Percentage Rent for the prior three years.
 - 5. Year 31 and every five years thereafter: Greater of: 1) prior Annual Minimum Rent or 2) 75% of the average Annual Rent plus Percentage Rent for the prior three years.
- iii. Interest Rent: In addition to Minimum Annual Rent and Percentage Rent, Concessionaire shall pay the following Interest Rent in advance in equal monthly installments for Years 1-10 of Operations.
 - 1. Year 1: \$0
 - 2. Year 2: \$62,924
 - 3. Year 3: \$125,722
 - 4. Year 4: \$191,406
 - 5. Year 5: \$256,986
 - 6. Year 6: \$323,474
 - 7. Year 7: \$390,881
 - 8. Year 8: \$459,218
 - 9. Year 9: \$528,498
 - 10. Year 10: \$598,732
- iv. Percentage Rent:
 - 1. 10% Restaurant
 - 2. 12% Bar
 - 3. 12% Parking Fees
 - 4. 12% Retail Sales
 - 5. 25% Service Enterprise-Coin Operating Vending Machines
 - 6. 12% Miscellaneous
- v. Maximum Rent Deferral shall be set at 50% of the lesser of (a) the Total Redevelopment Cost or (b) the Total Allowable Redevelopment Cost.
 - 1. For the first 10 years of operation, a portion of percentage rent up to the Maximum Rent Deferral shall be deferred as set forth below in the Percentage Rent Allocation section.
 - 2. At the end of Year 10, all deferred Percentage Rent plus 5% interest shall be paid in equal monthly payments over a 15-year period.
 - 3. Concessionaire to provide guaranty for Rent Deferral payments.
- vi. TI Allowance shall be set at 50% of the lesser of (a) the Total Redevelopment Cost or (b) the Total Allowable Redevelopment Cost.
 - 1. The TI Allowance shall not exceed \$21 million subject to indexed increase from Effective Date

to Construction Completion Date.

vii. Annual Percentage Rent Allocation:

1. First up to \$2 million shall be allocated 50/50 to Deferred Rent up to the Maximum Rent Deferral and the annual TI Allowance;
2. Second, up to the remaining amount needed to meet the annual TI Allowance payment in Operating Years 1-15 (1/15th of the TI Allowance);
3. Third, to TI Allowance Catch-Up (i.e., unallocated TI Allowance Offset from prior periods until appropriate cumulative TI Allowance Offset has been allocated);
4. Fourth, to Deferred Rent, until the Maximum Rent Deferral is achieved in Operating Years 1-10; and
5. Any remaining Percentage Rent to be paid to the County.

viii. Participation: Standard fee for Transfers and Financing Events subject to:

1. Conversion of construction debt to permanent debt does not qualify as a Financing Event;
2. The first qualifying Financing Event and Transfer Event will be exempt from the Participation Fee as long as each occurs within the first 15 years of Construction.

ix. Security Deposit shall be the following amounts:

1. Year 1 - \$100,000
2. Year 2 - \$115,000
3. Year 3 - \$130,000
4. Year 4 - \$145,000
5. Year 5 - \$160,000
6. Year 6 - \$180,000
7. Year 7 - \$200,000
8. Year 8 - \$215,000
9. Year 9 - \$230,000
10. Years 10-20 - \$240,000
11. Years 21-end of term – Consistent with County practices with other agreements but not to exceed an increase or 5% of prior amount of Security Deposit each 5 years.

x. Reserve Fund to fund capital improvements to project.

xi. FF&E Fund to fund replacements, additions or upgrades of or to furniture, fixtures and equipment used in the improvements throughout the Term.

ENVIRONMENTAL DOCUMENTATION

The project qualifies for a Class 2, Replacement or Reconstruction, categorical exemption under CEQA (Public Resources Code section 21000 et seq.), the State CEQA Guidelines (Title 14, Cal. Code Regs., Chapter 3, §§ 15000-15387), and the Environmental Document Reporting Procedures and Guidelines for the County, because it involves negligible or no expansion of an existing or former use and is within a class of projects that have been determined not to have a significant effect on the environment. The Class 2 categorical exemption allows for replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity. Section 15302 of the State CEQA Guidelines provides four examples of projects that are categorically exempt under this class, including: “(b) replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.”

The proposed project would replace an existing restaurant structure with a new restaurant structure within the same site and of a substantially similar size and capacity. The proposed restaurant would be constructed entirely within the same site of the existing building. The proposed project would include a restaurant building with a square footage of approximately 12,500 square feet which will

replace the existing restaurant's 12,091 approximate square feet (aggregate floor area (inclusive of existing main restaurant, secondary restaurant, and accessory structure). Additionally, the new restaurant proposes a smaller capacity and fewer seats (proposed 450 seats compared to existing capacity of 707 seats). Reconfiguration of the existing adjacent parking lot would take place within the same site as the existing parking lot and provide similar levels of restaurant and public parking availability while also providing a transit benefit associated with bus layover facilities proposed within the site. All proposed improvements associated with the parking lot would be constructed within the existing property and no changes to the Pacific Coast Highway/Sunset Boulevard intersection or Pacific Coast Highway right-of-way is proposed.

Finally, the proposed project is not subject to any of the exceptions that would render the categorical exemptions inapplicable to the project. More specifically, the project: 1) does not present cumulative impacts due to an abundance of successive projects of the same type in the same place; 2) does not involve any unusual circumstances; 3) will not damage scenic highways; 4) is not located on any hazardous waste site lists pursuant to Government Code section 65962.5; and 5) will not cause a substantial adverse change in the significance of a historical resource.

Upon your Board's approval of the recommended actions, the department will file a Notice of Exemption with the County Clerk in accordance with section 21152 of the California Public Resources Code.

CONTRACTING PROCESS

On April 23, 2017, the County issued a Request for Proposals for concession services at County-operated Will Rogers State Beach to develop, construct, manage, and operate a new restaurant with related facilities on the site of the existing Gladstone's restaurant. After a comprehensive evaluation, the County concluded that PCH Beach Associates, LLC was the most qualified proposer and recommended entering into exclusive negotiations with that proposer. On April 3, 2018, your Board authorized such negotiations, and the County and PCH Beach Associates executed the Exclusive Negotiating Agreement (ENA) on September 27, 2018. Subsequently, the parties negotiated the terms of the proposed Option and Concession Agreements and are now seeking approval of those documents by your Board.

Upon Concessionaire's demonstration that it has satisfied the conditions for exercise of the Option, including the receipt of all governmental and other approvals required for the commencement of construction, DBH will present to your Board's Executive Officer the final confirmation that the conditions for exercise contained in the Option Agreement have been satisfied and will request the Chair's execution of the Concession Agreement for the Property in a form substantially similar to Exhibit A attached to the Option.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on other current services or projects.

CONCLUSION

It is requested that the Executive Officer, Board of Supervisors send two original copies of the executed Option Agreement and an adopted Board Letter to the Department. Should you have any questions please contact Don Geisinger at (424) 526-7730 or DGeisinger@bh.lacounty.gov.

The Honorable Board of Supervisors

9/27/2022

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Jones". The signature is fluid and cursive, with a large initial "G" and "J".

GARY JONES

Director

GJ:AC:SP:dlg

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

OPTION TO CONCESSION AGREEMENT
(WILL ROGERS STATE BEACH)

THIS OPTION TO CONCESSION AGREEMENT (“**Agreement**”) is made and entered into as of the ____ day of _____, 2022, by and between the COUNTY OF LOS ANGELES (“**County**”) and PCH BEACH ASSOCIATES LLC, a California limited liability company (“**Concessionaire**”).

R E C I T A L S

A. County is the fee owner of certain real property located at 17300 Pacific Coast Highway, Pacific Palisades, California and commonly known as Will Rogers State Beach and more particularly described in **Exhibit A** attached hereto (the “**Premises**”).

B. Concessionaire has requested that County, and County is willing to, grant Concessionaire an option to lease the Premises, for the purposes set forth in this agreement, in accordance with the terms and provisions of this Agreement.

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Concessionaire hereby agree as follows:

1. **Grant of Option.** County hereby grants to Concessionaire an option (the “**Option**”) to enter into a concession agreement with County substantially in the form of the Concession Agreement attached to this Agreement as **Exhibit B** (the “**Concession Agreement**”). Capitalized terms used in this Agreement which are undefined herein shall have the meanings set forth in the Concession Agreement.

2. **Option Term.** The term of the Option (the “**Option Term**”) shall commence on the date of this Agreement and expire on that date (the “**Option Expiration Date**”) that is eighteen (18) months following the date of this Agreement, unless extended as set forth below.

If by the Option Expiration Date set forth above in this Section 2 the Option Conditions has not been satisfied, then upon written notice to County at least ten (10) days prior to the expiration of the then current Option period, Concessionaire shall have the right to extend the Option Expiration Date for up to five (5) additional periods of six months each (each an “**Option Extension Period**”). Each extension notice by Concessionaire shall also be accompanied by the applicable Option fee (each an “**Option Term Extension Fee**”). The Option Term Extension Fees are as follows: i) \$0.00 for the first Option Extension Period; ii) \$50,000 for the second Option Extension Period; (iii) \$120,000 for the third Option Extension Period; (iv) \$140,000 for the fourth Option Extension Period; (v) \$140,000 for the fifth Option Extension Period; and (vi) the amount, as determined by the Director of the Department of Beaches and Harbors of the County (the “**Director**”), for any extension granted by the Director for any of the additional Option Extension Period(s) as provided below.

In addition, the Director shall have the authority in Director's reasonable discretion to grant additional Option Extension Period(s) if the following conditions to each such extension are satisfied: (i) if Concessionaire has not satisfied the Entitlement Conditions (as defined in Section 3.1 below), Director determines in Director's reasonable judgment that Concessionaire has proceeded with good faith efforts to satisfy the Entitlement Conditions but has been delayed in doing so as a result of delays beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Concessionaire's applications for the Entitlements or the pendency of an appeal, proceeding or litigation described in clauses (a) and (b) of Section 3.1 below, or delays resulting from Unreasonable County Activity (as defined in Section 6.2 below) (collectively, an "**Entitlements Condition Delay**"), (ii) if Concessionaire has satisfied the Entitlements Conditions but has not satisfied the Project Financing Condition, Director determines in Director's reasonable judgment that Concessionaire has proceeded with reasonable efforts to satisfy the Project Financing Condition, and (iii) in the case of each extension Concessionaire pays to County an extension fee (if any) for such extension as determined by Director, with it being understood and agreed that no fee shall be imposed for Force Majeure events, subject to the last paragraph of this section.

Upon the grant by Director of an extension to the Option Expiration Date, Concessionaire shall provide to Director quarterly progress reports during the period of the extension regarding Concessionaire's efforts towards the satisfaction of the Option Conditions and the status and projected date for satisfaction of the Option Conditions. Director shall have no obligation to extend the Option Expiration Date in the case of a Concessionaire Default (as defined in Section 10.12 below).

If, at the end of the fifth Option Extension Period (i.e., forty-eight (48) months from the Option Grant Date), or as mutually extended by the Director and Concessionaire, the Option still has not been exercised, the Option Agreement shall terminate upon not less than thirty (30) days prior written notice given by County to Concessionaire.

Notwithstanding the Option Expiration Date set forth above in this Section 2, in the case of the non-satisfaction of the Entitlements Condition, if Concessionaire's inability to satisfy the Entitlements Condition is caused by (i) a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements, or (ii) after the issuance of the Entitlements, the continued pendency of an appeal, proceeding or litigation (including all appeals of such litigation) that contests the issuance of the Entitlements, then as long as there is not a Concessionaire Default under this Agreement, the Option Expiration Date shall be tolled until the cessation of such moratorium, temporary restraining order, injunction or other court order, or the denial, dismissal or other resolution in favor of the issuance of the Entitlements, of such appeal, proceeding or litigation that contested the issuance of the Entitlements, as applicable. If requested by Concessionaire, such tolling may be recognized in writing by the Director, however, in no event shall such tolling be extended for more than an aggregate of two (2) years.

3. Option Conditions. In addition to any other requirements for exercise of the Option set forth in this Agreement, the exercise by Concessionaire of the Option shall be subject to the satisfaction of the following conditions (the "**Option Condition**"):

3.1 Concessionaire shall have obtained all discretionary planning, zoning and entitlements approvals that may be required to be obtained from governmental authorities

(including, but not limited to, a Coastal Development Permit and any required discretionary approvals to be issued by Beach Commission Regional Planning, the Board of Supervisors of County (if applicable) and the California Coastal Commission (if required), and all other required discretionary approvals, for the construction of the Redevelopment Work (as defined in Section 5.1 of the form of Concession Agreement) on the Premises (collectively, the “**Entitlements**”), and both (a) the Entitlements shall not be subject to further appeal, and (b) there shall be no judicial or administrative proceeding pending as to the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (including, without limitation, any proceeding or litigation brought by or on behalf of Concessionaire or any direct or indirect partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Concessionaire), or if such a proceeding or litigation has been pending, then a dismissal, decision or judgment shall have been issued in favor of the validity of the Entitlements, which dismissal, decision or judgment shall not be subject to further appeal (collectively, the “**Entitlements Condition**”);

3.2 Concessionaire shall have received Director’s written approval, which shall not be unreasonably withheld, of: (i) schematics and preliminary plans; and (ii) all permit-ready plans, specifications and schematics (the “Approved Permit-Ready Plans, Specifications and Costs” as defined in Subsection 5.5.1 of the form of Concession Agreement) at the level of design required to be prepared in connection with the receipt of the discretionary entitlements for the Redevelopment Work, and such Approved Permit-Ready Plans, Specifications and Costs shall have been approved by all required agencies, and such Approved Permit-Ready Plans, Specifications and Costs shall have been attached as Exhibit B to the form of Concession Agreement;

3.3 Concessionaire has prepared for approval of the Los Angeles County Department of Public Works, Building and Safety Division (“**DPW B&S**”), all required permit ready plans and specifications and approvals from DPW B&S, and any other agency having jurisdiction, required to be obtained in connection with receipt of discretionary entitlements and/or permits or approvals for the Redevelopment Work;

3.4 Concessionaire shall have obtained Project Financing (as defined below) for the Redevelopment Work (the “**Project Financing Condition**”). For purposes of this Agreement, “**Project Financing**” means: (i) evidence of project financing for the completion of the Redevelopment Work deemed reasonably satisfactory to the Director; and (ii) a copy of the Operating Agreement of Concessionaire, showing all members of the Concessionaire and their respective ownership interests: provided, however, that the County will endeavor to keep such Operating Agreement confidential, subject to the Public Records Act (including any exceptions) and other Applicable Laws;

3.5 Concessionaire shall have received and provided to County verification of plans that have been prepared for the issuance of all entitlement approvals and/or permits, consistent with the Concession agreement, or such other documentation deemed appropriate by County to evidence receipt of all required approvals for the Redevelopment Work, including for utilities such as, but not limited to, water/sewer, electricity, telephone/cable, and gas, including any necessary and/or required approvals from California Department of Transportation, Los Angeles County Metropolitan Transit Authority, and the City of Los Angeles;

3.6 To the extent necessary and/or required, evidence of the availability of approvals by the City of Los Angeles and California Department of Transportation regarding (i) the status of reconstruction of the intersection of Pacific Coast Highway and Sunset Boulevard, and (ii) either the abandonment or grant of right by the City of Los Angeles to use the land on and under the extension of Sunset Boulevard to the west of Pacific Coast Highway (County agrees to cooperate and work with Concessionaire as provided in Exhibit B of the form of Concession Agreement);

3.7 Concessionaire shall have provided a final site plan no later than forty-five (45) days prior to exercise of the Option, which site plan may be modified subject to approval by the Director;

3.8 Concessionaire shall have made any payments required to be made to County pursuant to: (i) Sections 5 of this Agreement (Option Fee); and (ii) Section 4.7 of the form of Concession Agreement (County Costs);

3.9 On or before the date sixty (60) days prior to Concessionaire's delivery of the Exercise Notice, Concessionaire shall have delivered to County's outside counsel or the County construction representative a Cost Breakdown Update (the "**Cost Breakdown Update**"), in such reasonable detail and form as may be required by Director, including without limitation, specifications, quality standards, descriptions of materials, and the like, that are of similar standard, and which may be subject to modification as approved by Director;

3.10 Director shall have approved the Cost Breakdown Update in his or her reasonable discretion within ten (10) days of receipt, otherwise it shall be deemed disapproved;

3.11 Concessionaire shall have complied with the terms of Sections 5.3 and 5.3.1 of the Concession Agreement, including but not limited to, Concessionaire's commitment to use Frank Gehry (including his firm Gehry Partners, LLC) for concept and basic architectural design, and Concessionaire's agreement that Frank Gehry shall be the "principal designer" and shall be responsible for the design development phase.

3.12 The Option shall not have expired or been terminated pursuant to Section 2 of this Agreement.

4. Exercise of Option. The Option shall be exercisable by Concessionaire only by Concessionaire's strict satisfaction on or before the Option Expiration Date of the following terms and conditions (the "**Exercise Requirements**"): (a) Concessionaire shall notify County in writing of its exercise of the Option ("**Exercise Notice**"); (b) Concessionaire shall accompany the Exercise Notice with Concessionaire's execution and delivery to County two original counterparts of the Concession Agreement as executed by Concessionaire with any additional terms provided in this Agreement and any blank or bracketed terms set forth in Exhibit B hereto completed in accordance with the terms and provisions of this Agreement (as so completed and executed, the "**Final Concession Agreement**"); (c) as of the date of Concessionaire's delivery of the Exercise Notice there shall not be a Concessionaire Default under this Agreement; (d) the Option Conditions shall have been satisfied and there shall be no change in circumstances that causes the Option Conditions to no longer continue to be satisfied; and (e) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 6.3 of this Agreement.

Upon Concessionaire's proper and timely exercise of the Option, County shall execute and deliver the Final Concession Agreement as soon as reasonably possible thereafter, but, in any event not later than forty-five (45) days following the date of Concessionaire's exercise of the Option. The Effective Date of the Final Concession Agreement (as defined in the form of Concession Agreement) shall be the date the Concession Agreement is executed and delivered by County, which date shall be inserted into page 1 of the Concession Agreement concurrent with County's execution and delivery thereof. If Concessionaire's Project Financing is in a position to close within the above forty-five (45) day period County agrees to cooperate with Concessionaire to effectuate a concurrent closing of the Project Financing and County's delivery of the Concession Agreement such that the Effective Date of the Concession Agreement is the same as the date of the close of Concessionaire's Project Financing; provided, however, in no event shall such agreement to cooperate be interpreted to require County to delay the execution and delivery of the Concession Agreement beyond such forty-five (45) day period; and provided, further, that County shall not be required to execute and deliver the Concession Agreement unless within such forty-five (45) day period Concessionaire continues to satisfy the Option Conditions and Concessionaire's Project Financing is in a position to close on or before the execution and delivery by County of the Concession Agreement. Notwithstanding the foregoing, Director shall have the authority in the exercise of Director's good faith judgment, but not the obligation, to extend the forty-five (45) day period in which Concessionaire is required to close Concessionaire's Project Financing for up to an additional thirty (30) days.

The failure of Concessionaire's Project Financing to close or Concessionaire's continuing satisfaction of the conditions to County's required execution and delivery of the Concession Agreement during the above forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) shall not in and of itself cause a termination of the Option, and, as long as the Option Term has not expired, Concessionaire shall have the continuing right to subsequently re-exercise the Option during the remainder of the Option Term if Concessionaire once again satisfies all conditions to such exercise, subject to Concessionaire causing the closing of the Project Financing and the continued satisfaction of the conditions to County's execution and delivery of the Concession Agreement during the forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) following such subsequent re-exercise of the Option, in accordance with the terms and provisions of this Section 4.

5. Option Fee. In consideration of County's grant of the Option to Concessionaire, Concessionaire shall pay to County within five (5) business days from the grant of the Option the sum of One Hundred Thousand Dollars (\$100,000.00) (the "**Option Fee**"). The Option Fee shall be non-refundable; except in the event that subsequent to the receipt by the County of the Option Fee a lawsuit is filed challenging or contesting County's CEQA certification and/or any other entitlement approvals, and Concessionaire at its sole cost and expense diligently opposes said lawsuit to a final and non-appealable adjudication, then the County shall refund the Option Fee if the approvals are set aside by the Court.

6. Entitlements and Plan Preparation During Option Term.

6.1 Obtaining Entitlements. During the Option Term, Concessionaire shall use its good faith efforts to satisfy the Option Conditions, without any requirement to commence or defend any litigation. Such efforts shall include Concessionaire's expenditure of such funds,

including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to pursue the permit, license and other approval processes.

6.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the “**Department**”) shall cooperate with and assist Concessionaire, to the extent reasonably necessary and practical, and reasonably requested by Concessionaire, in Concessionaire’s efforts to obtain the appropriate governmental approvals, consents, permits, variances and other entitlements which may be required in connection with the performance by Concessionaire of the Redevelopment Work as defined in the form of Concession Agreement. Such cooperative efforts may include the Department’s joinder in any application for such approval, consent, permit variance or other entitlement, where such joinder by the Department (in the Department’s reasonable discretion) is required or helpful; provided, however, that Concessionaire shall reimburse County for the actual third party costs incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding any contrary provision of this Agreement, Concessionaire and County acknowledge that the approvals given by County and/or the Department under this Agreement and/or the Concession Agreement shall be approvals pursuant to its authority under Section 25536 or 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Concession Agreement in no way release Concessionaire from obtaining, at Concessionaire’s expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises and Improvements; and that the Department’s duty to cooperate and County’s approvals under this Agreement and/or the Concession Agreement do not in any way modify or limit the exercise of County’s governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Concession Agreement.

For the purposes of this Agreement, “**Unreasonable County Activity**” means any of the following actions (or inactions) that occur after the date of this Agreement and prior to the expiration of the Option Term: (i) the Department’s failure to provide required County joinder, if any, as fee title owner of the Premises, in Concessionaire’s submittal to the applicable governmental agency of the Approved Permit-Ready Plans, Specifications and Cost (as defined in Section 5.4 of the Concession Agreement) for the Redevelopment Work that are approved by the Department, if required by law; or (ii) the Department’s failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Concessionaire and which are necessary for Concessionaire to proceed with the permitting and approval process, or the taking by the Department of actions in its proprietary capacity, without Concessionaire’s consent, which are in conflict with Concessionaire’s rights and obligations under this Agreement and actually delay the receipt of the Entitlements; or (iii) the Department’s failure to comply with the time periods imposed upon the Department under Section 6.3 below, except in the case (if any) where a failure of the Department to notify Concessionaire of its approval or disapproval of a matter constitutes County’s deemed approval of such matter, or constitutes County’s deemed disapproval of such matter and County’s disapproval of such matter is authorized under the circumstances. Nothing contained in this Section 6.2 or the other provisions of this Agreement shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County’s actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County’s customary regulatory permit or approval process. No action or inaction

shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

(a) Within a reasonable time under the circumstances, Concessionaire must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Concessionaire fails to notify Director in writing as specified in the immediately preceding sentence within forty-five (45) days following Concessionaire's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this Section 6.2, in no event shall Concessionaire be entitled to any extension of the Option Term for any period of the delay under this Section 6.2 that occurred prior to the date of Concessionaire's notice described in this paragraph (a).

(b) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Concessionaire or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 6.2 for the Unreasonable County Activity shall equal the actual amount of delay in the receipt of the Entitlements directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Concessionaire), then Concessionaire and Director shall establish the length of the delay in the receipt of the Entitlements likely to be caused by the Unreasonable County Activity.

(c) If, within fourteen (14) days following receipt of Concessionaire's notice alleging Unreasonable County Activity, Director and Concessionaire have not agreed in writing as to whether delay in the receipt of the Entitlements due to Unreasonable County Activity has occurred or the length of such delay, then Concessionaire may elect to have the matter referred to the Board of Supervisors of the County for such determination, or file an action for declaratory relief or similar action. If it is determined that there is Unreasonable County Activity, all time periods under the Option (including the Option Expiration Date) and the amount so determined shall be tolled during the pendency of the determination of Unreasonable County Activity.

6.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Concessionaire in accordance with and subject to the terms and provisions of Article 5 of the form of Concession Agreement. The requirements of Article 5 of the form of Concession Agreement include, without limitation, the obligation of Concessionaire to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.4 of the form of Concession Agreement. The procedure for the preparation, submittal and approval of the plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the form of Concession Agreement, except that during the period commencing on the date of this Agreement and expiring on the earlier of Concessionaire's exercise of the Option or the Option Expiration Date, Concessionaire shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.4 of the form

of Concession Agreement that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with Concessionaire's applications for or receipt of the Entitlements for the Redevelopment Work. Concessionaire shall accompany such plans, specifications and other materials with the construction cost estimates described in Section 5.4 of the form of Concession Agreement, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Concessionaire pursuant to this Section 6.3 shall be in accordance with the terms and provisions of Section 5.4 of the form of Concession Agreement, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Concessionaire in accordance with the conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Concessionaire to Director pursuant to this Section 6.3, Concessionaire shall have the right, at its election, but not the obligation, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Concessionaire of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the form of Concession Agreement. Notwithstanding the foregoing, County acknowledges that prior to the date of this Agreement Director has reviewed and approved the schematic plans and narrative description of the Redevelopment Work required under Subsection 5.4.1 of the form of Concession Agreement. Such approved schematic plans and narrative description of the Redevelopment Work are set forth or referenced in the Redevelopment Plan attached as Exhibit B to the form of Concession Agreement

7. Physical Inspection. Concessionaire shall have the right to enter the Premises for physical inspection of the Premises during the Option Term, provided that the current concessionaire has consented.

8. Reserved.

County Costs. Regardless of whether Concessionaire exercises the Option, Concessionaire shall reimburse County for the Actual Costs (as defined in the form of Concession Agreement) incurred by County in the review, negotiation, preparation, documentation and administration of this Agreement, the Concession Agreement and the term sheets and memoranda that precede or preceded any of the foregoing. Concessionaire shall pay all of such Actual Costs within thirty (30) days following receipt by Concessionaire of an invoice from the County for such Actual Costs.

9. Miscellaneous.

9.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the

part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

9.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Concession Agreement.

9.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

9.5 Attorneys' Fees. In the event of any action, proceeding or mediation arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

9.6 No Assignment. Concessionaire shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its reasonable discretion. If Concessionaire now or hereafter has a Board of Directors, any change in the Board of Directors of Concessionaire of an aggregate of more than fifty percent (50%) in any twelve (12)-month period shall constitute an assignment or transfer that requires the written consent of County pursuant to this Section 10.6. A mere change in the form of Concessionaire shall not require County approval so long as there is no change in the actual beneficial ownership in Concessionaire, and such change in form does not involve an intent to avoid Concessionaire's obligations under this Agreement. For the avoidance of doubt and notwithstanding the foregoing, no consent is required to assign and transfer this Agreement to a financial institution previously approved by the County as security for the purpose of providing capital for the Redevelopment Work. Any approved assignment of this Agreement shall release the assignor of all liability arising due to actions or omissions, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Agreement and to pay any amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment.

9.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supersedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

9.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.10 Counterparts. This Agreement and any other document necessary for the consummation of the transaction contemplated by this Agreement may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered had been signed using a handwritten signature. County and Concessionaire (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intended to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

9.11 Successors and Assigns. Subject to Section 10.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.12 Concessionaire Default. For purposes of this Agreement, a "**Concessionaire Breach**" under this Agreement means a failure of Concessionaire to perform or comply with any material obligation or covenant of Concessionaire under this Agreement. For purposes of this Agreement, a "**Concessionaire Default**" under this Agreement means Concessionaire's failure to cure a Concessionaire Breach under this Agreement within (a) ten (10) days after Concessionaire's receipt of written notice from County in the case of the payment of money, or (b) thirty-five (35) days after Concessionaire's receipt of written notice from County in the case of any other obligation or covenant of Concessionaire under this Agreement; provided, however, that if the nature of the Concessionaire Breach under this clause (b) is such that it cannot with reasonable diligence be cured within thirty-five (35) days, then the cure period set forth in this clause (b) shall be extended for such additional period as reasonably required for the cure of the Concessionaire Breach as long as Concessionaire commences cure of the Concessionaire Breach within thirty-five (35) days after Concessionaire's receipt of written notice from County and diligently prosecutes such cure to completion.

9.13 Reserved.

9.14 Indemnification. Concessionaire agrees to indemnify, defend and hold County, its agents, officers and employees, harmless from and against any claim, cause of action

or proceeding brought against County, its agents, officer or employees, and all liabilities and costs (including without limitation attorneys' fees) incurred in connection therewith, regarding any contest, opposition or challenge relating to the Entitlements for the Redevelopment Work, including without limitation any contest, opposition or challenge to the issuance of any particular permit(s) or approval(s) for the Redevelopment Work or as to whether the Redevelopment Work requires the issuance of any particular permit(s) or approval(s). Concessionaire shall have the right to assume the defense of any such action or proceeding with counsel reasonably satisfactory to County

9.15 Exhibits. Exhibits A, B, C and D attached to this Agreement are hereby expressly incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Concessionaire have entered into this Agreement as of the date first set forth above.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

PCH BEACH ASSOCIATES, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ATTEST:

CECILIA ZAVALA,
Executive Officer – Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

DAWYN HARRISON,
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

GLASER, WEIL, FINK, HOWARD, AVCHEN & SHAPIRO LLP

By: _____
Roger H. Howard, Esq.

EXHIBIT A

DESCRIPTION OF PREMISES

[See attached]

EXHIBIT A

LEGAL DESCRIPTION

The Premises consists of the Restaurant Parcel and the Parking Lot Parcel, as more particularly described below:

Restaurant Parcel

That portion of Lot F, Tract No. 8940, in the City of Los Angeles, County of Los Angeles, State of California, as shown on map filed in Book 162, pages 42 to 45 inclusive, of Maps, in the office of the Registrar-Recorder of said County, and that portion of the Rancho Boca de Santa Monica, in said City, as shown on map recorded in Book 3, pages 12 and 13 of Patents, in the office of said Registrar-Recorder, within the following described boundaries:

Beginning at the northwesterly corner of that certain parcel of land described as Parcel No. 4 in deed to State of California, recorded on October 27, 1947 in Book 25674, page 296, of Official Records, in the office of said Registrar-Recorder; thence easterly along the general southerly boundary of Pacific Coast Highway, formerly Malibu Road, as shown on map of Tract No. 10238, filed in Book 206, pages 23 to 26 inclusive, of said Maps, to the easterly boundary of Sunset Boulevard, formerly Beverly Boulevard, as shown on the last mentioned map; thence southerly along said easterly boundary to the mean high tide line of the Pacific Ocean; thence westerly along said mean high tide line to the westerly line, or its southerly prolongation, of said certain parcel of land; thence northerly along said westerly line or said southerly prolongation and said westerly line to the point of beginning.

Parking Lot Parcel

That portion of Rancho Boca de Santa Monica, as shown on map recorded in Book 3, pages 12 and 13, of Patents, in the office of the Registrar-Recorder of the County of Los Angeles described as PARCEL 4, PARCEL 5 and PARCEL 6 all in deed to the State of California, recorded in Book 25674, page 296, of Official Records, in the office of said registrar-recorder within the following described boundaries:

Beginning at the intersection of the easterly line of Beverly Boulevard, 60 feet wide, now known as Sunset Boulevard, as shown on map of Tract No. 10238, filed in Book 206, pages 23 to 26 inclusive, of Maps, in the office of said registrar-recorder and that certain 2,370-foot radius curve in the southerly boundary of Malibu Road, 140 feet wide, now known as Pacific Coast

EXHIBIT B

FORM OF CONCESSION AGREEMENT

[See attached]

EXHIBIT C

DESCRIPTION OF REDEVELOPMENT PLAN

Project Description

Concessionaire will demolish all existing improvements on site, including an approximately 12,091 square foot, 707-seat restaurant and 7,900 square foot patio and public viewing deck, and replace it with a new currently programed approximate 12,500 square foot, approximate 450-seat restaurant, and a new currently programmed approximate 2,700 square foot, approximate 100-seat public viewing deck containing an approximate 700 square-foot food and beverage service station all as finally delineated in the plans approved by the government agencies and authorities having jurisdiction over the Project and pursuant to the entitlements and the Concession Agreement including but not limited to the Los Angeles County Department of Regional Planning approval of the Land Use Application, the California Coastal Commission approval of the Coastal Development Permit and the Los Angeles County Department of Beaches and Harbors Director's approval of each phase of the plans pursuant to the Concession Agreement and subject to final market conditions at the Commencement Construction Date as defined in the Concession Agreement but at a Total Redevelopment Cost no less than Twenty Seven Million Dollars (\$27,000,000) pursuant to section 5.1.1 of the Concession Agreement. The proposed public viewing deck would be for public use and would operate separately from the restaurant. In addition, Concessionaire will repave and reconfigure the existing public beach and restaurant parking lot, and add a bus turnaround for Metro and Big Blue Lines.

Scope of Work

The following Scope of Work of the Project is delineated below pursuant to the Project Description above including the limitations, restrictions and adjustments that may occur as described therein:

- i. Demolition of existing Gladstone's building.
- ii. Construction of a new restaurant with approximately 450 seats, with exterior and interior dining, and 100-seat public deck/boardwalk that will include restrooms, a separate outlet offering reasonably priced food and beverages and other amenities as approved by the Director in its reasonable discretion.
- iii. Redevelopment of: 1) parking lot with bus turnaround; 2) vehicle access from parking lot to beach for maintenance or emergency use; 3) ADA-compliant ramp access to the beach (if required); 4) satisfaction of all conditions imposed by Big Blue Bus, Metro and Caltrans, on and off-site.

EXHIBIT D

REDEVELOPMENT WORK COST CATEGORIES

[See attached]

CONCESSION AGREEMENT
EXHIBIT H

Project Cost Breakdown Categories

PROJECT:
ADDRESS:
ARCHITECT:
PROJECT #:
ESTIMATOR:
DATE:

PROJECT REQUIREMENTS

Temp. Construction
Site Safety
Temp. Hoisting
Scaffolding & Staging
Temporary Facilities
Beach Maintenance
Jobsite Office
Progress Cleaning - General Laborers
Waste Management & Disposal
Final Cleaning
Site Safety
Other

PROJECT REQUIREMENTS

DEMOLITION

Demolition of Existing Restaurant Building
Remove Existing Piles
Demolition of Minor Sidewalk, Curb and Gutter
Abatement of Hazardous Materials (Allowance)
Removal of Existing "Riprap" Rock Underneath Building
Removal of Existing Asphalt Paving
Other

DEMOLITION

CONCRETE

Structural Cast-In-Place Piles / Caissons
Structural Cast-In-Place Exterior Foundation
Structural Cast-In-Place Interior Foundation
Repave and Restripe Entire Asphalt Parking Lot
Bus Turnaround Area
Minor Sidewalk, Curb and Gutter at Bus Turnaround Area
Pedestrian Walk Path at West of Parking Lot
Misc. Ramps / Stairs / Pads
Misc. Parking Lot / Entry / Hardscape
Shoring Allowance
Seawall / Erosion Control (Allowance)
5'-0" Wide Beach Path at West of Restaurant Building Line
Other

CONCRETE

MASONRY

Enter Scope Here
Other

MASONRY

STONE

STONE

STRUCTURAL STEEL

STRUCTURAL STEEL

MISC. METALS

Misc. Metals / Structural Supports (Allowance)

Other

MISC. METALS

ORNAMENTAL METALS

Patio Railings

Roof Screens (Allowance)

Other

ORNAMENTAL METALS

WOOD FRAMING / ROUGH CARPENTRY

Structural Wood Framing / PSL / Truss / Moment Frames

Architectural Wood Framing Details (Allowance)

Protection of Interior Finishes

Other

WOOD FRAMING / ROUGH CARPENTRY

WOOD DECKING

Exterior Wood Decking at Patio Dining

Exterior Wood Decking at Entry Deck

Protection of Exterior Finishes

WOOD DECKING

MILLWORK

Furnish and Install Interior Restaurant Millwork

Front and Back Bar Assemblies

Banquettes

FOH Finishes

Baseboard

Built-In Casework

POS Station

Server Station

Other

Public Deck (Allowance)

MILLWORK

WATERPROOFING

Waterproofing Membrane at Kitchen

Waterproofing Membrane at Bathrooms

Exterior Waterproofing Allowance

Other

WATERPROOFING

ROOFING

PVC Membrane Roofing System

Other

ROOFING

FIREPROOFING

FIREPROOFING

JOINT SEALANTS

Caulking of Dissimilar Materials

Exterior Decorative Sealants

Other

JOINT SEALANTS
DOORS, FRAMES & HARDWARE Interior Doors, Frames and Hardware Other
DOORS, FRAMES & HARDWARE
SPECIAL DOORS Sliding / Operable Partitions Counter Roll Down / Shutter System at Bar Patio Other
SPECIAL DOORS
STOREFRONT Fixed Storefront Wall Systems at 11'-0" H Other
STOREFRONT
MONUMENTS Frank Gehry "Monuments" with Incorporated Signage Other
MONUMENTS
DRYWALL Interior Metal Stud Framing and Drywall Acoustical Treatment FRP for Kitchen Walls Other
DRYWALL
PLASTER Exterior Stucco - Integral Color 3/8" Cement Plaster Other
PLASTER
TILE Restroom Ceramic Floor Tile Restroom Ceramic Wall Tile BOH Kitchen Quarry Tile Other
TILE
ACOUSTICAL CEILINGS BOH Washable Ceiling Tile at Kitchen Other
ACOUSTICAL CEILINGS
CARPET/RESILIENT FLOORING Other
CARPET/RESILIENT FLOORING
FLOOR PREPARATION Other
FLOOR PREPARATION
WOOD FLOORING Wood Flooring Finish at Banquet Rooms & Interior Dining Other
WOOD FLOORING
RESINOUS FLOORING Enter Scope Here

Other
RESINOUS FLOORING
PAINTING
Painting Budget
Staining/Treatment of Exterior Millwork at Patio Dining and Entry
Other
PAINTING
SPECIALTIES
New Bathroom Accessories
Toilet Partitions
BOH Employee Lockers
Other
SPECIALTIES
SIGNAGE
Signage Budget
Other
SIGNAGE
FOOD SERVICE EQUIPMENT
Food Service Equipment Budget
FOOD SERVICE EQUIPMENT
ARTWORK
Artwork Budget
ARTWORK
FURNISHINGS, FIXTURES & EQUIPMENT (FF&E)
FF&E Budget
FURNISHINGS, FIXTURES & EQUIPMENT (FF&E)
WINDOW TREATMENT
Manual Curtains / Blinds Budget
Other
WINDOW TREATMENT
ELEVATORS
ELEVATORS
FIRE PROTECTION
Fire Protection Budget
Fire Riser
NFPA-13 Compliant Sprinkler Heads
Dry Pendant at Walk-Ins
Piping
Drawings, Calculations & Submittals
FIRE PROTECTION
PLUMBING
Plumbing Budget
Kitchen Equipment Connections
Plumbing Equipment & Connections
Water Supply/Return Piping
Sanitary/Waste Piping
Gas Piping
Rough-Ins

Water Meter Tie-In
Other
PLUMBING
HVAC
HVAC Budget
Rooftop Units
Equipment
Direct Digital Controls & Thermostats
Supply & Return Distribution
Supply & Return Register, Diffusers & Grille
Commissioning
Other
HVAC
ELECTRICAL
Electrical Budget
Safe-Off Prior to Demolition
New 2000AMP Service
Transformers
Panels
Branch Feeder System
Receptacles
Back Boxes
Lighting Installation
Power to Mechanical Equipment
Power to Kitchen Equipment
Power to Lighting
6" PVC Soda/Beer Conduit
Low Voltage - Conduit and Pull String Only
Patio Dining & Entry Deck - Wayfinding/Pathway & Service Terminals (Allowance)
Other
ELECTRICAL
LIGHTING
FOH Lighting Budget
BOH Lighting Budget
Exterior Lighting Budget
Parking Lot Lighting Budget (Allowance)
Lighting Controls / Lutron / T-24 Budget
Other
LIGHTING
LOW VOLTAGE SYSTEMS
A/V IT/POS/Security/Wi-Fi Equipment & Systems
Other
LOW VOLTAGE SYSTEMS
FIRE ALARM
Fire Alarm Budget
Control Panel
Strobes, Annunciators, Devices, Etc.
Wiring
Design
Other
FIRE ALARM
EARTHWORK
Enter Scope Here
Other
EARTHWORK
LANDSCAPING
Landscaping and Plantings Budget

Irrigation Budget
Landscaping and Plantings at Parking Lot Budget
Other
LANDSCAPING
TRELLIS SYSTEMS
Trellis / Sun Treatment at Bar Patio
Trellis / Sun Treatment at Outdoor Deck
Trellis / Sun Treatment at Dining Patio
Other
TRELLIS SYSTEMS
SITE UTILITIES
Electrical Service Connection
Domestic Water Service Connection
Fire Service Connection
Sewer Connection
Gas Service Connection
Rework Existing DWP Pole on Building
Stormwater Mitigation at Parking Lot
Other
SITE UTILITIES
PRECONSTRUCTION
Preconstruction
PRECONSTRUCTION
GENERAL CONDITIONS
General Conditions
GENERAL CONDITIONS
BONDS
ESTIMATED SUBTOTAL
FLOOD AND EARTHQUAKE INSURANCE
GENERAL LIABILITY INSURANCE
BUILDERS RISK INSURANCE
C.M. FEE
ESTIMATED SUBTOTAL
LOCAL BUSINESS TAX
DESIGN CONTINGENCY
CONTRACTOR CONTINGENCY
ESCALATION CONTINGENCY (2.0%)
ESTIMATED TOTAL

ALTERNATES (NOT INCLUDED IN BASE TOTAL; SUBJECT TO INSURANCES, FEE AND CONTINGENCY)

- Food Service Equipment Budget
 - Back Kitchen
 - Cold & dry storage areas
 - Ice production
 - Prep areas
 - Dish room
 - Cold meat & fish cutting
 - Service areas
 - Banquet pantry
 - Prep cook line

- Special custom chef's island suites
 - Pizza oven
 - Chef's counters
 - Pick up areas
 - Pastry pantry
 - Lobster display
 - Wine display
 - Bar area
 - Remote refrigeration
 - Refrigerated wine display
 - Remote beer system
- Entry deck bar and kitchen
 - Installation
 - Freight
 - Shop drawings
 - Storage & staging
 - Delivery
 - Sales tax
 - Coordination

FF&E Budget

- Furnishings
 - Exterior entry deck furniture
 - Cabana enclosures and furnishings
 - Stools
 - Chairs
 - Tables
 - Bench seating
 - Umbrellas
 - Patio furniture
 - Chairs
 - Tables & bases
 - Lounge furniture
 - Banquet chairs
 - Tables & dollies
 - Dining booth seating
 - Dining chairs
 - Tables & bases
 - Stools
 - Décor lighting
 - Installation
 - Handling
 - Freight
 - Storage & staging
 - Sales tax
 - Coordination
 - Miscellaneous Items
 - POS system
 - Signs & graphics
 - Smallwares
 - Pots & pans
 - Bar smallwares & glasses
 - Audio video
 - Misc. small appliances

Artwork Budget

- Art, sculptures
- Accessories

Other

- IT/Security/Wi-Fi Budget
- Electrical Service Connection
- Domestic Water Service Connection
- Fire Water Service Connection
- Sewer Connection
- Gas Service Connection

Air Scrubber Allowance
Entry Deck Design Elements
18'-0" to 20'-0" Cast In Place Seawall - Assumes 67'-0" Length
Removal of Existing Riprap Rocks to Nearby Existing Groins
5'-0" Wide Beach Path at West of Restaurant Building Line

ESTIMATED TOTAL WITH ALTERNATES

BELOW THE LINE ITEMS

Rework Existing Pole on Building
Replace Existing Riprap Rock Underneath Building
Stormwater Mitigation at Parking Lot

Consultants

Coastal Engineer
Environmental Assessment
Misc reports/consultants
PTR
Utility Investigation
OTHER
Miscellaneous

Construction Soft Cost Costs

Development Fees
Misc Dev Expenses (Reimbursables)
Liquor License
Project management
Legal Fees
Consultants

DESIGN AND ENGINEERING

Architect RFP (Gehry Partners)
Architect - Frank Gehry (Gehry Partners)
Architect - Frank Gehry Design Fee - Equity
Architect - Executive Architect (HansonLA)
MEP
Interior Design
Arch/Int Design Reimbursables
Hanson Arch Reimb
Structural Engineer
Landscape Architect
Site Survey + As Builts
Geotechnical Engineer/Soils
Civil Engineer-Grading Plans/Drainage Plans
Food Service Design
Low Voltage Consultants
Lighting Design
Code Consultant
Specification Writer
ADA Consultant
Permit Expeditor
Permit Fees
Preliminary Haz Mat Report Documentation
Phase 1 Environmental Review
Coastal Commission Consultant
Website/CoUrban
Property Tax During Construction
Inspections - Geotech Deputy
Inspections - Structural Deputy
Other
SUB TOTAL
SOFT COST CONTINGENCY
TOTAL SOFT COSTS

Acquisition Cost

Rent During Construction
ENA Deposit+ Payments made during RFP
Reimbursement of County Expenses
Option Payments
Other
SUB TOTAL
ACQUISITION COSTS CONTINGENCY
TOTAL ACQUISITION COSTS

Preopening

Financing Costs

Fundraising Fees
Lender Fees
Interest
Other

CONCESSION AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

PCH BEACH ASSOCIATES LLC

(Lease No. _____)

Dated as of _____, 2022

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**CONCESSION AGREEMENT
WILL ROGERS STATE BEACH**

THIS CONCESSION AGREEMENT (“**Agreement**”) is made and entered into as of the _____ day of _____, 2022 (“**Effective Date**”), by and between the COUNTY OF LOS ANGELES (“**County**”), and PCH BEACH ASSOCIATES LLC, a California limited liability company (together with its permitted successors and assigns, “**Concessionaire**”), as concessionaire.

RECITALS

WHEREAS, County is the fee owner of that certain real property located at 17300 Pacific Coast Highway, Pacific Palisades, California and commonly known as Will Rogers State Beach and more particularly described in **Exhibit “A”** attached hereto (the “**Premises**”); and

WHEREAS, County and Concessionaire have entered into that certain Option Agreement dated as of _____ (the “**Option Agreement**”), pursuant to which County granted Concessionaire an option (the “**Option**”) to lease the Premises from County on the terms and conditions set forth in this Agreement; and

WHEREAS, Concessionaire has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Concessionaire hereby agree as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Agreement shall have the following meanings:

1.1.1 “ACCOUNTING YEAR” shall have the meaning set forth in Section 14.8.

1.1.2 “ACTUAL COST” shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County’s environmental consultant), and (ii) costs incurred in connection with appraisals.

1.1.3 “ADA” shall have the meaning set forth in Subsection 2.1.1.

- 1.1.4 “ADMINISTRATIVE CHARGE” shall have the meaning set forth in Section 4.6.
- 1.1.5 “AGGREGATE TRANSFER” shall have the meaning set forth in Subsection 4.6.4.
- 1.1.6 “AGREEMENT” shall have the meaning set forth in the first paragraph above.
- 1.1.7 “ALTERATIONS” shall have the meaning set forth in Section 5.2.
- 1.1.8 “ANTENNAE” shall have the meaning set forth in Subsection 3.2.2.5.
- 1.1.9 “ANNUAL INTEREST RENT” shall have the meaning set forth in Subsection 4.2.1.
- 1.1.10 “ANNUAL MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.
- 1.1.11 “ANNUAL PERCENTAGE RENT” shall have the meaning set forth in Subsection 4.2.4.
- 1.1.12 “ANNUAL RENT” shall have the meaning set forth in Section 4.2.
- 1.1.13 “ANNUAL RESERVE FUND EXPENDITURE PLAN” shall have the meaning set forth in Subsection 5.17.4.
- 1.1.14 “ANNUAL RESERVE FUND UPDATE” shall have the meaning set forth in Subsection 5.17.4.
- 1.1.15 “APPLICABLE LAWS” shall have the meaning set forth in Subsection 2.1.1.
- 1.1.16 “APPLICABLE RATE” shall mean an annually compounded rate of interest equal to the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the preceding sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.
- 1.1.17 “APPROVED GOVERNMENTAL CHANGES” shall mean any changes to the Redevelopment Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Redevelopment Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.18 “APPROVED PERMIT-READY PLANS, SPECIFICATIONS AND COSTS” shall have the meaning set forth in Subsection 5.5.1.

1.1.19 “ASSIGNMENT STANDARDS” shall have the meaning set forth in Section 11.2

1.1.20 “AUDITOR-CONTROLLER” shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.21 “AWARD” shall have the meaning set forth in Subsection 6.1.3.

1.1.22 “BASE VALUE” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.23 “BENEFICIAL INTEREST” shall have the meaning set forth in Subsection 4.6.5.

1.1.24 “BOARD” shall mean the Board of Supervisors for the County of Los Angeles.

1.1.25 “BUSINESS DAY” shall have the meaning set forth in Section 17.3.

1.1.26 “CALCULATION NOTICE” shall have the meaning set forth in Section 4.7.

1.1.27 “CHANGE OF CONTROL” shall have the meaning set forth in Subsection 4.6.1.

1.1.28 “CITY” shall mean the City of Los Angeles, California.

1.1.29 “CONCESSIONAIRE” shall have the meaning set forth in the first paragraph of this Agreement.

1.1.30 “CONDEMNATION” shall have the meaning set forth in Subsection 6.1.1.

1.1.31 “CONDEMNOR” shall have the meaning set forth in Subsection 6.1.4.

1.1.32 “CONSTRUCTION DEFAULT” shall have the meaning set forth in Subsection 13.1.4.

1.1.33 “CONSTRUCTION PERIOD” shall have the meaning set forth in Subsection 4.2.1.

1.1.34 “CONSUMER PRICE INDEX” shall mean the Consumer Price Index-- All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or

otherwise available, such replacement index as may be reasonably agreed upon by County and Concessionaire.

1.1.35 “COST” shall have the meaning set forth in Subsection 4.2.4.3(6).

1.1.36 “COST ADJUSTMENT PERIOD” shall have the meaning set forth in Subsection 5.1.1.

1.1.37 “COUNTY” shall have the meaning set forth in the first paragraph of this Agreement.

1.1.38 “COUNTY REMOVAL NOTICE” shall have the meaning set forth in Subsection 2.4.2.

1.1.39 “DATE OF TAKING” shall have the meaning set forth in Subsection 6.1.2.

1.1.40 “DEFERRED RENT” shall have the meaning set forth in Subsection 4.2.5.

1.1.41 “DEFERRED RENT AMORTIZATION PAYMENT” shall have the meaning set forth in Subsection 4.2.6.

1.1.42 “DEFERRED RENT PRINCIPAL BALANCE” shall have the meaning set forth in Subsection 4.2.6.

1.1.43 “DEMOLITION AND REMOVAL REPORT” shall have the meaning set forth in Subsection 2.4.2.

1.1.44 “DEMOLITION SECURITY” shall have the meaning set forth in Subsection 2.4.2.

1.1.45 “DEPARTMENT” shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.46 “DIRECTOR” shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Agreement.

1.1.47 “DOCUMENTED TRANSACTION COSTS” shall have the meaning set forth in Subsection 4.8.1.2.

1.1.48 “EFFECTIVE DATE” shall have the meaning set forth in the first paragraph of this Agreement.

1.1.49 “ENCUMBRANCE” shall have the meaning set forth in

Subsection 12.1.1.

1.1.50 “ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 12.1.1.

1.1.51 “ENR INDEX” shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index upon which the parties may reasonably agree if such index is no longer published or otherwise available.

1.1.52 “EQUITY ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 12.1.1.

1.1.53 “EQUITY FORECLOSURE TRANSFEREE” shall have the meaning set forth in Subsection 12.2.1.

1.1.54 “ESTIMATED COSTS” shall have the meaning set forth in Subsection 2.4.2.

1.1.55 “EVENTS OF DEFAULT” shall have the meaning set forth in Section 13.1.

1.1.56 “EXCESS PERCENTAGE RENT PAYMENT” shall have the meaning set forth in Subsection 4.2.4.4.

1.1.57 “EXCLUDED CONDITIONS” shall have the meaning set forth in Subsection 2.1.3.

1.1.58 “EXCLUDED DEFAULTS” shall have the meaning set forth in Subsection 12.3.3.

1.1.59 “EXCLUDED TRANSFERS” shall have the meaning set forth in Subsection 4.6.2.

1.1.60 “EXEMPT FINANCING EVENT” shall have the meaning set forth in Subsection 4.6.3.

1.1.61 “EXEMPT TRANSFER” shall have the meaning set forth in Subsection 4.6.3.

1.1.62 “EXTENDED TIME” shall have the meaning set forth in Section 15.15.

1.1.63 “FAIR MARKET RENTAL VALUE” shall have the meaning set forth in Subsection 6.7.3.

1.1.64 “FF&E FUND” shall have the meaning set forth in Section 5.18.

1.1.65 “FINAL COMPLETION CERTIFICATE” shall have the meaning set forth in Subsection 5.8.8.

1.1.66 “FINAL RESERVE STUDY” shall have the meaning set forth in Subsection 5.17.5.

1.1.67 “FINANCING EVENT” shall have the meaning set forth in Subsection 12.1.1.

1.1.68 “FORCE MAJEURE” shall mean any inability of a party to perform any non-monetary obligations under this Agreement due to fire or other casualty, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee or worker restrictions as required by governmental order, governmental order or other unforeseeable event reasonably beyond the control of the party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Concessionaire of the Redevelopment Work under the Redevelopment Plan, a delay in such construction to the extent caused by a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Concessionaire as of the exercise of the Option although Concessionaire shall to the extent possible commence and complete the portions, if any, of the Improvements not impacted by such delay within the timeframe set forth in this Agreement. “Force Majeure” shall also include (i) “Unreasonable County Activity,” as defined in and subject to the terms and conditions of Section 5.7 of this Agreement, and (ii) an injunction or restraining order against the performance of the Redevelopment Work issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Concessionaire, or any person or entity affiliated with Concessionaire.

1.1.69 “FORECLOSURE TRANSFER” shall have the meaning set forth in Subsection 12.2.1.

1.1.70 “FORECLOSURE TRANSFEREE” shall have the meaning set forth in Subsection 12.2.1.

1.1.71 “GROSS RECEIPTS” shall have the meaning set forth in Subsection 4.2.4.3.

1.1.72 “GROSS TRANSFER PROCEEDS” shall have the meaning set forth in Section 4.8.

1.1.73 “GUARANTOR” shall have the meaning set forth in Subsection 4.2.6.

1.1.74 “HAZARDOUS SUBSTANCES” shall mean the following:
(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas; (b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive,

flammable or explosive; and (c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “solid waste” or similarly defined substance pursuant to any Applicable Laws.

1.1.75 “HOSPITALITY OPERATOR(S)” includes hotels, restaurants, or hospitality/food service concessionaires operating on County-owned or managed property, and is described in the County’s Labor Peace Agreements Policy No. 5.290.

1.1.76 “IMPROVEMENTS” means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, and other improvements now or hereafter located on the Premises.

1.1.77 “IMPROVEMENT COSTS” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.78 “INCOME APPROACH” shall have the meaning set forth in Section 6.5.

1.1.79 “INITIAL CURE PERIOD” shall have the meaning set forth in Subsection 12.6.3(b)(1).

1.1.80 “INITIAL RESERVE FUND PERIOD” shall have the meaning set forth in Subsection 5.17.3.

1.1.81 “INSTITUTIONAL LENDER” shall have the meaning set forth in Subsection 12.3.1.

1.1.82 “INTEREST RENT” shall have the meaning set forth in Subsection 4.2.2.

1.1.83 “JAMS” shall have the meaning set forth in Section 16.1.

1.1.84 “LABOR PEACE AGREEMENT” means a written agreement between a hospitality operator and a labor organization that contains a provision prohibiting a labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with the hospitality operations in which the County has a proprietary interest.

1.1.85 “LATE FEE” shall have the meaning set forth in Section 4.5.

1.1.86 “LEASE YEAR” shall have the meaning set forth in Section 2.2.

1.1.87 “MAINTENANCE STANDARD” shall have the meaning set forth in Section 10.1.

- 1.1.88 “MAJOR SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.
- 1.1.89 “MAJOR SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.
- 1.1.90 “MATERIAL MODIFICATION” shall have the meaning set forth in Subsection 5.5.1.
- 1.1.91 “MAXIMUM RENT DEFERRAL” shall have the meaning set forth in Subsection 4.2.5.
- 1.1.92 “MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.
- 1.1.93 “MINIMUM STANDARDS” shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects in Los Angeles.
- 1.1.94 “MONTHLY INTEREST RENT” shall have the meaning set forth in Subsection 4.2.2.
- 1.1.95 “MONTHLY MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.
- 1.1.96 “NET AWARDS AND PAYMENTS” shall have the meaning set forth in Section 6.7.
- 1.1.97 “NET REFINANCING PROCEEDS” shall have the meaning set forth in Subsection 4.8.5.
- 1.1.98 “NET TRANSFER PROCEEDS” shall have the applicable meaning set forth in Subsection 4.8.2 or 4.8.3.
- 1.1.99 “NOTICE OF COMPLETION” shall have the meaning set forth in Subsection 5.8.7.
- 1.1.100 “OPERATING COVENANT EXCEPTIONS” shall have the meaning set forth in Section 3.3.
- 1.1.101 “OPERATIONS” shall have the meaning set forth in Subsection 4.2.1.
- 1.1.102 “OPERATIONS PERIOD” shall have the meaning set forth in Subsection 4.2.1.

1.1.103 “OPTION” shall have the meaning set forth in the fourth paragraph of the Recitals to this Agreement.

1.1.104 “OPTION AGREEMENT” shall have the meaning set forth in the fourth paragraph of the Recitals to this Agreement.

1.1.105 “OPTION FEE” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.106 “OWNERSHIP INTERESTS” shall have the meaning set forth in Subsection 12.1.1.

1.1.107 “PARTICIPATION FEE” shall have the meaning set forth in Section 4.6.

1.1.108 “PARTIAL TAKING” shall have the meaning set forth in Section 6.5.

1.1.109 “PAYMENT BOND” shall have the meaning set forth in Subsection 5.5.4.2.

1.1.110 “PERCENTAGE RENT” shall have the meaning set forth in Subsection 4.2.4.

1.1.111 “PERCENTAGE RENT ALLOCATION” shall have the meaning set forth in Subsection 4.2.5.

1.1.112 “PERCENTAGE RENT RATES” shall have the meaning set forth in Subsection 4.2.4.

1.1.113 “PERFORMANCE BOND” shall have the meaning set forth in Subsection 5.5.4.1.

1.1.114 “PERMITTED CAPITAL EXPENDITURE WORK” shall have the meaning set forth in Subsection 5.17.2.

1.1.115 “PERMITTED CAPITAL EXPENDITURES” shall have the meaning set forth in Subsection 5.17.2.

1.1.116 “PERMITTED USES” shall have the meaning set forth in Section 3.1.

1.1.117 “PORTION SUBJECT TO DEMOLITION” shall have the meaning set forth in Subsection 2.4.2.

1.1.118 “POST TERM REMOVAL PERIOD” shall have the meaning set forth in Subsection 2.4.2.

1.1.119 “POTENTIAL RESERVE STUDY COMPANY” shall have the

meaning set forth in Subsection 5.17.3.

1.1.120 “PREMISES” shall have the meaning set forth in the recitals to this Agreement.

1.1.121 “PRIME RATE” shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.122 “PRIOR FINANCING EVENT PRINCIPAL BALANCE” shall have the meaning set forth in Subsection 4.8.5.

1.1.123 “PROPOSED TRANSFER NOTICE” shall have the meaning set forth in Subsection 11.2.3.1.

1.1.124 “PUBLIC WORKS DIRECTOR” shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.125 “PUBLICITY” shall mean and include, without limitation, all communications, publications, advertisements (oral or written) social and other media, etc.

1.1.126 “PURCHASE MONEY NOTE” shall have the meaning set forth in Subsection 4.7.2.

1.1.127 “QUALIFYING TRANSFER EVENT” shall have the meaning set forth in Subsection 4.6.1.

1.1.128 “REDEVELOPMENT PLAN” shall have the meaning set forth in Section 5.1.

1.1.129 “REDEVELOPMENT WORK” shall have the meaning set forth in Section 5.1.

1.1.130 “RENT DEFERRAL PERIOD” shall have the meaning set forth in Subsection 4.2.5.

1.1.131 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” shall have the meaning set forth in Section 5.1.1.

1.1.132 “REQUIRED CONSTRUCTION COMPLETION DATE shall have the meaning set forth in Section 5.1.1.

1.1.133 “REQUIRED INSURANCE” shall have the meaning set forth in Section 9.1.

- 1.1.134 “REQUIRED RESERVE STUDY” shall have the meaning set forth in Subsection 5.17.3.
- 1.1.135 “RESERVE FUND” shall have the meaning set forth in Subsection 5.17.1.
- 1.1.136 “RESERVE STUDY” shall have the meaning set forth in Subsection 5.17.3.
- 1.1.137 “RESERVE STUDY COMPANY” shall have the meaning set forth in Subsection 5.17.3.
- 1.1.138 “RESTAURANT” shall have the meaning set forth in Section 3.1.
- 1.1.139 “SECURITY DEPOSIT” shall have the meaning set forth in Section 7.1.
- 1.1.140 “SPREADSHEET” shall have the meaning set forth in Section 14.3.
- 1.1.141 “STATE” shall mean the State of California.
- 1.1.142 “SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.
- 1.1.143 “SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.
- 1.1.144 “TERM” shall have the meaning set forth in Section 2.2.
- 1.1.145 “THRESHOLD AMOUNT” shall have the meaning set forth in Subsection 5.17.1.
- 1.1.146 “TOTAL ALLOWABLE REDEVELOPMENT COST” shall have the meaning set forth in Section 5.1.1.
- 1.1.147 “TOTAL REDEVELOPMENT COSTS” shall have the meaning set forth in Section 5.1.1.
- 1.1.148 “TRANSFER EVENT” shall have the meaning set forth in Subsection 4.6.1.
- 1.1.149 “TI ALLOWANCE” shall have the meaning set forth in Subsection 4.2.6.1.
- 1.1.150 “TI ALLOWANCE CATCH-UP” shall have the meaning set forth in Subsection 4.2.6.1.
- 1.1.151 “TI ALLOWANCE OFFSET” shall have the meaning set forth in Subsection 4.2.6.1.

1.1.152 “TIME OF THE ESSENCE” shall have the meaning set forth in Section 15.6.

1.1.153 “UNINSURED LOSS” shall have the meaning set forth in Section 10.4.

1.1.154 “UNREASONABLE COUNTY ACTIVITY” shall have the meaning set forth in Section 5.7.

1.1.155 “UPDATED BASE VALUE” shall have the meaning set forth in Subsection 4.8.2.1.

1.1.156 “UTILITIES” shall have the meaning set forth in Section 4.1.1.

2. AGREEMENT: TERM: OWNERSHIP OF IMPROVEMENTS

2.1 Concession. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Agreement, County hereby grants the concession to Concessionaire to the extent authorized by Government Code Section 25907, and Concessionaire hereby leases and hires from County, an exclusive right to possess and use, as concessionaire, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

2.1.1 As-Is. Except as provided in Subsection 2.1.3, Concessionaire accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party as of the Effective Date, and Concessionaire hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Premises or Improvements. Concessionaire hereby accepts the Premises on an “AS-IS, WITH ALL FAULTS” basis and, except as expressly set forth in this Agreement, Concessionaire is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and the Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Premises or any Improvements located thereon for any particular purpose, (v) the zoning, entitlements or other legal status of the Premises or Improvements, and any public or private restrictions affecting use or occupancy of the Premises or Improvements, (vi) the compliance of the Premises or Improvements with any applicable codes, rules, regulations, statutes, resolutions, ordinances,

covenants, conditions and restrictions or laws of the City, County, State, United States of America, California Coastal Commission or any other local, state or federal governmental or quasi-governmental entity (“**Applicable Laws**”), including, without limitation, relevant provisions of the Americans with Disabilities Act (“**ADA**”), (vii) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Premises, Improvements, the adjoining or neighboring property, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements.

2.1.2 **Title.** County represents that County owns fee title to the Premises and that County has authority to enter into this Agreement. Concessionaire hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Concessionaire may occupy the Premises pursuant to the terms and conditions of this Agreement.

2.1.3 **Excluded Conditions.** Notwithstanding anything to the contrary set forth herein, the terms and provisions of Subsection 2.1.1 shall not be applicable to any sewer, storm drain or other improvements which have been dedicated to (and such dedication has been accepted by) the Department of Public Works (“**Excluded Conditions**”); provided, however, that this Agreement (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such sewer, storm drain and other improvements.

2.2 **Term.** The term of the concession (“**Term**”) shall commence on the Effective Date set forth herein. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on _____, 20___. For purposes of this Lease, “**Lease Year**” shall mean each calendar year (or partial calendar year) (January 1 through December 31) during the Term of this Agreement.

2.3 **Ownership of Improvements During Term.** Until the expiration of the Term or sooner termination of this Agreement, and except as specifically provided herein, Concessionaire shall own all Improvements now existing and constructed by Concessionaire or its predecessors on the Premises, or hereafter constructed by Concessionaire upon the Premises, and all alterations, additions or modifications made thereto by Concessionaire.

2.4 **Reversion of Improvements.** Upon the expiration of the Term or sooner termination of this Agreement, whether by cancellation, forfeiture or otherwise:

2.4.1 **County’s Election to Receive Improvements.** Unless Concessionaire is expressly directed by County in writing in accordance with this Section 2.4 to demolish and remove Improvements upon the expiration or earlier termination of the Term, all Improvements located on, in, or under the Premises (including all fixtures or equipment affixed thereto, except for trade fixtures) shall remain upon and be surrendered with the Premises as part thereof, and

title to such Improvements shall vest in County without any compensation to Concessionaire. Nothing contained herein shall be construed to deny or abrogate the right of Concessionaire, prior to the expiration of the Term or termination of this Agreement, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Concessionaire immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Agreement, (b) permit Concessionaire to remove all trade fixtures and permit a Sublessee to exercise a right under its Sublease to remove any so-called Sublessee “trade-dress” items installed in or on the interior of space subleased to such Sublessee, provided that Concessionaire shall be responsible for repairing (or causing its Sublessee to repair) any damage to the Improvements incurred in connection with the removal of such items; or (c) remove any furniture or equipment that is not permanently affixed to the Premises, any signage identifying Concessionaire (as opposed to other signage used in the operation of the Premises and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Agreement or at any time during the Term, subject to Concessionaire’s obligations under this Agreement to use the Premises for the Permitted Uses.

2.4.2 Duty to Remove. No later than five (5) years prior to the expiration of the Term, Concessionaire shall deliver to County a report prepared by a construction and demolition expert reasonably approved by County that details and estimates the cost and required time period for the demolition and removal of all Improvements on the Premises at the expiration of the Term (the “**Demolition and Removal Report**”).

County may elect to require Concessionaire at the end of the Term or any earlier termination of this Agreement to demolish and remove, at the sole cost and expense of Concessionaire, all of the Improvements located on, in or under the Premises, whether placed or maintained thereon by Concessionaire or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, County may require a portion of the Improvements designated by County for demolition (“**Portion Subject to Demolition**”) to be, and must be able to be demolished separately from other portions of the then-existing Improvements which County has designated to remain, but only to the extent that the costs for demolishing the Portion Subject to Demolition do not exceed the costs for total demolition. Concessionaire shall complete the required demolition and removal and shall restore and surrender to County possession of the Premises in the following condition: (a) as to any portion of the Premises on which the Improvements are required to be demolished, such portion of the Premises shall be surrendered to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps; and (b) as to any portion of the Premises on which the Improvements are not required to be demolished, the Premises and such Improvements shall be surrendered to County in the condition in which the Premises and Improvements are required to be maintained and repaired under this Agreement. In the case of the termination of the Agreement at the scheduled expiration date of the Term, any election by County to require Concessionaire to demolish and remove the Improvements or a Portion Subject to Demolition must be made by County in writing to Concessionaire (“**County Removal Notice**”) three (3) years prior to the then-scheduled expiration date of the Term. If County elects to require Concessionaire to demolish and remove all of the Improvements or a

Portion Subject to Demolition, Concessionaire shall complete such demolition and removal and otherwise comply with Concessionaire's surrender obligations under this Section 2.4 on or before the expiration of the Term of the Agreement. In the case of the termination of the Agreement at the scheduled expiration date of the Term, Concessionaire shall have the right, by written notice to County not later than (90) days prior to the scheduled expiration date of the Term, to extend the date by which Concessionaire must complete the Improvement demolition and removal and Premises surrender obligations under this Subsection 2.4.2 and/or the Concessionaire's demolition and removal obligations under Subsection 2.4.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Removal Period**"); provided, however, that all of the Concessionaire's obligations and liabilities under the Agreement (other than the obligation to affirmatively operate the Premises or to maintain and repair those Improvements required to be demolished) shall be applicable during the Post Term Removal Period, including without limitation, the Concessionaire's obligations with respect to insurance and indemnification, and Concessionaire's obligation to pay County compensation for the Post Term Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Removal Period shall be paid by Concessionaire in advance prior to the commencement of the Post Term Removal Period.

In the case of a termination of the Agreement prior to the scheduled expiration date of the Term, any election by County to require Concessionaire to remove the Improvements or a Portion Subject to Demolition must be made by County's delivery of the County Removal Notice not later than sixty (60) days after the effective date of such termination, and if County elects to require Concessionaire to demolish and remove all or a portion of the Improvements upon a termination of the Agreement prior to the scheduled expiration of the Term, Concessionaire shall complete such demolition and removal and otherwise comply with Concessionaire's surrender obligations under this Section 2.4 on or before the later of (a) ninety (90) days after the date on which this Agreement terminated, or (b) if Concessionaire has submitted a Demolition and Removal Report to County, that period after the date on which this Agreement terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon receipt of a County Removal Notice, Concessionaire shall within ninety (90) days after receipt of the County Removal Notice, provide County with a written plan which sets forth Concessionaire's proposed method of securing the discharge of Concessionaire's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Concessionaire, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County ("**Demolition Security**"), and (ii) a schedule satisfactory to County for the delivery by Concessionaire of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "**Estimated Costs**"),

adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Concessionaire delivers the Demolition Security. Thereafter, Concessionaire shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Concessionaire's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. Concessionaire shall contribute to the Reserve Fund amounts required to be made by Concessionaire towards Concessionaire's obligations to fund the Demolition Security requirements under this Subsection 2.4.2 to the extent permitted under the last paragraph of Section 5.17 of this Agreement. Any uncured failure by Concessionaire to deliver the Demolition Security described in this Subsection 2.4.2 shall constitute an Event of Default. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Agreement by written notice to Concessionaire of such revocation at any time not later than ninety (90) days prior to the scheduled expiration date of the Agreement. If County revokes its prior County Removal Notice, then any Demolition Security previously delivered by Concessionaire to County pursuant to this paragraph shall be returned to Concessionaire within thirty (30) days following the date of such revocation. Upon completion of all of Concessionaire's obligations under this Section 2.4, the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 2.4.3 or 2.4.4 below) shall be returned to Concessionaire. Notwithstanding the foregoing, Concessionaire may elect to use any remaining funds in the Reserve Fund or the FF&E Fund (as defined in Section 15.18) towards Concessionaire's removal and restoration obligations under this Subsection 2.4.2. To the extent any funds remain in the Reserve Fund after Concessionaire's removal and restoration obligations have been fulfilled, to Director's satisfaction and in accordance with Applicable Laws, such funds shall be returned to Concessionaire.

If County fails to elect to require Concessionaire to remove all of the Improvements or a Portion Subject to Demolition on the Premises in accordance with the terms of this Section 2.4 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Agreement, Concessionaire shall surrender possession to County of the Premises and those Improvements not required to be removed by Concessionaire, in the condition in which such Improvements are required to be repaired and maintained under this Agreement, subject to wear and tear and assuming the remaining useful life of the improvements under this Agreement will be the end of the Term. To the extent any funds remain in the Reserve Fund, such funds shall be retained by County. To the extent any funds remain in the FF&E Fund, such funds shall be returned to Concessionaire.

2.4.3 County's Right to Remove Improvements. If County elects to have Concessionaire demolish and remove Improvements or a Portion Subject to Demolition and Concessionaire fails to do so in accordance with this Agreement, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements that were required to have been demolished and removed by Concessionaire, Concessionaire shall reimburse County for any Actual Costs incurred by County in connection with such demolition and removal and any site restoration work required by any

regulatory agency in excess of any funds received by County as a result of any sale of the demolished Improvements; provided, however, that County shall be under no obligation to Concessionaire to effectuate any such sale or, in the case of a sale, to obtain any required level of compensation therefor.

2.4.4 **Duty to Remove Personal Property.** No later than the expiration of the Term or sooner termination of this Agreement (subject to Concessionaire's rights with respect to the Post Term Removal Period described in Subsection 2.4.2 above), Concessionaire shall in all events remove, at its cost and expense, all furniture, fixtures, equipment and other personal property and all trade fixtures that are not permanently affixed to the Improvements. Should Concessionaire fail to remove such furniture, fixtures, equipment and other personal property within said period, and said failure continues for thirty (30) days after written notice from County to Concessionaire, Concessionaire shall lose all right, title and interest therein, and County may elect to keep the same upon the Premises and Improvements or to sell, remove, or demolish the same, in which event Concessionaire shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof.

2.4.5 **Title to Certain Improvements Passes to County; Concessionaire to Maintain.** As between County and Concessionaire, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Concessionaire upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility company or other third party provider. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Agreement), shall be maintained, repaired, and replaced, if and as needed, by Concessionaire during the Term.

3. USE OF PREMISES.

3.1 **Specific Primary Use.** The Premises and Improvements shall be used by Concessionaire for the construction, operation and management of (a) restaurant space (the "**Restaurant**"); (b) such other related and incidental uses as are specifically approved by County; and (c) parking associated with the foregoing (collectively, the "**Permitted Uses**"). Except as specifically provided herein, the Premises and Improvements shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Concessionaire bears all risk of an adverse change in Applicable Laws. Each of the Improvements comprising the Redevelopment Work shall be operated in good condition and repair in accordance with the standard of operation at least equal to other similar first class improvements or facilities of its respective type in Los Angeles County.

3.2 **Prohibited Uses.** Notwithstanding the foregoing:

3.2.1 **Nuisance.** Concessionaire shall not conduct or permit to be conducted

any private or public nuisance on or about the Premises or the Improvements, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Premises or Improvements be permitted to be operated or maintained in a manner that renders the Premises or Improvements a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises and Improvements as set forth in this Agreement, the following uses of the Premises and Improvements are expressly prohibited:

3.2.2.1 The Premises and Improvements shall not be used or developed in any way which violates any Applicable Law.

3.2.2.2 The Premises and Improvements shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity.

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Agreement, except as such condition is affected by the performance of the Redevelopment Work or Alterations in accordance with the requirements of Article 5 of this Agreement.

3.2.2.4 No condition shall be permitted to exist upon the Premises or Improvements which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Concessionaire shall take such measures as are appropriate to prevent any conditions from existing on the Premises or Improvements which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Premises or Improvements.

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, “**antennae**”) shall be erected, used or maintained by Concessionaire outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain Director’s approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further that Director shall not unreasonably withhold approval of any satellite dish or communication antennae installed as an incident to the use of subleased space for purposes other than the operation of a satellite or communications business, and that is not greater than 18’ in diameter and is screened from general view in a manner reasonably acceptable to Director.

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except (i) as is necessary to allow Concessionaire to construct the Improvements and/or perform its maintenance and repair obligations pursuant to this Agreement, and (ii) for such boring or drilling as necessary to perform soil or water testing or monitoring, or any dewatering program to relieve soil water pressure.

3.2.2.7 Except for the Excluded Conditions, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Premises or the Improvements, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Premises, the Improvements or any portion thereof, including, without limitation, into subsurface waters; provided, however, that Hazardous Substances may be stored or used on the Premises or in the Improvements, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws

3.3 Active Public Use. The parties acknowledge that County's objective in entering into this Agreement is the complete and continuous use of the facilities and amenities located in Los Angeles by and for the benefit of the public, without discrimination as to race, gender or religion, and for the generation and realization by County of revenue therefrom as set forth in this Agreement. Accordingly, Concessionaire agrees and covenants that it will operate or cause to be operated the Premises and Improvements located thereon fully and continuously (except to the extent that Concessionaire is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Concessionaire under this Agreement or to accommodate the leasing, remodel and commencement of operations of a sublease or due to a Transfer Event (collectively, "**Operating Covenant Exceptions**")) in light of these objectives, consistent with the operation of comparable facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Agreement and the Redevelopment Plan. In the event of any dispute or controversy relating hereto, this Agreement shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Restaurant shall contain both a fine dining component and a beachside casual component. The beachside casual component shall be open every day of the year, except for any closure caused by inclement weather or any closure approved by Director required to perform (a) any Alteration permitted under this Agreement, or (b) maintenance, repair, replacement or restoration work permitted or required under this Agreement. The fine dining component shall be open at least five (5) days per week except for any closure approved by

Director required to perform (a) any Alteration permitted under this Agreement, or (b) maintenance, repair, replacement or restoration work permitted or required under this Agreement. Any changes in the days or hours of operation of the Restaurant shall be subject to the written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed. The other Improvements on the Premises shall be open every day of the year for at least hours commensurate with the hours of operations of other similar facilities in Los Angeles County, California, subject to the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses in Pacific Palisades are customarily closed.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises or Improvements shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Law, the Design Control Board), in writing, whether pursuant to Article 5 of this Agreement or otherwise, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Director shall not unreasonably withhold its approval of the matters described in this Section 3.5. Any dispute as to whether Director has unreasonably withheld its approval of a matter described in this Section 3.5 shall be submitted to mediation pursuant to Article 16 of this Agreement.

3.6 Compliance with Regulations. Concessionaire shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits required by applicable governmental agencies related to or affecting the use, operation, maintenance, repair or improvement of the Premises or Improvements. Concessionaire agrees that (a) all public facilities at the Restaurant shall be open to members of the public generally, and (b) Concessionaire shall not discriminate against any person on the basis of race, color, sex, sexual orientation, age, religious belief, national origin, marital status, physical or mental handicap, medical condition or place of residence in the use of the Restaurant or any facilities located thereon.

3.7 Rules and Regulations. Concessionaire agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises and Improvements as may be promulgated by County (including the Director and other County agencies having jurisdiction over the Premises) from time to time for general applicability on a non-discriminatory basis to other recreational, restaurant and public park facilities in Los Angeles and delivered in writing to Concessionaire. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to mediation pursuant to Article 16 of this Agreement.

3.8 Reservations. Concessionaire and County expressly agree that this Agreement and all of Concessionaire's rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the Effective Date or otherwise referenced in this Agreement in, to, over or affecting the Premises for any purpose whatsoever, and also subject to any other encumbrances, reservations, licenses, easements and rights of way consented to by Concessionaire in writing.

Without limiting the foregoing, Concessionaire expressly agrees that this Agreement and all rights hereunder shall be subject to all prior matters of record and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Concessionaire, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others. Notwithstanding the foregoing or anything herein to the contrary, County agrees to cooperate with Concessionaire, at Concessionaire's cost, in Concessionaire's efforts to address title matters, if any, which would prevent Concessionaire from proceeding with the redevelopment of the Premises in accordance with the Redevelopment Work, as long as such efforts do not materially adversely affect the County (e.g., cooperating with Concessionaire in the relocation at Concessionaire's cost of any easements which interfere with the Redevelopment Work, to the extent such relocation is reasonably acceptable to County).

4. PAYMENTS TO COUNTY.

4.1 Net Agreement. The parties acknowledge that the rent to be paid by Concessionaire under this Agreement is intended to be absolutely net to County. Except as expressly provided herein, the rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Except as specifically set forth herein, Concessionaire shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises and Improvements, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Concessionaire shall pay or cause to be paid all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services (collectively, "Utilities") to the Premises and Improvements.

4.1.2 Taxes and Assessments. Concessionaire agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Agreement or any possessory right which Concessionaire may have in or to the Premises or the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Concessionaire's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of this Agreement taking effect. Concessionaire shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Concessionaire.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Concessionaire. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Concessionaire shall include a statement in all Subleases to the effect that the interests created therein are derived from the Concessionaire's interest under this Agreement and that Concessionaire's interest requires the payment of a possessory interest tax.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Concessionaire shall pay County in lawful money of the United States (a) the Annual Minimum Rent described in subsection 4.2.1 below, (b) the Annual Interest Rent described in subsection 4.2.2 below, and (c) subject to TI Allowance and Deferred Rent, the Percentage Rent described in subsection 4.2.3 below. For purposes of this Agreement "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent, the Annual Interest Rent, and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Concessionaire shall pay to County the minimum rent described in this Subsection 4.2.1 (the "**Minimum Rent**") during each Lease Year during the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Concessionaire to County on a monthly basis in advance in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is shorter or longer than a calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from the Effective Date and continuing until the Required Construction Completion Date (the "**Construction Period**"), the Annual Minimum Rent shall be equal to Fifty Thousand Dollars (\$50,000.00). In the event that the Required Construction Completion Date has not occurred by the end of the 36th month following the Effective Date (subject to Force Majeure), assuming the Agreement has not been terminated, the Annual Minimum Rent shall increase to Four Hundred Thousand Dollars (\$400,000.00) until the start of Operations (as defined below). In the event that the Required Construction Completion Date has not occurred by the end of the 48th month following the Effective Date, assuming the Agreement has not been terminated, the Annual Minimum Rent shall increase to One Million Dollars (\$1,000,000.00) until the start of Operations.

The first day of the month following the last day of the Construction Period and continuing through the remainder of the Term shall be known as "**Operations**" or the "**Operations Period.**"

Commencing with the first month of Year 1 and continuing through Year 10 of Operations, the Annual Minimum Rent shall be equal to Four Hundred Thousand Dollars (\$400,000.00).

Commencing with the first month of Year 11 and continuing through Year 20 of Operations, the Annual Minimum Rent shall be equal to Nine Hundred Sixty Thousand Dollars (\$960,000.00).

Commencing with the first month of Year 21 and continuing through Year 25 of Operations, the Annual Minimum Rent shall be equal to One Million Fifty-Six Thousand Dollars (\$1,056,000.00).

Commencing with the first month of Year 26 and continuing through Year 30 of Operations, the Annual Minimum Rent shall be equal to the greater of (a) the Annual Minimum Rent for the immediately preceding Lease Year or (b) fifty percent (50%) of the average Annual Minimum Rent plus Percentage Rent (as defined in Subsection 4.2.2 below) for the prior three year period.

Commencing with the first month of Year 31 of Operations and continuing every five years thereafter through the remainder of the Term, the Annual Minimum Rent shall be adjusted and shall be equal to the greater of (a) the Annual Minimum Rent for the immediately preceding Lease Year or (b) seventy-five percent (75%) of the average Annual Minimum Rent plus Percentage Rent (as defined in Subsection 4.2.4 below) for the prior three year period.

4.2.2 Interest Rent. Concessionaire shall pay to County the interest rent described in this Subsection 4.2.2 (the “**Interest Rent**”) during Year 1 through Year 10 of the Operations Period (the “**Annual Interest Rent**”). Annual Interest Rent shall be payable by Concessionaire to County on a monthly basis in advance in equal installments of one-twelfth (1/12th) of the Annual Interest Rate and simultaneously with the Monthly Minimum Rent (the “**Monthly Interest Rent**”).

Commencing with the first month of Year 1 and continuing through the end of Year 1 of Operations, the Annual Interest Rent shall be equal to Zero Dollars (\$0.00).

Commencing with the first month of Year 2 and continuing through the end of Year 2 of Operations, the Annual Interest Rent shall be equal to Sixty-Two Thousand Nine Hundred Twenty-Four Dollars (\$62,924.00).

Commencing with the first month of Year 3 and continuing through the end of Year 3 of Operations, the Annual Interest Rent shall be equal to One Hundred Twenty-Five Thousand Seven Hundred Twenty-Two Dollars (\$125,722.00).

Commencing with the first month of Year 4 and continuing through the end of Year 4 of Operations, the Annual Interest Rent shall be equal to One Hundred Ninety-One Thousand Four Hundred Six Dollars (\$191,406.00).

Commencing with the first month of Year 5 and continuing through the end of Year 5 of Operations, the Annual Interest Rent shall be equal to Two Hundred Fifty-Six Thousand Nine Hundred Eighty-Six Dollars (\$256,986.00).

Commencing with the first month of Year 6 and continuing through the end of Year 6 of Operations, the Annual Interest Rent shall be equal to Three Hundred Twenty-Three Thousand Four Hundred Seventy-Four Dollars (\$323,474.00).

Commencing with the first month of Year 7 and continuing through the end of Year 7 of Operations, the Annual Interest Rent shall be equal to Three Hundred Ninety Thousand Eight Hundred Eighty-One Dollars (\$390,881.00).

Commencing with the first month of Year 8 and continuing through the end of Year 8 of Operations, the Annual Interest Rent shall be equal to Four Hundred Fifty-Nine Thousand Two Hundred Eighteen Dollars (\$459,218.00).

Commencing with the first month of Year 9 and continuing through the end of Year 9 of Operations, the Annual Interest Rent shall be equal to Five Hundred Twenty-Eight Thousand Four Hundred Ninety-Eight Dollars (\$528,498.00).

Commencing with the first month of Year 10 and continuing through the end of Year 10 of Operations, the Annual Interest Rent shall be equal to Five Hundred Ninety-Eight Thousand Seven Hundred Thirty-Two Dollars (\$598,732.00).

4.2.3 Agreement Rental Schedule. Within thirty (30) days from the execution of the Agreement, County and Concessionaire shall execute an Agreement rental schedule setting forth the periods of payment and the rental amounts to be paid, as described in Subsections 4.2.1 and 4.2.2.

4.2.4 Percentage Rent. For the purposes of this Agreement, “**Percentage Rent**” for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.4. “**Annual Percentage Rent**” shall equal the sum of the product of the Percentage Rent Rates, as defined herein multiplied by the amount of annual Gross Receipts (as defined herein) corresponding to each category (paid monthly in arrears with an annual reconciliation), less the then-current Minimum Rent, and for Years 1-10, less Interest Rent. Gross Receipts from each transaction, sale or activity of Concessionaire (or, subject to Subsection 4.2.4.5, of any Sublessee) on, from or within the Premises or Improvements shall be reported under one or more of the percentage categories set forth below, as applicable. It is understood that Article 3 of this Agreement provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Agreement and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Concessionaire, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this Subsection 4.2.4, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the Term,

Concessionaire shall file a report of Gross Receipts and, subject to TI Allowance and Deferred Rent, pay to County a sum equal to the total of the following percentages of Gross Receipts (the “**Percentage Rent Rates**”) for such previous month, less the amount of the installment of Monthly Minimum Rent paid for such previous month, and for Years 1 through 10 of Operations, less the amount of the installment of Monthly Interest Rent and less TI Allowance and Deferred Rent. Concessionaire shall also file with the County an annual reconciliation of the Annual Percentage Rent amounts as provided in Section 14.4(c).

(a) INTENTIONALLY OMITTED;

(b) INTENTIONALLY OMITTED;

(c) INTENTIONALLY OMITTED;

(d) TEN PERCENT (10%) of Gross Receipts and other fees charged for the occupancy of restaurants; and TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of bars, stores, shops, or other commercial establishment; provided that Gross Receipts for restaurants or bars, stores, shops, or other commercial establishments shall include base rent, CAM reimbursement, property tax reimbursements, insurance reimbursement, percentage rents and any other amounts received from sublessees, and if a sublessee pays any of the aforementioned costs directly in lieu of reimbursements to Concessionaire, Concessionaire shall provide County with a reconciliation of those costs paid directly and add those direct costs to the rent basis upon which such percentage is calculated;

(e) INTENTIONALLY OMITTED;

(f) INTENTIONALLY OMITTED;

(g) INTENTIONALLY OMITTED;

(h) With respect to the installation or operation of coin-operated vending or service machines, including pay phones, FIVE PERCENT (5%) of the Gross Receipts received by Concessionaire (or an affiliate of Concessionaire or a subtenant) from such enterprise if Concessionaire (or an affiliate of Concessionaire or a subtenant) is the operator of such enterprise if Concessionaire (or an affiliate of Concessionaire or a subtenant) is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Concessionaire (or an affiliate of Concessionaire or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(i) INTENTIONALLY OMITTED;

(j) INTENTIONALLY OMITTED;

(k) INTENTIONALLY OMITTED;

(l) INTENTIONALLY OMITTED;

(m) INTENTIONALLY OMITTED;

(n) INTENTIONALLY OMITTED;

(o) INTENTIONALLY OMITTED;

(p) INTENTIONALLY OMITTED;

(q) INTENTIONALLY OMITTED;

(r) TWELVE PERCENT (12%) of Gross Receipts from parking fees; notwithstanding the foregoing, Gross Receipts from the operation of parking facilities in connection with another use category under this Subsection 4.2.4 shall be considered Gross Receipts under such other use category if the percentage rate for such other use category results in a greater Percentage Rent payable with respect to such parking Gross Receipts;

(s) TWELVE PERCENT (12%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses, but not specifically provided for elsewhere in this Subsection 4.2.4;

(t) If with the prior approval of County or Director Concessionaire hereafter engages in a use that is not currently permitted under this Agreement and as to which there is no specific percentage set forth above applicable to such additional or related use, then concurrent with the approval by County or Director of such specific additional use, Director and Concessionaire shall negotiate in good faith with Concessionaire to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage of Gross Receipts received by County with respect to that category of activities within Los Angeles, California at the time of approval of the additional or related use, and (2) the most recent agreement between County and a County lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use.

4.2.4.1 Other Activities. If Director or Concessionaire reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Concessionaire shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.4.2 Reserved.

4.2.4.3 Gross Receipts. Except as herein otherwise provided, the term “**Gross Receipts**” as used in this Agreement means all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common

area maintenance payments, operating expense or real property tax reimbursements, fees and commissions paid to Concessionaire and/or all Sublessees (subject to the provisions of Subsection 4.2.4.5), from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, calculated in accordance with the accounting method described in Section 14.1.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in Subsection 4.2.4.3(5)i below), insurance and taxes.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom by Concessionaire such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Concessionaire to a governmental agency accompanied by a tax return statement.

(3) Gross Receipts shall not include security deposits paid by a Sublessee to Concessionaire to be held by Concessionaire as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Concessionaire allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Concessionaire, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.

(4) Gross Receipts must include the usual charges for any services, goods, rentals or facilities provided by Concessionaire or Sublessees. Bona fide bad debts actually accrued for amounts owed by Sublessees, concessionaires, customers or patrons may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(5) Gross Receipts shall not include any of the following items; provided, however, that the non-inclusion in Gross Receipts of the following items shall not be construed or interpreted to permit the reduction of, or any offset against, Gross Receipts by or for the amount of such items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Concessionaire, where such returns or deliveries are

made solely for the convenient operation of the business of Concessionaire or Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Concessionaire, or the amount of cash refunded or credit allowed thereon in lieu of Concessionaire's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Concessionaire accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Concessionaire's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Concessionaire on funds arising from the Premises or the use thereof, deposited or maintained by Concessionaire in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes; provided, however, that the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed the actual charges for such matters;

j. interest or other charges paid by customers of Sublessees for the extension of credit; and

k. the sale of promotional merchandise by Sublessees at cost.

(6) Gross Receipts shall not include payments received by Concessionaire from a Sublessee for the Cost of such Sublessee's submetered

electricity, provided (A) each Sublessee's obligation to reimburse Concessionaire for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity. For the purpose of this paragraph (6), the "Cost" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Concessionaire, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Concessionaire of such disapproval or challenge, shall be resolved by mediation pursuant to Article 16 of this Agreement. The terms and provisions of this paragraph (6) shall also be applicable to other submetered utility charges, such as water and gas, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

4.2.4.4 Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Concessionaire in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Concessionaire shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Percentage Rent otherwise due under this Subsection 4.2.4.4 until such time as the entire Excess Percentage Rent Payment has been recouped. If Concessionaire makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Concessionaire within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent. Any disputes relating to Gross Receipts and calculation of rental payments may be submitted to mediation as set forth in Article 16 of this Agreement.

4.2.4.5 Effect of Sublessee Doing Business. Except as specifically provided to the contrary in this Agreement, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Concessionaire's leasehold, for purposes of determining Percentage Rent Concessionaire shall report whichever of the following results in the greater Percentage Rent: (i) the Gross Receipts received by each Sublessee; or (ii) the Gross Receipts received by Concessionaire from such Sublessee.

4.2.4.6 Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Concessionaire or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.4.7 Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by Concessionaire that Section 3.1 of this Agreement sets forth the Permitted Uses of the Premises by Concessionaire; thus, the Percentage Rent categories listed in Subsection 4.2.4 are not all necessarily applicable to this Agreement and are in no way intended to expand the Permitted Uses.

4.2.4.8 Policy Statements. Director, by Policy Statement and with the approval of Concessionaire, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing Subsections of this Agreement.

4.2.5 Rent Deferral. In consideration of the costs incurred by Concessionaire for the construction of certain public improvements not required by Applicable Laws for the Redevelopment Work, County grants Concessionaire the right to defer the Annual Rent payable by Concessionaire under this Agreement (“**Deferred Rent**”) in an aggregate amount equal to fifty percent (50%) of the lesser of (a) the Total Redevelopment Cost (as defined in Subsection 5.1.1), or (b) the Total Allowable Redevelopment Cost (as defined in Subsection 5.1.1) (the “**Maximum Rent Deferral**”).

Commencing with the first month of the Operations Period and continuing each month thereafter until the earlier of (a) the Maximum Rent Deferral amount is fully applied and (b) the last month of the tenth year of the Operations Period (the “**Rent Deferral Period**”), any and all Percentage Rent shall be allocated monthly according to the priority set forth in Subsection 4.2.6.2 below (the “**Percentage Rent Allocation**”).

4.2.6 Repayment of Deferred Rent Balance. At the end of year 10 of Operations, the aggregate amount of Deferred Rent is defined as the “**Deferred Rent Principal Balance**”. The Deferred Rent Principal Balance shall be paid by Concessionaire as follows: commencing on the day following the end of the tenth (10th) year of Operations and continuing on the same day of each month thereafter (adjusted to the first of the month) Concessionaire shall pay amortized payments of the Deferred Rent Principal Balance, plus interest at a five percent (5%) annual rate in equal monthly installments over a fifteen (15) year period (the “**Deferred Rent Amortization Payment**”). Notwithstanding the above, any outstanding Deferred Rent Principal Balance shall be due in full at the time of the first Transfer Event (as defined in Section 4.6, below).

Commencing on the effective date of the Agreement, Concessionaire shall have provided a personal guaranty or security from Wolfgang Puck or Thomas R. Tellefsen, or a guarantee from an affiliated entity of Wolfgang Puck or Thomas R. Tellefsen (which affiliated entity is owned at least seventy-five percent (75%) by Wolfgang Puck and/or by Thomas R. Tellefsen,

and of which they are also the managing partner/member), or from a source approved by Director (in Director's reasonable discretion). Such guarantor (the "**Guarantor**") shall have a minimum net worth as determined by County after review of financials of at least \$8,500,000. The guaranty shall be in an amount equal to the lesser of (a) the Deferred Rent Principal Balance, or (b) \$5,000,000, subject to the guaranteed amount being reduced to the outstanding balance (below \$5,000,000) as a result of the amortization payments of Deferred Rent. Should the guaranty or security include Wolfgang Puck or Thomas R. Tellefsen personally or through their respective affiliated entities then the guaranty or security shall remain in place in Operations Period years 11 through 20; otherwise, the guaranty or security to remain in place through year 25.

4.2.6.1 Tenant Improvement Allowance. Concessionaire shall be entitled to a Tenant Improvement Allowance, which shall be equal to fifty percent (50%) of the lesser of (a) the Total Redevelopment Cost and (b) the Total Allowable Redevelopment Cost (the "**TI Allowance**"). The TI Allowance shall not exceed \$21,000,000 subject to increase by the change in the ENR Index (or suitable substitute) from the Option Grant Date (as defined in the Option) to the Construction Commencement Date. The TI Allowance is to be credited against Percentage Rent in equal monthly payments over 15 years subject to the "**TI Allowance Catch-Up**" (defined as any TI Allowance Offset, as defined below), from prior periods until the TI Allowance has been credited in full) beginning on the first day of Year 1 of Operations, as an offset to Percentage Rent, ("**TI Allowance Offset**") per the Percentage Rent Allocation. If any portion of the monthly allocated TI Allowance is not met, the unmet amount may be carried over from month to month until met.

4.2.6.2 Percentage Rent Allocation. The allocation of Annual Percentage Rent shall be as follows:

- a. First, up to TWO MILLION DOLLARS (\$2,000,000.00) shall be allocated 50/50 to Deferred Rent and the annual TI Allowance Offset, in Years 1-10 of Operations;
- b. Second, up to the remaining amount needed to meet the annual TI Allowance Offset, in Years 1-15 of Operations;
- c. Third, to the TI Allowance Catch-Up;
- d. Fourth, to Deferred Rent, until the Maximum Rent Deferral is achieved, in Years 1-10 of Operations; and
- e. Any remaining Percentage Rent to be paid to the County.

Said allocations to be credited monthly against monthly Percentage Rent due, with monthly reconciliations as described in Section 14.3 and annual year end reconciliations as described in Section 14.4.

4.3 INTENTIONALLY OMITTED.

4.4 INTENTIONALLY OMITTED.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Concessionaire in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Concessionaire in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth (15th) day of the calendar month following each month of the Term, calculated as follows: the Concessionaire shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, subject to the Rent Deferral and TI Allowance Offset deductions, Concessionaire shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.4.4. Payment shall be made no later than sixty (60) days after the end of each such Lease Year, and may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to County of Los Angeles, Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, Attn: Director, or such other address as may be provided to Concessionaire by County.

Concessionaire acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Concessionaire has received no such statement, invoice or demand. In the event any payment under this Agreement is not received by County by the date due, Concessionaire acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee (“**Late Fee**”) based upon an interest rate of Prime plus three percent (3%), not to exceed ten percent (10%) (annual rate), compounded monthly, of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that no Late Fee shall be assessed in the case of the first late payment by Concessionaire during any Lease Year as long as such late payment is cured within five (5) business day after Concessionaire receives written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Concessionaire acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Agreement, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 12 below,

interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Premises shall be limited to a maximum of three (3) years.

4.6 Transfer Events and Financing Events. Except as otherwise provided in this Section 4.6, each time Concessionaire proposes either (a) a Transfer Event (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Transfer Event or Financing Event ("**Administrative Charge**") and (2) subject to the remaining provisions of this paragraph, a Participation Fee, in the event County approves such proposed Transfer Event or Financing Event. "**Participation Fee**" shall mean the applicable amount determined pursuant to Section 4.8 of this Agreement. Transfer Events are subject to County approval as provided in Article 11 of this Agreement. Financing Events are not Transfer Events, but are subject to County approval as provided in Article 12 of this Agreement.

4.6.1 Transfer Event. "**Transfer Event**" shall mean, commencing with the end of Year 1 of Operations: (a) any transfer by Concessionaire of a twenty-five percent (25%) or greater direct or indirect ownership interest in this Agreement or in a beneficial interest by the initial investors ("Initial Investors") in Concessionaire, (b) the execution by Concessionaire of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a fifty percent (50%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsections 4.6.1 (a) or (b) which constitute an Aggregate Transfer of twenty-five percent (25%) or more of the beneficial interests in Concessionaire or a Major Sublessee, (d) a Change of Control (as defined below) of Concessionaire or a Major Sublessee, or (e) a transfer by Wolfgang Puck of more than fifty percent (50%) of his beneficial interest in Concessionaire, which transfer occurs on or before seven (7) years from the commencement of operations of the restaurant on the Premises. For the purposes of this Agreement, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial interest in Concessionaire or a Major Sublessee which brings its cumulative beneficial interest in Concessionaire or a Major Sublessee, as applicable, to greater than fifty percent (50%). Any Transfer Event that is not an Excluded Transfer Event, as defined in Subsection 4.6.2, is a "**Qualifying Transfer Event.**"

4.6.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Agreement, Transfer Events resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Participation Fee or any Administrative Charge:

4.6.2.1 Intentionally deleted;

4.6.2.2 a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

4.6.2.3 a transfer of ownership interests in Concessionaire or in

constituent entities of Concessionaire (i) to a member of the immediate family of the transferor (which for purposes of this Agreement shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Concessionaire as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Concessionaire to an affiliate of such partner;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Agreement, Concessionaire or a Major Sublease, and such transfer does not involve an intent to avoid Concessionaire's obligations under this Agreement with respect to a Transfer Event;

4.6.2.6 any transfer resulting from a Condemnation by any public agency with the authority to condemn; or

4.6.2.7 any assignment of the Agreement by Concessionaire to a parent, subsidiary or affiliate of Concessionaire in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

4.6.3 Exempt Transfer Event and Exempt Financing Event. Notwithstanding anything herein to the contrary, the first Qualifying Transfer Event that results in the assignment of the Agreement or Concessionaire's entire interest in the Agreement by Concessionaire to a third party successor Concessionaire ("Successor Concessionaire") or that is designated by Concessionaire to be the Exempt Transfer Event and the first Financing Event, as long as each occurs within the first fifteen (15) years from the Construction Completion Date, is an "**Exempt Transfer**" and an "**Exempt Financing Event**," respectively, and each shall be exempt from the obligation to pay a Participation Fee. However any other Qualifying Transfer Event or Financing Event will be required to pay a Participation Fee.

4.6.4 Aggregate Transfer. "**Aggregate Transfer**" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Concessionaire or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Subsection 4.6.2) occurring since the later of (a) the end of Year 1 of

Operations, (b) the execution of a Major Sublease in the case of an Aggregate Transfer involving a Major Sublessee, or (c) the most recent Transfer Event upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.5 Beneficial Interest. As used in this Agreement, “**beneficial interest**” shall refer to the direct, indirect or any ownership interests in Concessionaire (or a Major Sublessee, as applicable), regardless of the form or the percentage of ownership interest, and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.5.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Concessionaire, this Agreement or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Concessionaire or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Concessionaire, this Agreement or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Concessionaire or a Major Sublease shall have any liability to County under this Agreement, except for the guaranty provided under Section 4.2.6.

4.6.5.2 Ownership of Multiple Assets. For purposes of determining the Gross Transfer Proceeds and Net Transfer Proceeds from a transaction or event that involves both a Qualifying Transfer Event and also the transfer of other assets or interests unrelated to this Agreement, a Major Sublease or beneficial interests in Concessionaire or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Agreement, a Major Sublease and/or beneficial interests in Concessionaire or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the relative fair market values of the respective assets transferred.

4.6.6 Financing Events Regarding Multiple Assets. For purposes of determining the Participation Fee and Net Refinancing Proceeds from a financing transaction that involves both a Financing Event under this Agreement and a financing in which other assets or interests unrelated to this Agreement, a Major Sublease or beneficial interests in Concessionaire or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Agreement, a Major Sublease and/or beneficial

interests in Concessionaire or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the relative fair market values of the respective assets that secure the financing.

4.7 Calculation and Payment. A deposit of Fifteen Thousand Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Concessionaire's notification to County of the proposed Qualifying Transfer Event (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. The balance of the Administrative Charge, if any, and the Participation Fee shall be due and payable concurrently with the consummation of the transaction constituting the Qualifying Transfer Event (other than an Excluded Transfer Event) or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Concessionaire a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Concessionaire shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6 within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Concessionaire within five (5) business days after its receipt of such notice. At the time of Concessionaire's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Participation Fee is payable but County's approval is not required, then at the time of Concessionaire's notice to County of the transaction, but in no event later than the consummation of the transaction), Concessionaire shall present (or cause to be presented) to County its calculation of the Participation Fee (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the calculation of such Participation Fee ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Participation Fee. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Participation Fee set forth therein or the related adjustment of Improvement Costs, if any. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Concessionaire with the reason or reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by mediation as set forth in Article 16 of this Agreement in the manner prescribed herein for the resolution of disputes. In the event County approves a Transfer Event or Financing Event but a dispute exists as to the Participation Fee in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Concessionaire's Calculation Notice; provided, however, that (i) Concessionaire shall remit to County as otherwise required hereunder the undisputed portion of the Participation Fee and (ii) Concessionaire shall deposit the disputed

portion of the Participation Fee into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the mediation of the dispute pursuant to Article 16 of this Agreement, in the manner prescribed herein for the resolution of disputes.

4.7.1 Transfer of Less Than Entire Interest. Where a Transfer Event has occurred by reason of the transfer of less than all of an owner's beneficial interest in Concessionaire or a Major Sublessee, the Participation Fee shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the date of the most recent event creating Concessionaire's obligation to pay a Participation Fee (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Participation Fee) with respect to this Agreement, a Major Sublease or a Transfer Event that included a transfer of the beneficial interest that is the subject of the current transfer, or (c) the date which is twelve (12) months prior to the transfer which constitutes the Transfer Event.

4.7.2 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Concessionaire as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by mediation pursuant to Article 16 below.

4.7.3 Obligation to Pay Participation Fee and Administrative Charge. With respect to a Transfer Event giving rise to the Administrative Charge and Participation Fee, the obligation to pay the Administrative Charge and Participation Fee shall be the obligation of Concessionaire, and in the case in which the identity of the Concessionaire changes with the transfer, shall be the joint and several obligation of both the Concessionaire entity prior to the transfer and the Concessionaire entity after the transfer. In the event that the Administrative Charge or Participation Fee is not paid when due with respect to the beneficial interest in this Agreement, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Participation Fee. In the event of a Qualifying Transfer Event, other than the Exempt Transfer Event and other than the transfer of a beneficial interest by an Initial Investor, the "**Participation Fee**" shall be the amount by which the greater of the following exceeds the Administrative Charge paid by Concessionaire to County in connection with such Transfer Event: (a) five percent (5%) of the Gross Transfer Proceeds from such Transfer Event; or (b) twenty percent (20%) of the Net Transfer Proceeds from such Transfer Event.

With respect to a Financing Event, other than the Exempt Financing Event, the "Participation Fee" shall be the amount (if any) by which (I) twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event exceeds (II) the Administrative Charge paid by

Concessionaire to County in connection with the transaction. Notwithstanding the foregoing, with respect to a Financing Event that occurs that is a refinancing for Concessionaire's construction loan or an initial financing after the completion of construction, the conversion of equity or construction debt (including mini-perm debt) to permanent debt and Concessionaire is not receiving any funds in excess of the amount being financed and costs for obtaining a permanent loan ("Concessionaire Permanent Financing"), will not incur a Participation Fee.

Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Concessionaire that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest.

"Gross Transfer Proceeds" shall mean the total cash and other consideration received by Concessionaire, but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be determined to be less than the fair market value of the interests; if Concessionaire and County are unable to agree upon such fair value, then the matter shall be determined pursuant to Article 16.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Qualifying Transfer Event or Financing Event, as applicable, for which a Participation Fee is due, pursuant to the remaining provisions of Section 4.8 below, (i) there shall be no duplication of any amounts to be subtracted from Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), even if a particular amount qualifies for subtraction under more than one category, and (ii) the calculation will reflect the Participation Fees previously paid to the County, as well as the prior basis for such fees plus any capital investment made since the previous event.

4.8.1 Transaction by Original Concessionaire. In the case of a transfer by Concessionaire (but not a transfer by a successor or assignee of Concessionaire) constituting a Qualifying Transfer Event for which a Participation Fee is payable (i.e., not an Exempt Transfer Event), **"Net Transfer Proceeds"** shall mean the Gross Transfer Proceeds from the transfer, less the following costs with respect to Concessionaire (but not its successors or assignees):

4.8.1.1 The sum of (a) amount of the **"Option Fee"** and any "Option Term Extension Fee" paid by Concessionaire under the Option Agreement, plus (b) the actual out-of-pocket costs incurred by Concessionaire for its third party consultants and attorneys in connection with the negotiation and consummation of the Summary of Terms For Proposed Concession Contract for Restaurant Operation at Will Rogers State Beach at County Operated Will Rogers State Beach, Option Agreement and this Agreement, including costs incurred for appraisers, attorneys and consultants, plus (c) the Actual Costs reimbursed by Concessionaire to County in connection with the negotiation and consummation of the Summary of Terms Proposed Concession Contract for Restaurant Operation at Will Rogers State Beach at County Operated Will Rogers State Beach, Option Agreement and this Agreement,

including costs incurred for appraisers, attorneys and consultants (the sum of the amounts in (a), (b) and (c) are referred to as the “**Base Value**”), plus (d) the Total Redevelopment Cost at date of transfer, plus (e) the Deferred Rent Balance, if any, paid from Transfer Proceeds, plus (f) the total cost of other physical capital Improvements or Alterations made to the Premises by Concessionaire (including future capital redevelopment and rehabilitation work, but not periodic maintenance and repair, and not including new or replacement FF&E, and including, in each case all hard and soft costs (including, without limitation, architectural fees, engineering fees, loan fees, permit, entitlement and building fees and costs, leasing commissions, etc.), construction period interest on Concessionaire’s construction loan, and developer fees incurred by Concessionaire, as long as such developer fees do not exceed five percent (5%) of hard construction costs), after the Effective Date in compliance with Article 5 of this Agreement, to the extent that such costs have been submitted to County within one hundred eighty (180) days after the completion of such Improvements, together with a written certification from Concessionaire and either Concessionaire’s construction lender or Concessionaire’s architect, subject to the County’s right to audit such certifications, or in the case of phased construction, within one hundred eighty (180) days after the completion of the applicable phase (to the extent that such construction lender exists and the construction lender has funded such costs) that such costs are accurate (the amounts described in this clause (e) are referred to as “**Improvement Costs**”). Notwithstanding the foregoing, with respect to Improvements or Alterations which are not part of the Redevelopment Work, Concessionaire shall submit the cost of such Improvements within one hundred eighty (180) days following the completion of the Improvements. If by the date that is one hundred eighty (180) days after the completion of the Improvements the final amount of the Improvement Costs is not established because of a dispute or disputes between Concessionaire and its contractor(s), then Concessionaire shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Concessionaire shall thereafter notify County in writing within ninety (90) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute; plus

4.8.1.2 Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys’ fees, and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Participation Fee, including the Administrative Charge paid to County for such transaction (but without double counting) (collectively, “**Documented Transaction Costs**”) (it being understood and agreed that prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs) shall not be included in Documented Transaction Costs), plus Documented Transaction Costs to the extent paid in connection with a Financing Event for which County was not paid a Participation

Fee; plus

4.8.1.3 Costs incurred by Concessionaire related to securing financing for the construction of the Redevelopment Work and/or Improvements and for permanent financing; plus

4.8.1.4 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Concessionaire paid County a Participation Fee; plus

4.8.1.5 Fees paid to procure equity capital, provided such fees do not exceed more than two percent (2%) of such funds procured unless approved by the Director.

4.8.1.6 Costs that qualify to be included herein per Section 4.8.4 below.

4.8.2 Transfer by Concessionaire's Successor. In the case of a Qualifying Transfer Event by a successor Concessionaire, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds received by that successor, minus the following costs with respect to such successor Concessionaire:

4.8.2.1 The actual out-of-pocket costs incurred by the successor Concessionaire for its third party consultants and attorneys and actual costs reimbursed to County in connection with the renegotiation and amendment of the Agreement (if any), including costs incurred for appraisers, attorneys and consultants (the amount defined in Subsection 4.8.2 less the amount in this Subsection 4.8.2.1 is referred to as the "**Updated Base Value**"); plus

4.8.2.2 The purchase price paid by the successor Concessionaire to the prior Concessionaire for the interest acquired by the successor Concessionaire; plus

4.8.2.3 The Improvement Costs. Notwithstanding the foregoing, the successor Concessionaire shall submit the cost of such Improvements within one hundred eighty (180) days following the completion of the Improvements. If by the date that is one hundred eighty (180) days after the completion of the Improvements the final amount of the Improvement Costs is not established because of a dispute or disputes between the successor Concessionaire and its contractor(s), then the successor Concessionaire shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). The successor Concessionaire shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute; plus

4.8.2.4 Documented Transaction Costs with respect to such Qualifying

Transfer Event; plus

4.8.2.5 For any Financing Event after the date of the prior Financing Event(s), the amount determined to be the Net Financing Proceeds for such event or events, whether or not a Participation Fee was payable.

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Qualifying Transfer Event described in Subsection 4.6.1 (b), Subsections 4.8.1 and 4.8.2 shall apply (as applicable), except that any rents or other amounts received by Concessionaire from the Major Sublessee a percentage of which is passed through to County under any provision of this Agreement (other than payment of Participation Fee) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 Other Transfers. With respect to any Qualifying Transfer Event that is not an Excluded Transfer Event or an Exempt Transfer Event and is not a transfer of a beneficial interest by an Initial Investor and is not described in Subsections 4.8.1 through 4.8.3 (e.g., a transfer of a beneficial interest in Concessionaire or a Major Sublessee that results in funds being received by Original Concessionaire, Successor Concessionaire, or Major Sublessee), Subsections 4.8.1, 4.8.2 and 4.8.3 shall apply to such Qualifying Transfer Event (as applicable), as adjusted pursuant to the immediately following sentence. For purposes of the application of Sections 4.8.1 and 4.8.2 to a Qualifying Transfer Event under this Section 4.8.4, in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share (i.e., the percentage of the entire beneficial interest in Concessionaire that is then being transferred) of the Base Value and Improvement Costs (or with respect to a transfer of a beneficial interest in a Concessionaire that is not the original Concessionaire Entity that executed this Agreement, such cost shall in no event be deemed to be less than the pro rata share (i.e., the percentage of the entire beneficial interest in Concessionaire that is then being transferred) of the sum of Subsections 4.8.2.1 and 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool)) shall be deducted. Furthermore, in the event that any such Transfer Event produces a Participation Fee, the then-existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Participation Fee was calculated, and the basis of the interest that was transferred and for which a Participation Fee was paid shall also be increased for subsequent transfers of the same interest, as if realized by Concessionaire or a Major Sublessee upon a transfer of a comparable interest in this Agreement or in a Major Sublease, as applicable.

4.8.5 Net Refinancing Proceeds. "**Net Refinancing Proceeds**" shall mean in the case of any Financing Event after the Effective Date, the gross principal amount of said Financing Event (plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing), minus (a) the Prior Financing Event Principal Balance (as defined below), (b) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs to be incurred after the date of the Financing Event, as approved in advance by the Director, but not including the cost of any new

or replacement FF&E, (c) other approved Improvement Costs incurred by Concessionaire and not paid for or repaid with the proceeds of any Financing Event (but without duplication to the extent included in the amount determined under clause (a) above), and (d) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no double counting of Improvement Costs in clauses (a), (b) and (c) above. In addition, notwithstanding any contrary provision of Section 4.6 above pursuant to which a Participation Fee would be due upon a Financing Event, if the purpose of a Financing Event is to fund the acquisition cost (or a portion of the acquisition cost) of a Qualifying Transfer Event that is not an Excluded Transfer Event or an Exempt Transfer Event, then to the extent that the gross principal amount of the Financing Event does not exceed the gross sale or transfer price of such Qualifying Transfer Event, and if the Financing Event is consummated concurrently with the consummation of the Qualifying Transfer Event, there shall not be any separate Participation Fee payable in connection with such Financing Event.

For purposes of this Subsection 4.8.5, “**Prior Financing Event Principal Balance**” shall mean an amount equal to the original principal amount of a Financing Event consummated after the Effective Date but prior to the then-subject Financing Event, plus if such previous Financing Event was secondary financing, the original principal balance of any then-existing financing that was not repaid as part of such secondary financing; provided, however, if there were more than one such previous Financing Event after the Effective Date, then the calculation shall be performed for each such previous Financing Event after the Effective Date, and the higher or highest amount so determined shall be the Prior Financing Event Principal Balance.

4.8.6 Transfers and Financings to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Agreement or a Major Sublease which constitute a Qualifying Transfer Event, unless such transfers are otherwise excluded or exempt pursuant to this Agreement. Furthermore, the provisions of Sections 4.6 through 4.8 of this Agreement, and the principles set forth therein, shall apply to any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay Participation Fee set forth in Sections 4.6 through 4.8 of this Agreement and which, viewed together, would otherwise constitute a Transfer Event.

4.8.7 Payment. Participation Fee shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Participation Fee not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Participation Fee at the Applicable Rate from the date due until paid; provided, however, that in the case of a dispute as to the correct amount of the Participation Fee there shall be no late fee or interest payable as long as Concessionaire timely pays to County the undisputed portion of the Participation Fee and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay

Participation Fee are comprised, in whole or in part, of assets other than cash, then the cash payment of the Participation Fee shall reflect the fair market value of such non-cash assets as of the date of the Transfer Event, which shall be set forth in the Calculation Notice.

Notwithstanding the foregoing, in the case of a Transfer Event described in Subsection 4.6.1(b), the Participation Fee shall be payable to County as and when the Net Transfer Proceeds are received, with the Participation Fee being equitably apportioned to the payments derived by Concessionaire from said Transfer Event (other than any payments passed through to County under this Agreement).

4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Transfer Event or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Concessionaire shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Concessionaire, this Agreement or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Concessionaire or any Major Sublessee under any Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Concessionaire shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust; provided, however, that to the extent that Concessionaire is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Concessionaire shall have complied with this provision if Concessionaire uses its reasonably commercial efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Concessionaire agrees to use its reasonably commercial efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Concessionaire or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Promptly following the Effective Date, Concessionaire shall perform certain redevelopment and renovation work with respect to the Premises set forth in the Redevelopment Plan attached to this Agreement as **Exhibit "B"** (the "**Redevelopment Plan**") and the Approved Permit-Ready Plans, Specifications and Costs for such work, including without limitation: (a) demolition of the existing Gladstone's buildings containing an approximately 11,990 square foot building and a 7,900 square foot deck with a total existing seating capacity of 707 and appurtenant facilities; (b) construction of a new restaurant with approximately 450 seats, with exterior and interior dining, and public deck/boardwalk that will include restrooms, a separate outlet offering reasonably and moderately priced food and beverages and other amenities as approved by the Director in its reasonable discretion; (c) redevelopment of: (i) the existing parking lot; (ii) 20 public parking spaces; (iii) County vehicular access to the beach; and (iv) ADA-compliant ramp access to the beach (if required by a governmental agency); (d)

Concessionaire shall be required to satisfy all conditions imposed by Big Blue Bus, Metro and Caltrans along with any additional improvements including on-site and off-site improvements as may be required by any other governmental agencies; (e) construction of such other related and incidental uses as are specifically approved by County; and (f) construction of various improvements required by applicable governmental agencies as a condition to the issuance of the entitlement approvals or building permits for the Redevelopment Work (collectively, the “**Redevelopment Work**”). Director shall have the authority to approve modifications to each of the above approximate square footages for various components of the Redevelopment Work. The Redevelopment Work shall be performed in accordance with the Redevelopment Plan and the Approved Permit-Ready Plans, Specifications and Costs for the Redevelopment Work (as established under the Option Agreement to the extent that the Approved Permit-Ready Plans, Specifications and Costs for the Redevelopment Work are approved by Director prior to the Effective Date, or as established under Subsection 5.5.1 of this Agreement to the extent that the Approved Permit-Ready Plans, Specifications and Costs for the Redevelopment Work are not approved by Director until after the Effective Date).

Concessionaire shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, City, Coastal Commission and Design Control Board) planning and entitlement approvals, including density, site coverage, open space, view corridors, and building height issues, required to perform the Redevelopment Work and all requirements and specifications of regulatory agencies which may have oversight of construction activities at the Premises.

5.1.1 Total Redevelopment Costs. Concessionaire shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). Concessionaire shall expend on the Redevelopment Work not less than Twenty Seven Million Dollars (\$27,000,000) for the performance of the Redevelopment Work that complies with the definition of Total Redevelopment Cost Amount set forth below. The immediately preceding sentence shall not be construed as a maximum amount that Concessionaire is required to expend for Total Redevelopment Costs for the Redevelopment Work, but only as a minimum amount, and Concessionaire shall be required to perform the Redevelopment Work in accordance with the requirements and standards set forth in this Article 5 even if the Total Redevelopment Costs necessary to do so exceed the Total Allowable Redevelopment Cost. Only Total Redevelopment Costs may be used to satisfy the Total Allowable Redevelopment Cost. “**Total Redevelopment Costs**” shall mean all hard and soft costs for the development, construction, and for all cost categories contained in the line item budget as set forth in **Exhibit “H”** attached hereto and incorporated herein by reference (which includes hard and soft costs but excludes contingency amounts) of the Redevelopment Work, including but not limited to: (a) construction insurance; (b) any construction bonds and permit fees paid to the County and any governmental agencies; (c) the profit, overhead and conditions in reasonable market standard amounts paid to the non-Concessionaire affiliated general contractor that is responsible for the construction of the Redevelopment Work. Notwithstanding the foregoing, to the extent that there is a conflict between Exhibit H and this Agreement, the terms of Exhibit H shall prevail. The Total

Redevelopment Costs shall not include syndication fees or costs in excess of five percent (5%) of amounts raised, any imputed cost or value of the existing Improvements, or any imputed cost or value of land or the existing leasehold interest. Concessionaire's hard and soft construction costs shall be subject to Director's written approval, in its reasonable discretion. The dollar amounts and/or ratios in the Total Redevelopment Costs shall be at reasonable levels based on comparable Frank Gehry projects and shall be approved by the Director in his or her reasonable discretion; except, however, that the fees for architecture and interior design shall also reflect Frank Gehry's customary rates. Within one hundred eighty (180) days after the Construction Completion Date, which may be extended subject to Director's written approval in Director's sole and absolute discretion, Concessionaire shall submit to the Director, for his or her reasonable approval and reconciliation thereof, the Total Redevelopment Costs incurred by Concessionaire.

The "**Total Allowable Redevelopment Cost**" for the Redevelopment Work shall be not more than Forty Two Million Dollars (\$42,000,000), as adjusted in accordance with the terms and provisions of this paragraph. The initial Total Allowable Redevelopment Cost of \$42,000,000 shall be adjusted by the change in the ENR Index (or suitable substitute) from the Option Grant Date to the Construction Commencement Date (the "**Cost Adjustment Period**"), or such other amount as may be agreed to by Concessionaire and Director and approved in writing by the Director in his or her reasonable discretion.

Concessionaire shall comply with all time deadlines and schedules set forth in this Article 5 relating to the completion of the design and construction of the Redevelopment Work (subject to any extension set forth in Section 5.7 for Force Majeure delay). Concessionaire's failure to do so shall, if not cured within the applicable cure period set forth in Subsection 13.1.3, constitute an Event of Default. Except to the extent Concessionaire is prevented from so doing by Force Majeure delay as provided in Section 5.7, Concessionaire shall (1) cause the commencement of construction of the Redevelopment Work to occur on or before the date (the "**Required Construction Commencement Date**") which is ninety (90) days following Concessionaire's exercise of the Option; (2) following commencement of construction of the Redevelopment Work diligently continue performance of the Redevelopment Work through completion of the Redevelopment Work in accordance with the process set forth in Section 5.5 below; and (3) substantially complete the Redevelopment Work not later than twenty-four (24) months after the Required Construction Commencement Date (the "**Required Construction Completion Date**"). Notwithstanding the foregoing, County and Concessionaire's lender shall enter into a subordination, non-disturbance and attornment agreement which shall specify such lender's rights to cure any default by Concessionaire or otherwise have rights to exercise its remedies under its loan. Concessionaire shall deliver to County not less than ten (10) days prior to the Construction Commencement Date, the Performance and Payment Bonds or Alternative Security as required pursuant to Section 5.5.5. Furthermore, notwithstanding any contrary provision of this Article 5, in no event shall the Required Construction Commencement Date or the Required Construction Completion Date be extended for more than two (2) years for any Force Majeure delay. Concessionaire shall provide written notice to County of the date of issuance of a final certificate of occupancy for the improvements promptly upon the occurrence thereof, but no later than ten (10) business days from such issuance.

Concessionaire shall have the right and option to voluntarily extend the Required Construction Commencement Date for up to two periods of six (6) months by written notice to Director not later than thirty (30) days prior to the then-existing Required Construction Commencement Date. No extension fee shall be required for the first six (6) month extension. In the case of the second extension of the Required Construction Commencement Date, a condition to the extension shall be the concurrent delivery to County with its extension notice of an extension fee equal to One Hundred Thousand Dollars (\$100,000.00). If Concessionaire has not commenced construction within fifteen (15) months of the effective date of the Option (but subject to mutually agreed upon extension with the County, which may be granted by the Director), County has the right to terminate the Agreement upon written notice to Concessionaire. No extension of the Required Construction Commencement Date shall extend the Required Construction Completion Date. In the event that the Construction Commencement Date has not occurred by the end of the second six month extension, County, in its reasonable discretion, may grant additional six (6) month extensions upon written request by Concessionaire and Concessionaire's payment of an extension fee equal to One Hundred Thousand Dollars (\$100,000.00) for each additional six month extension. Concessionaire shall have the separate right to extend the Required Construction Completion Date for up to two periods of six (6) months by written notice to Director not later than thirty (30) days prior to the then-existing Required Construction Completion Date. In the case of an extension of the Required Construction Completion Date, a condition to the extension shall be the concurrent delivery to County, with each extension notice, subject to Force Majeure, of an extension fee equal to One Hundred Thousand Dollars (\$100,000.00), provided that said extension fee shall be due even in the case of Force Majeure. If Concessionaire has not completed construction by the last day of the 36th month following the effective date of the Agreement, subject to Force Majeure or other causes beyond the control of Concessionaire and/or other provisions agreed upon in the Agreement, County has the right to terminate the Agreement upon written notice to Concessionaire. Neither the Required Construction Commencement Date nor the Required Construction Completion Date shall be extended for more than an aggregate of two (2) years each pursuant to this paragraph.

Concessionaire acknowledges that the principal inducement to County to enter into this Agreement, is the timely commencement, performance and completion by Concessionaire of the Redevelopment Work.

5.2 Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 after this Section 5.2 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Concessionaire may be required or desire to make to the Premises during the Term below. For purposes of this Agreement, "**Alterations**" shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. The Redevelopment Work shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Agreement after this Section 5.2 that are applicable to Alterations shall also be applicable to the Redevelopment Work.

5.3 Predevelopment Architectural Work. With respect to design and architectural services, Concessionaire shall use Frank Gehry (including his firm Gehry Partners, LLC) for concept and basic architectural design; it is further understood and agreed that Frank Gehry shall be the “principal designer” and shall be responsible for the design development phase, but it is also understood and agreed that the development construction phase and the applicable construction documents will be prepared by other architects and other professionals, including for the interior, structural plans and specifications, and other required plans. Concessionaire shall describe the Premises and cause the Premises to be described in all Publicity (as defined in Section 1.1.125 of this Agreement) as “Frank Gehry designed” or “designed by Frank Gehry” (or words to the same effect). Additionally, the County shall have the right to describe the Premises, and to cause the Premises to be described, in all written and oral statements, including, without limitation, in all materials and Publicity, as “Frank Gehry designed” or “designed by Frank Gehry” (or words to the same effect).

In the event that Frank Gehry is unable to complete the design development phase and to be the principal designer, or should Frank Gehry become incapacitated or otherwise be unable or unwilling to complete the design development phase and be the principal designer, then County, through its Director, shall have the right to approve Concessionaire’s proposed comparable principal designer to perform the design development phase, which approval shall be in the County’s sole and absolute discretion.

Notwithstanding anything to the contrary contained in the Option Agreement or this Agreement, in the event that Frank Gehry is not the principal designer of the Premises and does not complete the design development phase, the Department of Beaches and Harbors of the County of Los Angeles shall have the unilateral right (in its sole and absolute discretion) to terminate the Option Agreement or this Agreement (whichever is in effect) subject to the terms and conditions contained herein.

5.3.1 Concessionaire’s Representations and Warranties. Concessionaire hereby represents and warrants to Lessor as follows:

i) Frank Gehry shall be the principal designer of the Project, and shall be responsible for the design development phase; and

ii) Concessionaire shall describe the Premises and cause the Premises to be described in all Publicity (as defined hereinbelow) as “Frank Gehry designed” or “designed by Frank Gehry” (or words to the same effect). Additionally, the County shall have the right to describe the Premises and to cause the Premises to be described, in all written and oral statements and materials, including without limitation, in all Publicity, as “Frank Gehry designed” or “designed by Frank Gehry” (or words to the same effect); and

iii) Frank Gehry has agreed and has consented in the contracts between Frank Gehry (including Frank Gehry’s firm, Gehry Partners, LLC) and all parties and with

Concessionaire, that all Publicity with respect to the Project may name and identify the Project as “designed by Frank Gehry” or “Frank Gehry designed” (or words to the same effect).

5.4 Plans and Specifications for Alterations. Concessionaire shall make no Alterations without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior and as a condition precedent to the construction of any Alterations, Concessionaire shall submit to Director, for Director’s approval, the plans, specifications and other materials described in this Section 5.4 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to the Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Agreement.

5.4.1 Schematics and Narrative. Concessionaire shall submit to Director six (6) sets of schematic plans, if applicable and desired by County, together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. After receipt of such plans, Director shall have forty-five (45) days within which to approve or disapprove such submission in writing. Failure of Director to approve such submission in writing within said forty-five (45) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Concessionaire, disclose to Concessionaire in writing Director’s objections to the submission. After approval of schematic plans (or subsequent approval of preliminary plans or Approved Permit-Ready Plans, Specifications and Costs) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency with jurisdiction thereover, Concessionaire shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.4.2 Preliminary Plans and Specifications. As soon as reasonably practicable after Director’s approval of the materials submitted pursuant to Subsection 5.4.1, Concessionaire shall submit to Director two (2) sets (one digital and one hard copy) of preliminary plans, if applicable (which should be the same version submitted to the County Director of Public Works for plan check), outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural progression and logical evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any material difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. The preliminary plans shall be of a detail and scope that is typically associated with design development drawings. Director shall have twenty-one (21) days from receipt within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans

only on the grounds that (i) they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. Upon request by Concessionaire, any disapproval shall be accompanied by a statement from Director disclosing the specific objections to the submission, except that no failure of Director to include such specific objections shall be deemed an approval of the subject plans. Failure of Director to disapprove said preliminary plans within ten (10) business days after Director's receipt thereof shall be deemed Director's disapproval thereof.

5.4.3 Permit-Ready Plans and Specifications. As soon as reasonably practicable after Director's approval of the preliminary plans, outline specifications and construction cost estimates, Concessionaire shall submit for approval by Director two (2) complete sets (one digital and one hard copy) of permit-ready plans, if applicable, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations (if structural work is contemplated), identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. The permit-ready plans and specifications shall reflect a natural progression and logical evolution from the preliminary plans and specifications. Concessionaire shall file duplicate copies of the permit-ready plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described in a separate written narrative to be provided by Concessionaire.

5.5 Conditions Precedent to the Commencement of Construction. No Redevelopment Work or other Alteration (including commencement of demolition and/or grading) shall be commenced until the following conditions have been satisfied:

5.5.1 Approved Permit-Ready Plans, Specifications and Costs: “**Approved Permit-Ready Plans, Specifications and Costs**” shall mean permit-ready plans, detailed construction specifications and construction statements that have been approved by the Director and are prepared and ready to be submitted to the appropriate governmental entity. Concessionaire shall: (a) have the Approved Permit-Ready Plans, Specifications and Costs; (b) have obtained all of its applicable permits and approvals for grading and demolition; and (c) have delivered to the County the Performance and Payment Bonds or other Alternative Security as required in Subsections 5.5.4 and 5.5.5 below. Director shall have twenty-one (21) days after receipt of the permit-ready plans, detailed construction specifications and construction cost statement within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and

construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said permit-ready plans within ten (10) business days after Director's receipt shall be deemed Director's disapproval thereof.

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Concessionaire, disclose to Concessionaire in writing Director's objections to the submission. Director's approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications (exclusive of any Approved Governmental Changes), or which contains new, different or additional specifications for the Improvements which were not expressly set forth in, and approved by Director as a part of, the preliminary plans and which do not meet the requirements for the Improvements set forth in this Article 5. No material modification shall be made to the Alterations described in the Approved Permit-Ready Plans, Specifications and Costs without the prior written approval of Director, which shall not be unreasonably withheld.

“Approved Governmental Changes” shall mean any changes to the Redevelopment Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency (including County in its regulatory capacity) as a condition to the issuance of required governmental permits and approvals for such Redevelopment Work (or other Alterations, as applicable), except for any change that is a Material Modification. **“Material Modification”** shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) as to which any one of the following applies: (1) the total cost of the modifications exceeds four hundred thousand dollars (\$400,000.00); (2) the proposed modification is structural in nature; (3) the modification affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under the Agreement; or (5) the modification (a) changes the square footage of the Improvements by more than 5% or (b) reduces the number of parking spaces, except for a corresponding reduction in the parking requirements for the Improvements (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the square footage of the Improvements. Any Material Modification will be subject to the Director's reasonable approval.

5.5.2 Permits and Other Approvals. Concessionaire shall have received and furnished Director with copies of all permits, licenses and other governmental approvals necessary to construct the improvements described in the Approved Permit-Ready Plans, Specifications and Costs (but with respect to the Redevelopment Work, prior to commencement of the work Concessionaire shall be required to have delivered building and other non-discretionary permits only with respect to the initial phase of same). Concessionaire agrees to apply for all such permits, licenses and other governmental approvals at commercially reasonable times and thereafter shall use its commercially reasonable efforts (necessary to seek the permit, license or other approval process) to procure such permits, licenses and other

approvals at the earliest possible time. It is understood that building or other non-discretionary permits for subsequent phases of the Redevelopment Work (if any) shall be obtained prior to the commencement of work thereon and shall be obtained in accordance with the time schedule provided by Concessionaire to Director and approved by Director. Within ninety (90) days of issuance of a final certificate of occupancy, Concessionaire will provide County with one digital set of Record Documents for the completed Redevelopment Work.

5.5.3 Copies of Construction Contracts. Concessionaire shall have furnished County with copies of any contract(s) entered into between Concessionaire and any general contractor(s) employed for the purpose of constructing the improvements described in the Approved Permit-Ready Plans, Specifications and Costs. County will endeavor to keep the foregoing materials confidential, subject to the Public Records Act (including any exceptions) and other Applicable Laws.

5.5.4 Performance and Payment Bonds. Concessionaire shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the Construction Commencement Date, which bonds (or other security) must be in form and content reasonably satisfactory to County:

5.5.4.1 A corporate surety performance bond (“**Performance Bond**”) issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the Approved Permit-Ready Plans, Specifications and Costs. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Concessionaire as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Concessionaire of Concessionaire’s obligations herein to build, construct and otherwise complete the Improvements described in the Approved Permit-Ready Plans, Specifications and Costs.

5.5.4.2 A corporate surety payment bond (“**Payment Bond**”), issued by a surety company licensed to transact business as such in the State of California, with Concessionaire as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost set forth in the Approved Permit-Ready Plans, Specifications and Costs, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment. The Payment Bond shall be in form and content reasonably satisfactory to County.

5.5.4.3 In the event that construction is performed by a licensed general contractor on behalf of Concessionaire, provided that such contractor provides County with a bond or bonds compliant with this Subsection and naming County as

an additional beneficiary, and in all material respects reasonably satisfactory to County and otherwise complying with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Concessionaire required by this Subsection 5.5.4.

5.5.5 Alternative Security. In lieu of providing the Payment and Performance Bonds, Concessionaire may, in its discretion, provide any one or any combination of the following alternative security: (i) a completion guaranty, in form and substance reasonably acceptable to Director, made by an individual or entity with a sufficient net worth and liquidity, in the reasonable discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Concessionaire's construction lender. The security described in clause (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Concessionaire or if a material Event of Default has occurred under this Agreement. Any alternative security provided by Concessionaire pursuant to this subsection may name County and Concessionaire's construction lender as co-beneficiaries.

5.5.6 Evidence of Financing. Concessionaire shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the improvements set forth in the Approved Permit-Ready Plans, Specifications and Costs. Concessionaire shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises within seven (7) days after such document or instrument becomes effective. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act (including any exceptions) and other Applicable Laws.

5.6 County Cooperation. County shall cooperate with and assist Concessionaire, to the extent reasonably necessary, and practical and reasonably requested by Concessionaire, in Concessionaire's efforts to obtain the appropriate governmental approvals, consents, permits or variances and other Entitlements which may be required in connection with the performance by Concessionaire of its obligations hereunder. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where such joinder therein by the Department (in the Department's reasonable discretion) is required or helpful; provided, however, that, if required by Applicable Laws, such joinder shall be at County's sole cost and expense and if such joinder is helpful, but not required by Applicable Laws, Concessionaire shall reimburse County for the actual third party cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Concessionaire and County acknowledge that the approvals given by County under this Agreement are approvals pursuant to its authority under Sections 25536 and 25907 of the

California Government Code; that approvals given under this Agreement in no way release Concessionaire from its obligations under this Agreement and from obtaining, at Concessionaire's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement as described above shall be in the County's and/or Department's reasonable discretion and do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement.

5.7 Delays in Commencement and Completion of Redevelopment Work. Upon commencement of construction of the Redevelopment Work, Concessionaire shall thereafter diligently pursue the completion of such construction by the Required Construction Completion Date, subject to extensions as provided herein and Force Majeure as set forth below. If Concessionaire is delayed in the commencement of construction or completion of the Redevelopment Work due to Force Majeure, then the Required Construction Commencement Date and the Required Construction Completion Date, if and to the extent that the event actually causes a delay in the commencement and completion of construction (as applicable) shall be extended by the period of the delay caused by such Force Majeure. Notwithstanding the foregoing, (a) any extension due to Force Majeure shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Concessionaire notifies Director in writing of the commencement of such delay within thirty (30) business days after Concessionaire's discovery of the delay; (b) in no event shall the Required Construction Commencement Date be extended for more than an aggregate of two (2) years due to Force Majeure; and (c) in no event shall the Required Construction Completion Date be extended for more than an aggregate of two (2) years due to Force Majeure. Concessionaire and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.7. If they are unable to agree within thirty (30) days after written notice from Concessionaire of the event or occurrence giving rise to Concessionaire's claim to an entitlement to a delay under this Section 5.7, the matter shall be mediated as set forth in Article 16.

For the purposes of this Agreement, "**Unreasonable County Activity**" means any of the following that occurs after the Effective Date: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Concessionaire's submittal to the applicable governmental agency for permits, licenses, registrations, plans, consents, and other approvals required by law or directive of a governmental authority for the construction of improvements on the Premises and operation and other use of such Improvements on the Premises including submission of the Approved Permit-Ready Plans, Specifications and Costs for the Redevelopment Work that are approved by the Department; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Concessionaire and which are necessary for Concessionaire to proceed with the permitting and approval process for the Redevelopment Work, or the taking by the Department of actions in its proprietary capacity, without Concessionaire's consent, which are in conflict with Concessionaire's rights and obligations under this Agreement and actually

delay the receipt of any remaining permits or approvals for the Redevelopment Work; or (iii) the Department's failure to comply with the time periods imposed upon the Department under Section 5.4 above, except in the case (if any) where a failure of the Department to notify Concessionaire of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Nothing contained in Section 5.6 above, this Section 5.7 or any other provisions of this Agreement shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

5.7.1 Within a reasonable time under the circumstances, Concessionaire must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Concessionaire fails to notify Director in writing as specified in the immediately preceding sentence within thirty (30) business days following Concessionaire's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this Section 5.7, in no event shall Concessionaire be entitled to any extension for any period of the delay under this Section 5.7 that occurred prior to the date of Concessionaire's notice described in this Subsection 5.7.1.

5.7.2 Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Concessionaire or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 5.7 for the Unreasonable County Activity shall equal the actual amount of delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Concessionaire), then Concessionaire and Director shall establish the length of the delay likely to be caused by the Unreasonable County Activity.

5.7.3 If, within fourteen (14) days following receipt of Concessionaire's notice alleging Unreasonable County Activity, Director and Concessionaire have not agreed in writing as to whether delay due to Unreasonable County Activity has occurred or the length of such delay, then the matter shall be referred to mediation as set forth in Article 16.

5.8 Manner of Construction.

5.8.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Concessionaire with due

diligence. Concessionaire shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Concessionaire shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Concessionaire shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.8.2 Utility Work. Any work performed by or on behalf of Concessionaire or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner to minimize any interference with the provision of such services to other persons.

5.8.3 Construction Safeguards. Concessionaire shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Concessionaire, all necessary safeguards for the protection of workers and the public.

5.8.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all Applicable Laws. Concessionaire shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover, but County will assist in assuring that the Project is reviewed by various departments within the County, including the fire department and land division.

5.8.5 Notice to Director; Damage to County Improvements. Concessionaire further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Concessionaire agrees to repair such damage immediately at no cost or expense to County or, in the event that Concessionaire fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Concessionaire commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Concessionaire within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other

improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to “five (5) business days” in this Subsection 5.8.5 shall be changed to “thirty (30) days.”

5.8.6 **Rights of Access.** Representatives of the Department shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Concessionaire, for the purpose of ascertaining compliance with the terms and conditions of this Agreement, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Concessionaire’s construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Concessionaire shall have the right to have a representative present to accompany the representatives of the Department in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Concessionaire.

5.8.7 **Notice of Completion; As-Built Drawings.** Upon completion of all or any portion of the Redevelopment Work or any other Alterations, Concessionaire shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the “**Notice of Completion**”) with respect to the subject Improvements and Concessionaire shall deliver to County, at no cost to County, two (2) sets of Conoflex or Mylar final as-built plans and specifications, as well as and an electronic file of such plans and specifications, of such Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)).

5.8.8 **Final Completion Certificate.** Promptly after completion of the Redevelopment Work, upon Concessionaire’s request, and provided that all Redevelopment Work has been completed in accordance with the terms of this Agreement, County shall execute and deliver to Concessionaire a final completion certificate (the “**Final Completion Certificate**”) as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Concessionaire in accordance with the terms of this Agreement.

5.9 **Use of Plans.** The parties hereby agree that if this Agreement is terminated by County due to Concessionaire’s default, County (or if County enters into a new agreement with Concessionaire’s Encumbrance Holder pursuant to Article 12, then Concessionaire’s Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract for such Alterations, upon the payment of any sums due to any party thereto. County’s right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Concessionaire or any such architect, design professional or contractor.

5.10 **Where Director Approval Not Required.** Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Concessionaire shall not be required to

seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.5) for Alterations where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars (\$100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date; provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars (\$100,000); and provided, further that as to the cost threshold set forth in this clause (i) it shall not be applicable to typical office, restaurant or retail interior leasehold improvements; (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes which materially affect or are visible from the exterior of the Premises; provided, however, that whenever Concessionaire makes or constructs or permits any improvements in or to the Premises, Concessionaire shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of “as-built” plans upon completion of such work to County.

5.11 Protection of County. Nothing in this Agreement shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Concessionaire or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics’ liens or other claims against the Premises or County.

5.11.1 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the Improvements thereon from mechanics’ liens or other claims. Concessionaire shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.11.2 Prompt Payment. Concessionaire shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Concessionaire or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Concessionaire shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Concessionaire.

5.11.3 Liens; Indemnity. Subject to Concessionaire’s rights to contest the same prior to payment, Concessionaire shall keep the Premises and any Improvements thereon free and clear of all mechanics’ liens and other liens arising out of or in connection with work done for Concessionaire and/or any parties claiming through Concessionaire. Concessionaire agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys’ fees incurred in defending and all other expenses on

account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Concessionaire or persons claiming under it.

In the event any lien is recorded, Concessionaire shall, within twenty (20) days after demand, furnish any one of the following, as determined by Concessionaire: (i) a bond which in accordance with the provisions of applicable law results in the removal of such lien from the Premises, (ii) a Set Aside Letter from Concessionaire's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Concessionaire's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring County against any loss or liability arising out of such lien, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.12 Local Hiring Requirements. In connection with all construction projects undertaken pursuant to this Agreement, Concessionaire shall comply, and shall cause its contractors to comply, with all applicable provisions of County's Countywide Local and Targeted Worker Hire Program as adopted by the Board on September 6, 2016 and attached as **Exhibit "F"** to this Agreement, as such program may be amended or implemented by actions of the Board from time to time. For purposes of payment of wages pursuant to this Agreement, this project is a Public Work as defined in Section 1720 of the California Labor Code. All contractors and its subcontractors of any tier shall comply with all provisions of said Labor Code including, but not limited to, paying no less than applicable prevailing wages to all workers. Under the provisions of said Labor Code, the State Department of Industrial Relations will ascertain the prevailing hourly rate in dollars and details pertinent thereto for each craft, classification or type of workers, or mechanic needed to execute any contract that may be awarded by the awarding entity.

5.13 Labor Peace Agreements. Prior to the commencement of restaurant operations, Concessionaire shall enter into a Labor Peace Agreement, as defined in Section 1.1.87, with the relevant labor unions, subject to County's approval, as described in this Section 5.13. In compliance with the County's Labor Peace Agreements Policy No. 5.290, effective September 15, 2021 (the "LPA Policy"), Concessionaire represents and warrants that it shall (a) ensure that there is an executed Labor Peace Agreement with any labor organization(s) representing or seeking to represent the employees of any Hospitality Operator(s), as defined in Section 1.1.76 (any "Hospitality Operator(s)," as defined under the County's LPA Policy, operating on County owned or County managed real property, and whether the Hospitality Operator(s) contracts directly with the County or the County's concessionaire) at the premises covered by this Agreement; (b) the Concessionaire or Hospitality Operator(s) shall have submitted to the County of Los Angeles a copy of evidence of such Labor Peace Agreement, executed by all parties; and (c) such Labor Peace Agreement shall prohibit labor organizations and their members from engaging in picketing, work stoppages, boycotts or other economic interference with the business for Hospitality Operator(s) at County-owned, operated, or managed sites for the duration of this Agreement. Concessionaire acknowledges that it is a material term of this Agreement that Concessionaire enter into or maintain a Labor Peace Agreement pursuant to the LPA Policy throughout the duration of the term of this Agreement, and that it would be impracticable and

extremely difficult to fix the actual damages for a breach of this provision. It is therefore agreed that if, for any reason whatsoever, Concessionaire fails to enter into or maintain a Labor Peace Agreement pursuant to the LPA Policy throughout the duration of the term of this Agreement, then County may terminate this Agreement for default by giving written notice of such termination to Concessionaire, which notice shall be effective thirty (30) days thereafter.

5.14 Prevailing Wage Requirements. In connection with all construction projects undertaken pursuant to this Agreement, Concessionaire shall comply, and shall cause its contractors and subcontractors to comply, with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the California Department of Industrial Relations, as more particularly described in **Exhibit “G,”** attached and incorporated herein. Concessionaire and all of its contractors and subcontractors shall obtain these rates from the Department of Industrial Relations, County or online at <http://www.dir.ca.gov/dlsr>, and shall keep them on file at their main office. Concessionaire shall cause its contractors and subcontractor to post a copy of the applicable rates at the Premises during all periods of construction during the Term. Concessionaire shall cause all contractor and subcontractors performing work at the Premises to comply with all applicable Labor Code provisions, including without limitation, requirements respecting contractor registration with the Department of Industrial Relations, employment of apprentices, and the payment of not less than the required prevailing rates and overtime. County and Concessionaire agree that the provisions of California Labor Code sections 1771, 1771.1, 1771.4, 1772, 1773.2, 1774, 1775, 1777.7, 1776, 1777.5, 1813 and 1815 shall be deemed attached hereto and incorporated by reference into this Agreement. In addition, Concessionaire shall require that all such sections be recited in and incorporated by reference into all of its contracts with contractors and into all contracts with subcontractors (of any tier).

5.15 Quarterly Construction Update. Concessionaire shall provide to County at the end of each quarter a written report summarizing construction activities, status of construction, and construction meetings that took place during the most recent quarter. Concessionaire shall notify County of the date, time and location of all regularly scheduled construction meetings at least forty eight (48) hours in advance, and shall provide such notice as shall be reasonably practicable to County in the event of unscheduled meetings (other than impromptu field meetings). Notice under this Section shall be by telephone or email to the person designated by the Director from time to time.

5.16 Construction Meetings. County shall be advised of, and shall be permitted to attend, all construction meetings (whether regularly scheduled or unscheduled) to be attended by Concessionaire’s general contractor or inspecting architect, as well as any inspecting architect engaged by Concessionaire’s Encumbrance Holder. For regularly scheduled meetings, Concessionaire shall provide at least forty-eight (48) hours’ prior notice (which notice may be by telephone or email) of the date, time and place of such regularly scheduled meeting, to the person designated by Director from time to time to represent County at such regularly-scheduled meetings. For unscheduled meetings, Concessionaire shall provide such telephonic or email notice as shall be reasonably practicable under the circumstances, to the person designated by Director

from time to time to receive notice for regularly scheduled meetings, or to such other individual as Director may designate from time to time.

5.17 Reserve Fund.

5.17.1 Establishment of Reserve Fund. Commencing on the date the initial Reserve Study is prepared, Concessionaire shall establish and maintain a reserve fund in accordance with the provisions of this Section 5.17 (the “**Reserve Fund**”) for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Commencing on the first day of the month immediately following the first day of the sixth (6th) operating year and on the first day of each month thereafter and continuing through the remaining Term (and subject to reaching the Threshold Amount, as defined below), Concessionaire shall make monthly contributions to the Reserve Fund on the same day that Monthly Minimum Rent payments are due each calendar month in the amounts established by the then most current updated Reserve Study (as described in Section 5.17.3 below).

If at any time the then-existing balance in the Reserve Fund reaches the Threshold Amount (as defined below), Concessionaire thereafter shall not be required to make further contributions to the Reserve Fund except as necessary to maintain the balance of the Reserve Fund in an amount at least equal to the Threshold Amount. The “**Threshold Amount**” shall mean the aggregate amount of contributions required to be made to the Reserve Fund over the three (3) -year period covered by the prior Reserve Study. The Threshold Amount shall be adjusted every three (3) years as part of the Reserve Study update process described in Section 5.17.4 hereinbelow.

Concessionaire shall keep the Reserve Fund funded as required by the most recent updated Reserve Study. All interest and earnings on the funds in the Reserve Fund shall be added to the Reserve Fund and shall be treated as a credit against the Reserve Fund contributions otherwise required to be made by Concessionaire pursuant to this Section 5.17. Failure to maintain and replenish the Reserve Fund, not cured within the time period set forth in Section 13.1.1 of the Agreement, shall constitute an Event of Default herewith.

5.17.2 Use of Reserve Fund. Concessionaire and County agree that the purpose of the Reserve Fund shall be to provide funds for “Permitted Capital Expenditures Work”, as set forth in the most recent or updated Reserve Study. Permitted Capital Expenditures shall consist of the Improvements and their systems, including building exteriors and building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation/elevators, security systems, communications systems, irrigation systems, structural or roof, walkways and driveways, parking lots, windows and exterior painting, and flooring. “**Permitted Capital Expenditure Work**” shall consist of the foregoing and additions, capital repairs, capital replacements, capital equipment, renovations or other capital upgrades requested by Concessionaire that enhance the quality of Permitted Capital Expenditures. “**Permitted Capital Expenditures**” shall mean and consist of the costs that may be incurred by Concessionaire for Permitted Capital Expenditure Work. The Reserve Fund may be used only to fund Permitted Capital Expenditure Work as set forth in the Reserve Study as it may be modified from time to time, and as may be approved

from time to time by the Director. All specific purposes and costs for which Concessionaire desires to utilize amounts from the Reserve Fund for Permitted Capital Expenditure Work not specified in the Reserve Study shall be subject to Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Concessionaire shall not be required to obtain the Director's prior approval for the use of Reserve Funds for all Permitted Capital Expenditure Work as provided in the Reserve Study, provided Concessionaire delivers to the Director at least thirty (30) days prior written notice of its intention to make said Permitted Capital Expenditure Work, which notice shall set forth the anticipated amount of Permitted Capital Expenditures for such Permitted Capital Expenditure Work and when such Permitted Capital Expenditure Work at issue will commence and be completed. In the event that during any calendar year Concessionaire intends to spend less than required by the most recent updated Reserve Study, then Concessionaire shall be required to obtain the Director's approval, which approval shall not be unreasonably withheld.

The Reserve Fund shall not be used for any of the following, all of which shall be separately funded by Concessionaire: (a) the cost of any portion of the Redevelopment Work or the cost of correcting any defect in the Redevelopment Work; (b) the cost of curing any deficiencies to the extent aggravated by the failure of Concessionaire to maintain and repair the Improvements in accordance with the requirements of this Agreement; (c) costs or expenses reimbursed by insurance, warranties or any other third party; (d) the costs of the initial construction of any new buildings or building additions; (e) the costs of new project amenities (e.g., barbecues or fitness equipment) or new common area furniture; (f) the cost of periodic, recurring or ordinary non-capital expenditures, repairs, maintenance or replacements that keep the Improvements or their systems in good operating condition, but that do not significantly add to their value or appreciably prolong their useful life or that otherwise constitute non-capital expenditures under generally accepted accounting principles consistently applied; (g) the costs for any necessary repairs to remedy any broken or damaged Improvement; (h) the costs of furniture or appliances, except as expressly permitted by a Reserve Study or the Agreement or as otherwise approved by Director; or (i) the cost of any repair or replacement of an individual or a selected group of individual items, unless (A) such capital repair or replacement is part of a larger plan (which may be a phased plan as provided in the most recent Reserve Study) of capital repair or replacement of all, or substantially all, similar, or (B) such capital repair or replacement of an individual or selected group of individual items is expressly set forth in the most recent updated Reserve Study.

Without limiting the prohibition in clause (d) above, the Reserve Fund shall not be used for additional improvements, equipment or systems that were not part of the Improvements upon completion of the Redevelopment Work or subsequently installed as an approved Alteration under this Agreement with Concessionaire's other funds, except for such upgrades as are approved by Director and only to the extent that the then-updated Reserve Study anticipates use of the applicable Reserve Fund for such purposes or the most recent updated Reserve Study is updated to adjust the future monthly Reserve Fund contributions to account for the unanticipated expenditure. Notwithstanding anything to the contrary contained hereinabove, any omission in the Reserve Study (including any failure in the Reserve Study to include an item that should be

repaired, maintained or replaced), shall not release Concessionaire from any responsibility or obligation it may have to make a capital expenditure or repair for items not foreseen or included in the Reserve Study and/or part of the Reserve Fund.

5.17.3 Reserve Studies. In order to provide the requisite funds for the Reserve Fund, Concessionaire shall cause a reserve study with respect to Permitted Capital Expenditures to be prepared sixty (60) days prior to the first day of the month of the sixth (6th) operating year from the date Concessionaire opens for business (“**Required Reserve Study**” or “**Reserve Study**”). The period of time between the initial Reserve Study and the first updated Reserve Study (as described in Section 5.17.4 hereafter) is the “**Initial Reserve Fund Period.**” Concessionaire shall prepare each Reserve Study at its sole cost and expense. Each Reserve Study shall be conducted and prepared by a company mutually acceptable to County and Concessionaire, which company has special expertise in preparing capital improvement reserve studies for similar and comparable projects (e.g. physically similar in age and other physical characteristics) within Los Angeles County. In the event County and Concessionaire cannot agree upon a mutually acceptable company to prepare the Reserve Study, then Concessionaire and the Director shall each engage a company that is able to perform the Reserve Study (each, a “**Potential Reserve Study Company**”) and the Potential Reserve Study Companies shall, amongst themselves, confer and determine which Potential Reserve Study Company shall perform the Reserve Study. If the Potential Reserve Study Companies cannot mutually agree on which Potential Reserve Study Company shall perform the Reserve Study, the Potential Reserve Study Companies shall collectively select an independent Reserve Study Company to perform the Reserve Study. (The reserve company engaged, whether by agreement of County and Concessionaire or pursuant to the procedures set forth in the preceding sentence, shall be referred to as the “**Reserve Study Company**”). In the event that the Reserve Study Company has not been selected on or before six (6) months prior to the end of the fifth (5th) operating year, then the Director shall select the Reserve Study Company. Each Reserve Study shall address the monthly contribution required to adequately maintain the Permitted Capital Expenditures for the full Term of this Agreement. In the event of any conflict regarding the appropriate levels of contribution to the Reserve Fund recommended by the Reserve Study Company, on the one hand, and any report and/or property assessment prepared for the benefit of any Encumbrance Holder, regarding its own separate reserve fund, the Reserve Study Company shall take the views of such consultant into consideration, but the final decision as to the appropriate levels of contribution to the Reserve Fund shall be determined solely by the Reserve Study Company in its reasonable discretion.

The first Reserve Study shall identify any existing deferred maintenance and repair deficiencies that exist at the date of the first Reserve Study. Concessionaire shall be required to remedy any such maintenance deficiencies at Concessionaire’s cost (without any use of the Reserve Fund) within ninety (90) days after the issuance of said first Reserve Study. If Concessionaire requires additional time to complete all existing maintenance deficiencies, then Concessionaire shall submit a schedule of repairs for Director’s written approval, which approval will not be unreasonably withheld.

Each Reserve Study shall determine the monthly contribution amount required to be made to the Reserve Fund. If Director approves any Permitted Capital Expenditure from the Reserve Fund outside of those anticipated under the then-current Reserve Study (as previously updated), then such Reserve Study shall be updated within ninety (90) days following the date such Permitted Capital Expenditure is made to adjust the future monthly Reserve Fund contributions to take into consideration the unanticipated Permitted Capital Expenditure Work. Such updated Reserve Study shall remain applicable for the ensuing three (3)-year period, unless such updated Reserve Study is required to be further updated prior to the expiration of such three (3)-year period pursuant to this sentence.

Each Reserve Study shall, at a minimum, contain the following: (i) identification of all Permitted Capital Expenditures requiring Permitted Capital Expenditure Work, that have a remaining useful life of less than thirty (30) years; (ii) identification of the probable remaining useful life of all Permitted Capital Expenditures as of the date of the most recent updated Reserve Study; (iii) an estimate of the anticipated Permitted Capital Expenditures for the Permitted Capital Expenditure Work identified in clause (i); and (iv) an estimate of the total annual contribution to the Reserve Fund necessary to defray the cost of Permitted Capital Expenditure Components Work identified in clause (i) during and at the end of their useful life, after subtracting total funds then held in the Reserve Fund as of the date of the study. The Reserve Study Company shall have reasonable discretion in determining which Permitted Capital Expenditures to consider for the most recent updated Reserve Study; provided, however, that when the useful life of any Permitted Capital Expenditure becomes thirty (30) years or less, it shall be added to the Reserve Study.

For the purpose of each Reserve Study: (a) “useful life” is defined as the number of years each individual Permitted Capital Expenditure is expected to serve its intended purpose if given regular and proper maintenance, and (b) “remaining useful life” is defined as the expected number of years each individual Permitted Capital Expenditure will continue to serve its intended purpose prior to repair or replacement. In determining the remaining life of a Permitted Capital Expenditure, a certain level of continued preventative maintenance is assumed, but shall be stated explicitly wherever possible in the applicable Reserve Study. Concessionaire hereby agrees to commence and complete all Permitted Capital Expenditure Work that the Reserve Study recommends.

Concessionaire shall be required to renovate, replace or upgrade particular Permitted Capital Expenditures (as identified in the Reserve Study by the Reserve Study Company) at the end of the expected useful life of such Permitted Capital Expenditures and otherwise perform the Permitted Capital Expenditure Work prescribed in the most recent updated Reserve Study. Concessionaire shall be required to perform such Permitted Capital Expenditure Work within ninety (90) days after the expiration of the useful life of the applicable Permitted Capital Expenditure. If Concessionaire requires additional time to complete any such Permitted Capital Expenditure Work because of its inability to obtain access to the interior of a residential unit due to tenant occupancy, etc., then Concessionaire shall submit a construction schedule for Director’s written approval, which approval will not be unreasonably withheld.

5.17.4 Updates to Reserve Studies. At least one hundred twenty (120) days prior to each third (3rd) anniversary of the Prior Reserve Study, the Reserve Study Company shall review the then current Reserve Study to update required Permitted Capital Expenditure Work changes, and take into consideration Permitted Capital Expenditures actually made during the preceding year to determine whether additional needed funds should be contributed to the Reserve Fund that were not included in the prior Reserve Study (“**Annual Reserve Fund Update**”). To assist the Reserve Study Company in preparing the Reserve Fund Update in addition for the necessity for the Reserve Study Company to enter the Premises, Concessionaire shall also provide to the Reserve Study Company an accounting of all Permitted Capital Expenditures made by Concessionaire for Permitted Capital Expenditure Work performed for the prior three (3) year period, and the Reserve Study Company shall take such Permitted Capital Expenditures into account in preparing the Reserve Fund Update. Notwithstanding anything to the contrary contained herein above, it shall not be necessary for a Reserve Fund Update to be prepared in the same year that a Required Reserve Study is prepared. Concessionaire shall submit to Director, for Director’s reasonable approval, an annual Reserve Fund expenditure plan (“**Annual Reserve Fund Expenditure Plan**”) at least ninety (90) days prior to the commencement of each calendar year following the expiration of the Initial Reserve Fund Period. The Director or the County shall respond within sixty (60) days thereafter with specific written objections consistent with the Reserve Study, and if Director or County has no objections, then Concessionaire’s proposed Annual Reserve Fund Expenditure Plan shall be approved. Each Annual Reserve Fund Expenditure Plan shall be consistent with the most recent updated Reserve Study, subject to modification for any unforeseen Permitted Capital Expenditure Work. Permitted Capital Expenditures from the Reserve Fund shall be consistent with the approved Annual Reserve Fund Expenditure Plan for such year, provided that Concessionaire shall have the right during each calendar year to submit for Director’s reasonable approval one or more mid- year modifications to the Annual Reserve Fund Expenditure Plan to address unforeseen Permitted Capital Expenditure Work that may arise during such year.

5.17.5 Final Reserve Study. A final updated Reserve Study (the “**Final Reserve Study**”) shall be prepared and delivered to County no later than five (5) years prior to the expiration of the Term. Prior to the preparation of the Final Reserve Study, County shall inform Concessionaire as to whether it intends to require the demolition of some or all of the Improvements at the end of the Term. The Final Reserve Study shall determine the monthly amounts, if any, required to be deposited to the Reserve Fund to fully fund (when combined with any amounts already on deposit in the Reserve Fund) the expected Permitted Capital Expenditure Work during the remaining Agreement Term or the expected demolition costs (if County has indicated that it intends to require demolition of some or all of the Improvements). The monthly contribution amounts required for the Reserve Fund shall take into consideration any then current balance in the Reserve Fund.

Concurrently with the delivery of the Final Reserve Study, Concessionaire shall deliver to County the Demolition and Removal Report in accordance with Section 2.4.2 of the Agreement. As set forth in Section 2.4.2, the Demolition and Removal Report shall detail the

cost and time period required for the demolition and removal of all Improvements or a Portion Subject to Demolition.

If County elects not to require Concessionaire to demolish the Improvements or a Portion Subject to Demolition at the end of the Term, then: (i) the Final Reserve Study shall make any adjustment for the cost for the future Permitted Capital Expenditure Work during the remaining Agreement Term, (ii) the Reserve Fund payments thereafter required to be made by Concessionaire shall continue to be used for purposes permitted under this Section 5.17, and (iii) any remaining funds in the Reserve Fund at the end of the Term shall be released to County.

If County elects to require Concessionaire, at Concessionaire's sole cost and expense, to demolish the Improvements or a Portion Subject to Demolition (as defined in Section 2.4.2) at the end of the Term and requires Concessionaire to provide security for its obligation to perform such removal obligations in accordance with Section 2.4.2 of the Agreement, then Concessionaire shall contribute to the Reserve Fund amounts thereafter required to be made by Concessionaire towards Concessionaire's obligations to fund the security requirements in Section 2.4.2, and continue to fund any needed Permitted Capital Expenditure Work for any remaining Improvements, as determined by Director in Director's reasonable discretion. As long as Concessionaire makes the Permitted Capital Expenditures prescribed under the Reserve Studies (as updated from time to time) and complies with its obligations under this Agreement with regard to the replacement of the Improvements during the Term and the demolition and removal of the Improvements at the end of the Term (if required), any surplus funds in the Reserve Fund at the end of the Term shall be released to Concessionaire after subtracting any amounts then owing by Concessionaire to County under the Agreement.

5.17.6 Reserve Fund Account. The Reserve Fund shall be held in a separate account reasonably acceptable to and approved by Director. Concessionaire shall make deposits into the Reserve Fund as required hereunder and make disbursements from the Reserve Fund account as required or permitted hereunder, but only for Permitted Capital Expenditures and in accordance with the then current approved Annual Reserve Fund Expenditure Plan (with such adjustments as may be approved by Director). Concessionaire shall have the right to maintain the Reserve Fund with an Institutional Lender that is an approved Encumbrance Holder and to grant such lender a security interest in Concessionaire's interest in the Reserve Fund account, subject to administration of the Reserve in accordance with the requirements of this Section 5.17. Subject to the foregoing, the Reserve Fund account may concurrently satisfy a separate reserve fund requirement of Concessionaire's Encumbrance Holder. The amounts to be added to the Reserve Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder. On or before January 15th of each year (and at any other time within thirty (30) days prior written notice from Director to Concessionaire), Concessionaire shall provide and deliver to Director evidence reasonably satisfactory to Director of the existence of the account in which the Reserve Fund exists, and a report that details all deposits to, earnings on, withdrawals (and the purpose of such withdrawals) from and the balance of the Reserve Fund.

5.18 Furniture, Fixtures and Equipment Fund. Commencing on the first day of the Operations Period, and continuing during the Term, Concessionaire shall establish and maintain a

reserve fund (the “**FF&E Fund**”) to fund the purchase and installment of replacements, additions or upgrades of or to the furniture, fixtures and equipment used in the improvements throughout the Term. The FF&E Fund shall not be used for (a) general maintenance or repair purposes, (b) any item included in the Total Redevelopment Cost or (c) the cost of Permitted Capital Expenditures to be funded by the Reserve Fund. Concessionaire shall provide County with a list of all expenditures made from the FF&E Fund on or before the fifteenth (15th) day of each month following said expenditures.

On or before the 15th day of each month during the period which the FF&E Fund deposits are required to be made, Concessionaire shall make a monthly deposit in an amount (if any) equal to that agreed to between County and Concessionaire (it may be recognized that no FF&E reserve is necessary given planned operations).

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. “**Condemnation**” means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. “**Date of Taking**” means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Premises; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.3 Award. “**Award**” means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. “**Condemnor**” means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties’ Rights and Obligations to be Governed by Agreement. If, during the Term of this Agreement, there is any Condemnation of all or any part of the Premises, any Improvements on the Premises or any interest in this Agreement by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Agreement shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Agreement shall remain in effect, except that Concessionaire

may elect to terminate this Agreement if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Concessionaire's continued use for the purposes contemplated by this Agreement. The remaining portion of the Premises shall be deemed unsuitable for Concessionaire's continued use if, following a reasonable amount of reconstruction, Concessionaire's business on the Premises could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Concessionaire must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Agreement's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Concessionaire does not elect to terminate this Agreement as provided above, then Concessionaire, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Concessionaire shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Agreement remains in full force and effect as to the portion of the Premises not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through mediation in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any mediation proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Concessionaire under this Agreement, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Agreement in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Concessionaire or Concessionaire's designee(s), in monthly installments equal to the sum set forth in Concessionaire's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Premises and any Improvements. Such requested sums shall be paid by County to Concessionaire or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Concessionaire pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Concessionaire with a written notice detailing the reasons for County's dispute. Thereafter, Director and Concessionaire shall promptly meet and negotiate in good faith to resolve any dispute; provided, however, that any dispute not resolved within thirty (30) days after Concessionaire has received notice from County of its dispute shall be submitted to mediation pursuant to Article 16. The balance, if any, shall be divided between County and Concessionaire pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Concessionaire's interest in the Premises for the remainder of the Term of this Agreement including bonus value (for such purposes, the Term of this Agreement shall not be deemed to have terminated even if Concessionaire so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Concessionaire's interest, then Concessionaire shall be entitled to the entire amount of the Net Awards and Payments. There shall be no abatement or reduction of Rent or any other sum payable hereunder as a result of any Partial Taking.

In case of a Condemnation described in this Subsection 6.7.1, Concessionaire shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Concessionaire; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Agreement shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of
(a) the sum of (1) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the

event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the Fair Market Rental Value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term. As used herein, “**Fair Market Rental Value**” shall mean the fair market rent, including an annual minimum rent and percentage rent, with the percentage rent expressed as the respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.4, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Agreement, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms’ length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Concessionaire an amount equal to the value of Concessionaire’s interest in the remainder of the Term of this Agreement, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Agreement shall not be deemed to have terminated even if Concessionaire so elects under Section 6.4.

Fourth: the balance shall be paid to the party as determined by a Court.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Agreement, and such total Condemnation or Partial Taking pertains to only Concessionaire’s interest, then Concessionaire shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Agreement, County shall promptly pay or authorize the payment of, as applicable, to Concessionaire all sums held by County or third parties as the Reserve Fund, the Security Deposit, and, upon completion by Concessionaire of its obligations

under Section 2.4 of this Agreement with respect to any portion of the Premises not taken in the Condemnation, the remaining Demolition Security.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Agreement which are not resolved by the parties, shall be submitted to mediation pursuant to Article 16 of this Agreement. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

6.7.5 Waiver. The provisions of this Agreement governing Condemnation are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and all similar laws, to the extent inconsistent with this Agreement. Nothing in this Article 6 shall be construed to limit County's powers with respect to Condemnation in its governmental capacity.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Concessionaire shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in the following amounts: (i) \$100,000.00 during the period from the Effective Date to one year after the Effective Date; (ii) \$115,000.00 during the period from one year after the Effective Date to two years after the Effective Date; (iii) \$130,000.00 during the period from two years after the Effective Date to three years after the Effective Date; (iv) \$145,000.00 during the period from three years after the Effective Date to four years after the Effective Date; (v) \$160,000.00 during the period from four years after the Effective Date to five years after the Effective Date; (vi) \$180,000.00 during the period from five years after the Effective Date to six years after the Effective Date; (vii) \$200,000.00 during the period from six years after the Effective Date to seven years after the Effective Date; (viii) \$215,000.00 during the period from seven years after the Effective Date to eight years after the Effective Date; (ix) \$230,000.00 during the period from eight years after the Effective Date to nine years after the Effective Date; (x) \$240,000.00 during the period from nine years after the Effective Date to twenty years after the Effective Date; (xi) commencing with the period from twenty years after the Effective Date, and continuing for every year thereafter, the amount shall be consistent with County practices with other leases but not to exceed an increase of five percent (5%) of the prior amount of the Security Deposit each five (5) years.

The Security Deposit shall secure Concessionaire's obligations pursuant to this Agreement, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Concessionaire within any applicable notice and cure period, and (b) any other Events of Default of Concessionaire under this Agreement. The Security Deposit shall be applied at the discretion of County. Concessionaire shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Concessionaire exists under the Agreement, Concessionaire shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of

the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Concessionaire shall not be entitled to interest). Provided that no Event of Default then exists under the Agreement, at the end of each Lease Year Concessionaire shall be entitled to a credit for all unexpended interest accruing to Concessionaire's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Concessionaire under the Agreement.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Concessionaire within any applicable notice or cure period, or against other Events of Default of Concessionaire hereunder, Concessionaire shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Agreement is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Concessionaire and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Concessionaire has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Concessionaire's obligations as set forth in this Agreement and may apply the funds to cover delinquent rent not paid by Concessionaire within any applicable notice and cure period and/or any other Event of Default of Concessionaire under this Agreement.

8. INDEMNIFICATION.

Except to the extent caused by the gross negligence or willful misconduct of the County or its agents, employees or contractors, guests or invitees, Concessionaire shall at all times relieve, defend, indemnify, protect, and save harmless County, its respective Board and members thereof, and officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Concessionaire and reasonably satisfactory to County, to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Premises or the Improvements by Concessionaire or its agents, officers, employees, licensees, concessionaires, permittees or Sublessee, including any occurrence in or on the Premises or Improvements, (b) the acts, omissions, or negligence of

Concessionaire, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (c) the failure of Concessionaire, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Agreement or any Applicable Laws, or (d) the negligent acts or omissions of Concessionaire in connection with the performance of the Redevelopment Work. The obligation of Concessionaire to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Concessionaire, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Agreement.

9. INSURANCE.

9.1 General Insurance Provisions - Concessionaire Requirements.

Without limiting the Concessionaire's indemnification of County and during the term of this Agreement, and until all of its obligations pursuant to this Agreement have been met, Concessionaire shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Agreement. These minimum insurance coverage terms, types and limits (the "**Required Insurance**") also are in addition to and separate from any other contractual obligation imposed upon Concessionaire pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Concessionaire for liabilities which may arise from or relate to this Agreement.

9.1.1 Evidence of Coverage and Notice to County.

9.1.1.1 Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Concessionaire's General Liability policy, shall be delivered to County at the address shown below and provided prior to the start day of this Agreement.

9.1.1.2 Renewal Certificates shall be provided to County not less than 10 days prior to Concessionaire's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Concessionaire insurance policies at any time.

9.1.1.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Concessionaire identified in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy

deductibles or self-insured retentions exceeding twenty five thousand (\$25,000.00) dollars, and list any County required endorsement forms.

9.1.1.4 Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Concessionaire, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

9.1.1.5 Certificates and copies of any required endorsements, and notices of cancellation shall be delivered to:

County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina del Rey, CA 90292
Attention: Director

Concessionaire also shall promptly notify County of any third party claim or suit filed against Concessionaire which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Concessionaire and/or County.

9.1.2 Additional Insured Status and Scope of Coverage. The County, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents), shall be provided additional insured status under Concessionaire's General Liability policy with respect to liability arising from or connected with the Concessionaire's acts, errors, and omissions arising from and/or relating to the Concessionaire's operations on and/or its use of the premises. County's additional insured status shall apply with respect to liability and defense of suits arising out of the Concessionaire's acts or omissions, whether such liability is attributable to the Concessionaire or to the County. The full policy limits and scope of protection also shall apply to the County as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

9.1.3 Cancellation of or Changes in Insurance. Concessionaire shall provide the County with, or Concessionaire's insurance policies shall contain a provision that the County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. If possible, the written notice shall be provided to the County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the reasonable discretion of the County, upon which the County may suspend or terminate this Agreement, subject to cure by Concessionaire, as provided in this Agreement.

9.1.4 Failure to Maintain Insurance. Concessionaire's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County, after notice to Concessionaire and a reasonable opportunity for Concessionaire to cure, immediately may suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Concessionaire resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Concessionaire, pursue Concessionaire reimbursement.

9.1.5 Insurer Financial Ratings. Insurance is to be provided by an insurance company authorized to do business in California and acceptable to the County, with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County.

9.1.6 Concessionaire's Insurance Shall Be Primary. Concessionaire's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to County. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Concessionaire coverage.

9.1.7 Waiver of Subrogation. To the fullest extent permitted by law, the Concessionaire hereby waives its and its insurer(s) rights of recovery against County under all required insurance policies for any loss arising from or related to this Agreement. The Concessionaire shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

9.1.8 Deductibles and Self-Insured Retentions (SIRs). Concessionaire's policies shall not obligate the County to pay any portion of any Concessionaire deductible or SIR. The County retains the right to require Concessionaire to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Concessionaire's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

9.1.9 Claims Made Coverage. If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the start date of this Agreement. Concessionaire understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

9.1.10 Application of Excess Liability Coverage. Concessionaire may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

9.1.11 Separation of Insureds. All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

9.1.12 County Review and Approval of Insurance Requirements. The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

9.2 Insurance Coverage Types and Limits.

9.2.1 **Commercial General Liability** insurance providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$ 20 million
Products/Completed Operations Aggregate:	\$ 20 million
Personal and Advertising Injury:	\$ 10 million
Each Occurrence:	\$ 10 million

9.2.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Concessionaire's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable. Any Concessionaire whose business includes auto garage, auto servicing or similar operations also shall endorse its policy to provide **Garagekeeper's Liability coverage** (written on ISO form CA 99 37 or its equivalent) with a limit of not less than \$3,000,000 for the Agreement premises.

9.2.3 **Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Concessionaire's employees will be engaged in maritime operations, coverage also shall be arranged to provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible.

9.2.4 **Commercial Property Insurance.** Such insurance shall:

9.2.4.1 Provide coverage for Concessionaire's property, and any improvements and betterments; This coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form CP 10 30), including earthquake (if Concessionaire deems it reasonable), Ordinance or Law Coverage, flood, and Business Interruption equal to two (2) years annual rent

9.2.4.2 Be written for the full replacement cost of the property, with a deductible no greater than \$250,000 or 5% of the property value whichever is less. Insurance proceeds shall be payable to the Concessionaire and County as their interests may appear and be utilized for repair and restoration of the Premises. Failure to use such insurance proceeds to timely repair and restore the Premises shall constitute a material breach of the Agreement.

9.2.5 **Liquor Liability** insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be provided and maintained by the Concessionaire if and when the manufacturing, distribution or service of alcoholic beverages occurs in the Premises, with limits of not less than \$5 million per occurrence and \$10 million aggregate. If written on a “claims made” form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Agreement, or replacement coverage shall be maintained until such time.

9.2.6 Reserved.

9.2.7 **Construction Insurance.** If major construction work is performed by Concessionaire during the term of this Agreement (i.e. demolition of structures, construction of new structures, renovation or retrofit involving structures, frame, foundation or supports, or more than 50% of building, etc.) then Concessionaire or Concessionaire’s contractor shall provide the following insurance. County will determine the coverage limits required on a project by project basis:

9.2.7.1 **Builder’s Risk Course of Construction Insurance.** Such coverage shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include earthquake, flood, ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants, and full collapse coverage during construction, without restricting collapse coverage to specified perils. Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating and other equipment during testing. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by the Concessionaire and the County if required.

9.2.7.2 **General Liability Insurance.** Such coverage shall be written on ISO policy form CG 00 01 or its equivalent, naming County as an additional insured, with limits of not less than:

General Aggregate:	\$ 20 million
Products/Completed Operations Aggregate:	\$ 20 million
Personal and Advertising Injury:	\$ 10 million
Each Occurrence:	\$ 10 million

The Products/Completed Operations coverage shall continue to be maintained in the amount indicated above for at least two (2) years from the date the project is completed and accepted by the Concessionaire and the County if required.

9.2.7.3 **Automobile Liability** coverage shall be written on ISO policy form CA 00 01 or its equivalent with limits of not less than \$3,000,000 for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Such insurance shall cover liability arising out of Concessionaire's or Concessionaire's contractor use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

9.2.7.4 **Professional Liability.** Such insurance shall cover liability arising from any error, omission, negligent, or wrongful act of the Concessionaire's contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits and coverages to be proposed by Concessionaire prior to the Effective Date, and to be approved by County in the Director's reasonable discretion, based upon the nature and scope of the services being provided.

9.2.7.5 **Workers Compensation and Employers' Liability Insurance** or qualified self-insurance satisfying statutory requirements. Such coverage shall provide Employers' Liability coverage with limits of not less than \$1 million per accident. Such policy shall be endorsed to waive subrogation against the County for injury to the Concessionaire's or Concessionaire's contractor employees. If the Concessionaire's or Concessionaire's contractor employees will be engaged in maritime employment, the coverage shall provide the benefits required by the *U.S. Longshore and Harbor Workers Compensation Act, Jones Act* or any other federal law to which the Concessionaire is subject. If Concessionaire or Concessionaire's contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change.

9.2.7.6 **Asbestos Liability or Contractors Pollution Liability Insurance** is needed if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal, or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring, and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the Concessionaire's or Concessionaire's contractor Automobile Liability Insurance. Concessionaire or Concessionaire's contractor shall maintain limits of not less than One Million Dollars (\$1,000,000) for this project.

9.2.7.7 **Performance Security Requirements.** Prior to the beginning of construction Concessionaire shall require its contractor to file surety bonds with

the Concessionaire and the County if required in the amounts and for the purposes noted below. All bonds shall be duly executed by a solvent surety company that is authorized by the State of California, is listed in the United States Department of the Treasury's Listing of Approved Sureties Treasury (Circular 570) and is satisfactory to the County, and it shall pay all premiums and costs thereof and incidental thereto (see www.fms.treas.gov/c570/).

Each bond shall be signed by the Concessionaire's Contractor (as Principal) and the Surety.

The Concessionaire's contractor shall give two surety bonds with good and sufficient sureties: the first in the sum of not less than 100% of the project price to assure the payment of claims of material men supplying materials to Concessionaire's contractor, subcontractors, mechanics, and laborers employed by the Concessionaire's contractor on the project, and the second in the sum of not less than 100% of the project price to assure the faithful performance of the Project Contract.

9.2.7.7.1 The "Materials and Labor Bond" (or "Payment Bond") shall be so conditioned as to inure to the benefit of persons furnishing materials for, or performing labor upon the Work. This bond shall be maintained by the Concessionaire's contractor in full force and effect until the Work is completed and accepted by the Concessionaire and the County if required, and until all claims for materials, labor, and subcontracts are paid.

9.2.7.7.2 The "Bond for Faithful Performance" shall be so conditioned as to assure the faithful performance by the Concessionaire's contractor of all Work under said project contract within the time limits prescribed, including any maintenance and warranty provisions, in a manner that is satisfactory and acceptable to the Concessionaire and the County if required; that all materials and workmanship supplied by Concessionaire's contractor will be free from original or developed defects, and that should original or developed defects, or failures appear within a period of one year from the date of Acceptance of the Work by the Concessionaire and the County if required, the Contractor shall, at Contractor's own expense, make good such defects and failures, and make all replacements and adjustments required, within a reasonable time after being notified by the Concessionaire to do so, and to the approval of the County if required. This bond shall be maintained by the Concessionaire's contractor in full force and effect during the performance of the project and for a period of one year after acceptance of the Work by the Concessionaire and the County if required.

Should any surety or sureties upon said bonds or any of them become insufficient, or be deemed unsatisfactory by the Concessionaire or the County, said Contractor shall replace said bond or bonds with good and sufficient sureties within ten (10) days after receiving notice from the Concessionaire or the County that the surety or sureties are insufficient or unsatisfactory.

No further payment shall be deemed due, or will be made under this Contract until the new sureties shall qualify and be accepted by the Concessionaire and the County.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Concessionaire's Maintenance and Repair Obligations. Concessionaire shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Conditions), in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Malibu (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial and/or public park projects (as applicable) in Malibu (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to mediation pursuant to Article 16 of this Agreement. Without limiting the foregoing, at Concessionaire's sole cost and expense, but subject to the terms and conditions of this Agreement, Concessionaire shall keep and maintain the exterior and interior of the Premises, including, without limitation, the outdoor public dining area, bus or other transportation turnout areas, parking areas and other areas in, on, or adjacent to the Premises, excluding the beach, except at times when Concessionaire uses the beach for its operations, and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or other Alterations or reconstruction of damaged or destroyed Improvements, Concessionaire's obligations as to the areas of the Premises under construction shall be controlled by Article 5 of this Agreement). Concessionaire shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Concessionaire incident to the provisions of this Article 10. Concessionaire shall maintain all Improvements on the Premises (other than the Excluded Conditions) in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Concessionaire shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as reasonably satisfactory to Director. Concessionaire specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. The exclusion of the Excluded Conditions from Concessionaire's maintenance obligations under this Section 10.1 shall not relieve Concessionaire from the obligation to repair and restore any damage to the Excluded Conditions caused by Concessionaire, its agents, employees, Sublessees or contractors, or by

Improvements constructed by or on behalf of Concessionaire, and Concessionaire hereby agrees to perform such repair or restoration work at Concessionaire's sole cost and expense.

10.2 Water Quality Management Program and Tree Trimming. During the remaining Term of the Agreement, Concessionaire shall comply with any legally required water quality management and tree trimming requirements hereafter adopted by County and imposed on a non-discriminatory basis to other similar operations in the County.

During the remaining Term of the Agreement, Concessionaire shall cause all trees located on the Premises to be trimmed and otherwise maintained in compliance with the tree trimming policy attached to this Agreement as **Exhibit "E"**, as such policy is updated from time to time by County. Any dispute as to whether such requirements adopted by the County from time to time are commercially reasonable shall be submitted to mediation pursuant to Article 16 of this Agreement.

10.3 Maintenance Deficiencies. If County provides written notice to Concessionaire of a deficiency or other breach in the performance by Concessionaire of the maintenance and repair obligations of Concessionaire under Sections 10.1 through 10.2 above, then Concessionaire shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Concessionaire to take all appropriate steps to avoid damage or injury. If Concessionaire fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.3), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Agreement for defaults not cured within the applicable notice and cure periods set forth therein, County may require Concessionaire to pay to County an amount equal to One Hundred Dollars (\$100) per day for one or more deficiencies for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Concessionaire), then as long as during the specified cure period Concessionaire commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.3 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of

Concessionaire the deficiency notice was erroneously issued by County, then Concessionaire shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Concessionaire. If Concessionaire files any such contest with Director, then Director shall exercise Director's reasonable discretion in considering Concessionaire's contest. If Concessionaire's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Concessionaire in writing that Director accepts or denies Concessionaire's contest. If Director denies Concessionaire's contest, Concessionaire may request mediation pursuant to Article 16. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.3 shall be adjusted every three (3) years during the remaining Agreement Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Concessionaire fails to pay any amounts payable by Concessionaire under this Section 10.3 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.4 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises or any Improvements located thereon (other than the Excluded Conditions, except to the extent damage thereto is caused by the Concessionaire, its agents, employees, Sublessee or contractors, or by Improvements constructed by or on behalf of Concessionaire), Concessionaire shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.4 such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds except as provided below. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Concessionaire shall have the option to terminate this Agreement and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (other than the Excluded Conditions) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Agreement (an "**Uninsured Loss**"), and where all of the following occur:

10.4.1 No more than one hundred (100) days following the Uninsured Loss, Concessionaire shall notify County of its election to terminate this Agreement; to be effective, this notice must include both a copy of Concessionaire's notification to the Encumbrance Holder, if any, of Concessionaire's intention to exercise this option to terminate and Concessionaire's certification under penalty of perjury that Concessionaire has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.4.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Concessionaire has notified the Encumbrance Holder regarding Concessionaire's desire to terminate this Agreement.

10.4.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.4.1 or such longer time as may be reasonable under the circumstances, Concessionaire shall, at Concessionaire's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

10.4.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.4.1, Concessionaire delivers to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Concessionaire's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.4.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.4.1, County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Concessionaire's interest in this Agreement to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Concessionaire's obligations under this Agreement.

10.5 No Option to Terminate for Insured Casualty. Concessionaire shall have no option to terminate this Agreement or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Agreement.

10.6 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

10.7 Repairs Not Performed by Concessionaire. If Concessionaire fails to make any repairs or replacements as required pursuant to the terms of this Agreement, Director may notify Concessionaire of said failure in writing, and should Concessionaire fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Concessionaire as provided in Section 13.5.

10.8 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises. Any entry by County onto the Premises pursuant to this Section 10.8, and any entry onto the Premises to perform work pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Concessionaire evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally

applicable to County contractors, and shall name Concessionaire and any then-current Encumbrance Holder as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County at its sole cost shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or its contractors on the Premises pursuant to this Section 10.8 or Section 10.6.

10.9 Notice of Damage. Concessionaire shall give prompt notice to County of any fire or damage affecting the Premises or the Improvements from any cause whatsoever.

10.10 Waiver of Civil Code Sections. The parties' rights shall be governed by this Agreement in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

11. ASSIGNMENT AND SUBLEASE.

11.1 Subleases.

11.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession or other interest in the Premises or the Improvements, or a right to use the Premises or a portion thereof, which is conveyed or granted by Concessionaire to a third party, and which constitutes less than the unrestricted conveyance of the entire Concessionaire's interest under this Agreement. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises, is sometimes referred to in this Agreement as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Agreement as a "**Major Sublessee**".

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease, or (b) any assignment or material amendment of such Sublease, Concessionaire shall submit a copy of such Sublease (or assignment or amendment thereof), to Director for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. Failure of Director to disapprove said proposed Sublease within thirty (30) days after Director's receipt thereof shall be deemed Director's approval thereof; provided that together with the submission of the proposed Sublease, Concessionaire must deliver to Director a transmittal letter containing the following text predominantly displayed in boldface type:

"PURSUANT TO SUBSECTION 11.1.2 OF THE AGREEMENT, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM"

In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Agreement applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Concessionaire in writing of the reason or reasons for such disapproval.

11.1.3 Major Sublease. Concessionaire shall deliver to County a copy of any proposed Major Sublease (or assignment or material modification of same) not less than thirty (30) days prior to the proposed effective date of such proposed Major Sublease (or assignment or material modification of same) for County's review and approval. Director shall approve or disapprove said proposed Major Sublease (or assignment or modification of same) within thirty (30) days after receipt thereof. The execution, material modification or assignment of a Major Sublease shall be subject to the procedures set forth in Section 11.2.3. Failure of Director to disapprove said proposed Major Sublease within thirty (30) days after Director's receipt thereof shall be deemed Director's approval thereof; provided that together with the submission of the proposed Major Sublease, Concessionaire must deliver to Director a transmittal letter containing the following text prominently displayed in boldface type:

“PURSUANT TO SUBSECTION 11.1.2 OF THE AGREEMENT, YOU HAVE THIRTY (30) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”

Each Major Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Agreement applicable to the portion of the Premises subject to the Major Sublease. If Director disapproves a Major Sublease (or assignment or material modification of same), Director shall notify Concessionaire in writing of the reason or reasons for such disapproval. Concessionaire shall enter into a Major Sublease only with a reputable owner or manager of comparable retail, office, or restaurant facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Concessionaire shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than thirty (30) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 11, Concessionaire shall not, without the prior written consent of County, which shall be based upon factors described in **Exhibit “C”** hereto, which is incorporated herein by this reference (“**Assignment Standards**”), and which shall be applied in a commercially reasonable

manner, either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Agreement or any interest, right, or privilege therein (but including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. There shall be no partial assignment of this Agreement or Concessionaire's right or obligations hereunder. Notwithstanding the foregoing, Concessionaire shall have the right, without the prior approval of County, to retain an affiliate of Concessionaire as the property manager for the Premises, so long as such affiliate has adequate experience in the operation of retail, office and restaurant venues in accordance with a standard at least commensurate with the Maintenance Standard. Any Transfer Event that involves the transfer of only beneficial ownership interests in the constituent owners of Concessionaire (as opposed to an assignment of the Agreement) shall not require County consent if it is an Excluded Transfer. If such Transfer Event with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Concessionaire's interest in this Agreement. For avoidance of doubt, any actual assignment of Concessionaire's interest in this Agreement shall require County consent even if it is an Excluded Transfer; provided, however, that in the case of an assignment of the Concessionaire's interest in the Agreement that constitutes an Excluded Transfer, Director shall have the authority to grant consent on behalf of County. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Concessionaire which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation or if Wolfgang Puck or Thomas R. Tellefsen is a remaining Manager or General Partner (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in Concessionaire or in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in Concessionaire; (3) in the event that Thomas R. Tellefsen and/or Wolfgang Puck wish to relinquish or transfer control of the day to day management and operations of Concessionaire (Concessionaire shall have the right to replace Thomas R. Tellefsen and Wolfgang Puck with a qualified operator acceptable to County, in County's reasonable discretion, however the replacement operator must meet the criteria items 2 and 3 as set forth at **Exhibit "C"**); or (4) for any Transfer Event by Wolfgang Puck occurring on or before seven (7) years from commencement of operations of the restaurant at the Premises. Notwithstanding the foregoing, any transfer of a beneficial interest exceeding twenty percent (20%) and a Change of Control shall require the County's prior written consent. Concessionaire shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Concessionaire's interest under the Agreement shall also apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees. Prior to the filing of the Notice of Completion of the Redevelopment Work, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the filing of the Notice of Completion of the Redevelopment Work, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease if (a) the assignee or a third party operator that will operate and manage the relevant Improvement or Improvements has adequate experience in the operation of restaurant venues in accordance with a standard at least commensurate with the Maintenance Standard, and (b) the Assignment Standards are satisfied to the reasonable satisfaction of County. If County withholds its consent to an assignment or Major Sublease, County shall notify Concessionaire in writing of the reason or reasons for such disapproval.

11.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Agreement, neither this Agreement nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Concessionaire (or the entity seeking approval of such assignment) shall notify County at least sixty (60) prior thereto and deliver to County written notice of any proposed assignment or transfer (the "**Proposed Transfer Notice**") containing all information reasonably relevant to the proposed assignment or transfer, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in Subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County discuss an assignment with any proposed assignee without providing Concessionaire the right to be present at any such discussion.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Concessionaire acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel.

Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Concessionaire's interest under this Article 11.

11.2.3.4 Concessionaire shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. (without any duplication with any Administrative Charge payable under Section 4.6).

11.2.3.5 Concessionaire or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) Nature of the Assignee. Full disclosure is required in accordance with this Agreement and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Concessionaire's breach or default thereunder.

(b) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises (unless the assignment is pursuant to a Transfer Event that is an Excluded Transfer or is pursuant to a Transfer Event that involves the transfer of only beneficial interests in the constituent owners of Concessionaire, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Premises) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such

proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises (unless the assignment is pursuant to a Transfer Event that constitutes an Excluded Transfer or is pursuant to a Transfer Event that involves the transfer of only beneficial ownership interests in the constituent owners of Concessionaire, and following such transfer there is no intended change in the business plan for the Premises), including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Concessionaire and its operations for the three (3) most recent years prior to the proposed transaction.

(f) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Agreement which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Concessionaire in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Concessionaire, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Nondisturbance. Upon written request from Concessionaire,

County agrees to execute a subordination, nondisturbance and attornment agreement and an estoppel certificate on commercially reasonable terms in favor of any Major Sublessee and/or Encumbrance Holder, provided that such Major Sublessee and Encumbrance Holder's interests are subordinate and subject to the Ground Lease.

11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 Reserved.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Concessionaire hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Concessionaire, and all rights, privileges and benefits arising under this Agreement in favor of Concessionaire shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Concessionaire in violation of the provisions of this Agreement shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Agreement, or as otherwise permitted under this Agreement without County approval, shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Agreement and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Participation Fee or Net Refinancing Proceeds which arise upon such assignment as provided herein.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Agreement, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a “**Financing Event**” shall mean any financing or refinancing consummated by Concessionaire (collectively, “**Ownership Interests**”), whether with private or institutional investors or lenders, where such financing or refinancing is (a) an Encumbrance (as defined below) or (b) has been underwritten based upon, or is intended to be repaid from, the proceeds of Concessionaire's operation of the Premises or the sale, assignment or transfer of Concessionaire's interest as provided herein); for purposes of Section 12.1.2 below and Sections 4.6 through 4.8 above, a “**Financing Event**” shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an “**Encumbrance**” shall mean any direct or

indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Concessionaire's interest under this Agreement and the estate so created (including without limitation a direct or indirect assignment of Concessionaire's right to receive rents from Sublessees) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Agreement, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. The term "**Encumbrance Holder**" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Agreement or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Agreement. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Concessionaire may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Concessionaire and County agree that Concessionaire may, subject to the provisions of this Subsection 12.1.2, have both or either construction and permanent financing involved, as well as potential transportation funds, an Infrastructure Financing District, utilization of PACE financing and other funding mechanisms. However, in the case of any transportation funds, an Infrastructure Financing District, utilization of PACE financing and other funding mechanisms, they shall not be included in any calculation of or subject to any Participation Fees. Concessionaire shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Concessionaire shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Concessionaire), Director shall within thirty (30) days of such request deliver to Concessionaire a written description of Director's objections to said proposed Financing Event). Concessionaire shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection

with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a “**Foreclosure Transfer**” shall mean any transfer of the entire leasehold estate under this Agreement or of all of the Ownership Interests in Concessionaire pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A “**Foreclosure Transferee**” shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Agreement or to all of the Ownership Interests in Concessionaire pursuant to a Foreclosure Transfer. An “**Equity Foreclosure Transferee**” shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Concessionaire.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Agreement or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County’s consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Agreement to the contrary) shall be limited to County’s confirmation (which must be reasonable) that the Concessionaire following such transfer has sufficient financial capability to perform its remaining obligations under this Agreement as they come due, along with any obligation of Concessionaire for which the Foreclosure Transferee from whom it receives such transfer is released under Subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Agreement, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one “single transfer” under this Section. Notwithstanding the foregoing, County agrees to execute and deliver to Concessionaire, at Concessionaire’s request, a Nondisturbance Agreement.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity

fund, mortgage conduit, real estate investment trust, commercial finance lender, life insurance trust or other financial institution or private equity group which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an “**Institutional Lender**”), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Concessionaire under this Agreement (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Agreement, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Agreement that accrue solely during such Institutional Lender’s period of ownership of the leasehold, and (ii) Concessionaire’s indemnification obligations under this Agreement with respect to matters pertaining to or arising during such Institutional Lender’s period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Concessionaire under this Agreement (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 above.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Agreement, County shall recognize the Foreclosure Transferee as the Concessionaire under the Agreement and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Concessionaire under this Agreement as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior concessionaire, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior concessionaire to pay any Participation Fee (collectively, “**Excluded Defaults**”), and thereafter performs the full obligations of Concessionaire under this Agreement. Pursuant to Subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 12.3.3 shall also inure to the benefit of the Concessionaire.

12.3.4 No Encumbrance Holder shall become liable for any of Concessionaire’s obligations under this Agreement unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Concessionaire’s leasehold interest under the Agreement.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Participation Fee, (ii) any acceleration of any financial obligation of Concessionaire under this Agreement, (iii) any recapture right on the part of County, or (iv) any termination right under this Agreement. Any

Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 12.2.3, shall be deemed to be excluded from the definition of “Transfer Event” for all purposes of this Agreement. For clarification purposes, the “single subsequent transfer” referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Subsection 12.2.3), so that there may be more than one “single subsequent transfer” benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Redevelopment Work described in Section 5.1, above (other than any obligations to make deposits into the Reserve Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Agreement or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Agreement.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Concessionaire, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Agreement shall also be afforded to Concessionaire from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Concessionaire directly and became the Concessionaire under this Agreement, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Agreement shall also be afforded to Concessionaire from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Concessionaire directly and became the Concessionaire under this Agreement.

12.4 No Subordination. County’s rights in the Premises and this Agreement, including without limitation County’s right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Agreement, including the right to commence an action against Concessionaire for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Concessionaire hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Agreement. This Agreement shall not be modified or amended without the prior written consent in its sole discretion of each then existing

Encumbrance Holder with respect to Concessionaire's entire leasehold interest in this Agreement or all of the Ownership Interests in Concessionaire. Further, this Agreement may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12 to do any act or thing required of Concessionaire in order to prevent termination of Concessionaire's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Concessionaire.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.3), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Agreement and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Concessionaire. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Agreement shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Concessionaire breaches set forth in Section 10.3.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Concessionaire pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Concessionaire's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Concessionaire commences to cure the default within Concessionaire's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Concessionaire's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Concessionaire has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in Subsection (1) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Concessionaire.

12.7 New Agreement.

12.7.1 Obligation to Enter Into New Agreement. In the event that this Agreement is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Agreement

otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Concessionaire's entire leasehold estate under this Agreement or all of the Ownership Interests in Concessionaire (according to the priority described below if there are multiple Encumbrance Holders), enter into a new agreement (which shall be effective as of the date of termination of this Agreement) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Agreement on the same terms and conditions as shall then be contained in this Agreement, provided that the Encumbrance Holder cures all then existing monetary defaults under this Agreement, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new agreement is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Agreement has terminated in accordance with Section 12.7 of this Agreement, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new agreement under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new agreement or the Premises. From and after the effective date of the new agreement, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in Subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new agreement shall be subject to all of the requirements of Article 11 of this Agreement. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new agreement, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrance(s). If a junior Encumbrance Holder does not elect to accept the new agreement within thirty (30) days of receipt of notice from County, the right to enter into a new agreement shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new agreement, or no Encumbrance Holder so elects.

12.7.2 Priority of New Agreement. The new agreement made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Concessionaire's entire leasehold interest in this Agreement or all of the Ownership Interests in Concessionaire that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Concessionaire is entitled under this Agreement and

that are required by the terms of this Agreement to be applied to restoration of the Improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Agreement), and (ii) any funds required to be held in the Reserve Fund (provided that such funds shall be used for the purposes required by this Agreement). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any mediation, litigation, condemnation or other proceeding affecting this Agreement. Concessionaire's right to make any election or decision under this Agreement with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Agreement and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Agreement shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.12 Reserved.

13. DEFAULT.

13.1 Events of Default. The following are deemed to be individually an "Event of Default" and collectively, "**Events of Default**" hereunder:

13.1.1 Monetary Defaults. The failure of Concessionaire to pay the rentals due, or make any other monetary payments required under this Agreement (including, without limitation, deposits to the Reserve Fund), within ten (10) days after written notice that said payments are overdue. Concessionaire may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such ten (10) day period.

13.1.2 Maintenance of Security Deposit. The failure of Concessionaire to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Agreement if not cured within ten (10) days after written notice of such failure.

13.1.3 Non-Monetary Defaults (Excluding Construction Defaults). The failure

of Concessionaire to keep, perform, and observe any and all other material promises, covenants, conditions and agreements set forth in this Agreement (except for any Construction Default), including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Concessionaire's failure to perform from Director; provided, however, that where Concessionaire's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Concessionaire has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Concessionaire uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.4 Construction Defaults. The failure of Concessionaire to (a) cause the commencement of construction of the Redevelopment Work to occur on or before the Required Construction Commencement Date; or (b) substantially complete the Redevelopment Work not later than the Required Construction Completion Date for the Redevelopment Work (each, a "**Construction Default**"). For the avoidance of doubt, the proviso set forth in Section 13.1.3 providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any Construction Default, subject to Force Majeure, if applicable.

13.1.5 Non-Use of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of sixty (60) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Agreement; provided, however, if an individual Sublessee of retail, office or restaurant space on the Premises fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 13.1.5 if Concessionaire uses its good faith efforts to recover possession of the applicable space from the Sublessee and diligently proceeds to re-sublease such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances; provided, further, that, except as provided below, the applicable space must be (i) re-leased no later than one hundred eighty (180) days following the date that possession of such space was recovered from the Sublessee (or as approved by the Director) and (ii) re-opened for business to the public within sixty (60) days thereafter. Such sixty (60) day time period may be extended due to delays which are not the fault of Concessionaire, such as permit and tenant improvement construction delays. In addition, notwithstanding any contrary provision of this Subsection 13.1.5, an Event of Default shall not be triggered under this Subsection 13.1.5 due to the termination of operations by a Sublessee as long as Concessionaire diligently attempts to re-sublease and re-open such Sublessee's space as soon as reasonably possible after Concessionaire obtains possession of the Sublessee's space.

Any notice required to be given by County pursuant to Subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Concessionaire shall not be considered in default as to any provision of this Agreement (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Concessionaire uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Agreement. County may terminate this Agreement by giving Concessionaire written notice of termination. On the giving of the notice, all of Concessionaire's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Concessionaire shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Agreement, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Concessionaire from the payment of any sum then due to County or from any claim for damages against Concessionaire as set forth in Subsection 13.4.4, or from Concessionaire's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Premises as is reasonably necessary to permit Concessionaire to comply with its removal obligations.

13.3.2 Keep Agreement in Effect. Without terminating this Agreement, so long as County does not deprive Concessionaire of legal possession of the Premises and allows Concessionaire to assign or sublet subject only to County's rights set forth herein, County may continue this Agreement in effect and bring suit from time to time for rent and other sums due, and for Concessionaire's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Agreement unless County gives Concessionaire written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Agreement in effect pursuant to Subsection 13.3.2, thereafter County may elect to terminate this Agreement and all of Concessionaire's rights in or to the Premises unless prior to such termination Concessionaire shall have cured the Event of Default or shall have satisfied the

provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Agreement under the provisions of the foregoing Section, County shall be entitled to recover from Concessionaire as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Agreement;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned under this Agreement until the time of award exceeds the amount of such rental loss that Concessionaire proves could have been reasonably avoided until the date Concessionaire surrenders possession of the Premises to County; and

13.4.3 Post Award Rent. The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Concessionaire proves could be reasonably avoided; and

13.4.4 Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Agreement become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Agreement, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Participation Fees and Net Refinancing Proceeds.

13.4.5 Interest Rate. The "worth at the time of award" of the amounts referred to in Subsections 13.4.1 and 13.4.2 is computed by allowing interest at the rate specified in this Agreement, or if no such rate is specified, the lawful rate. The "worth at the time of award" of the amounts referred to in Subsection 13.4.3 is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.5 Others' Right to Cure Concessionaire's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Concessionaire's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Concessionaire's cost and expense. If, after delivering to Concessionaire two (2) or more written notices with respect to any such default, County at any time, by reason of Concessionaire's continuing failure, pays or expends any sum, Concessionaire shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Concessionaire's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Agreement if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Concessionaire specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Concessionaire shall have no rights as a result of any default by County until Concessionaire gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Agreement or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Agreement, County's liability to Concessionaire for damages arising out of or in connection with County's breach of any provision or provisions of this Agreement shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Participation Fee, Net Refinancing Proceeds and other sums due under this Agreement, Concessionaire shall at all times during the Term of this Agreement, and for thirty six (36) months thereafter, keep, or cause to be kept, true, accurate, and complete records and double-entry books of account for the current and five (5) prior calendar years during the Term, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Concessionaire's other business operations, if any. With respect to the calculation of annual gross receipts and the preparation of the reports and maintenance of records required herein, Concessionaire shall utilize the accrual method of accounting on a GAAP basis. All financial statements are intended to be kept confidential and accordingly, County will work with Concessionaire and any Guarantor (if required under this Agreement) to review them on a basis that protects their confidentiality.

14.2 Cash Registers. To the extent retail sales are conducted at the Premises or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Concessionaire shall implement a point of sale system which can accurately verify all sales for audit purposes and customer review purposes, which system shall be

submitted to Director in advance of installation for his approval, which approval will not be unreasonably withheld.

Concessionaire's obligations set forth in this Section 14.2 include Concessionaire's obligation to insure that Concessionaire keeps records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Interest Rent, Administrative Charge, Participation Fee, Net Refinancing Proceeds and other sums due under this Agreement as set forth below, and to verify the amount and use of the Permitted Capital Expenditures.

14.3 Monthly Reporting Requirements. Concessionaire shall provide the following monthly reports and statements. Monthly reports are due to the County within thirty (30) days after the end of each calendar month of the Term, and shall include but not be limited to the following information for the preceding calendar Month:

(a) Total gross receipts by category of Percentage Rent. Concessionaire shall be required to provide total gross receipts data via the County's REportfolio portal or its equivalent as may be in place during the Term.

(b) Percentage Rent, showing the derivation of total Percentage Rent prior to the deduction of Minimum Rent and, for years 1-10, Interest Payment. Currently, REportfolio will derive this automatically based on gross receipts inputs.

(c) The allocation of Percentage Rent per Section 4.2.4.7. County and Concessionaire shall develop a mutually acceptable spreadsheet (the "**spreadsheet**") that will allocate the monthly Percentage Rent per Section 4.2.4. County and Concessionaire shall exchange the spreadsheet monthly to ensure agreement on Percentage Rent allocation.

(d) The current and cumulative TI Allowance Offset. This will be derived in the spreadsheet.

(e) In years 1-10, the current and cumulative Deferred Rent. After year 10, the Deferred Rent Amortization Payment, showing the amounts applied to principal and interest, with the current Deferred Rent Principal Balance. This will be derived in the spreadsheet.

14.4 Annual Reporting Requirements. Concessionaire shall provide the following annual reports and statements. The annual reports are due to the County within ninety (90) days after the end of each year of the Term, and shall include but not be limited to the following information for the preceding 12-month period:

(a) Total gross receipts by category of Percentage Rent Rate.

(b) Total Percentage Rent for the prior 12 months, showing the derivation of

total Percentage Rent prior to the deduction of Minimum Rent and, for years 1-10, Interest Payment.

(c) Reconciliation of the Annual Percentage Rent amount against the actual Percentage Rent amounts derived based on monthly operations.

(d) The allocation of Annual Percentage Rent per Section 4.2.4, reflecting any adjustments that might result from a discrepancy identified in (c). This will be derived in the spreadsheet.

(e) The current and cumulative TI Allowance Offset, reflecting any adjustments that might result from a discrepancy identified in (c). This will be derived in the spreadsheet.

(f) In years 1-10, the current and cumulative Deferred Rent, reflecting any adjustments that might result from a discrepancy identified in (c). After the completion of year 10 of operations, the Deferred Rent Amortization Payment, showing the amounts applied to principal and interest, with the current Deferred Rent Principal Balance. This will be derived in the spreadsheet.

(g) The form and current balance of the Deferred Rent Principal Balance security or guarantee per Section 4.2.5, with the derivation of any change in the amount.

(h) The current Security Deposit amount (if any), per Section 7.1.

(i) Contributions made to and disbursements from the Reserve Fund, with derivation, and current Reserve Fund balance, per Section 5.17.

(j) Insurance coverage amounts, per Section 9.

(k) Statement of property basis, with cost for any qualifying improvements (such costs required to be submitted for approval within ninety (90) days of completion of improvements).

(l) Financial statements of Concessionaire and Guarantor, setting forth Concessionaire's and Guarantor's financial condition, which shall be certified as true and accurate by Concessionaire and by Guarantor, respectively, and shall be sent to County's outside counsel for confidentiality.

14.5 Availability of Records for Inspector's Audit. Books of account and records required to be kept pursuant to Section 14.1 shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of total gross receipts and the compliance of Concessionaire with the terms of this Agreement and other governmental requirements, but not more often than once per fiscal

year. A County audit can only go back three (3) fiscal years, otherwise any discrepancies are waived by the County. This Section 14.5 shall survive the expiration of the Term or other termination of this Agreement for thirty six (36) months after such expiration or termination.

14.5.1 Entry by County. Upon at least one (1) business day advance notice County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Agreement for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.6 Cost of Audit. In the event that, for any reason, Concessionaire does not make available its original records and books of account at the Premises or at a location within Los Angeles County, Concessionaire agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than three percent (3%) of the revenue due County for the period audited, then Concessionaire shall pay County audit contract costs, together with the amount of any identified deficiency, and pay an additional three percent (3%) of the discrepancy. In the event that any audit does not disclose a discrepancy in County's favor of greater than three percent (3%) of the revenue due County for the period audited, then County shall pay County audit contract costs and Concessionaire's audit costs.

14.7 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major residential, office buildings and major parking service companies, and which County reasonably deems necessary if the system then being used by Concessionaire does not adequately verify sales for audit or customer receipt purposes.

14.8 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

14.9 Financial Statements Generally. Monthly and annual statements and reports required under this Article 14 shall be unaudited financial statements certified as true, correct and accurate by Concessionaire's Chief Financial Officer, or by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County (a "Qualified CPA"), or an officer of Concessionaire, including a balance sheet, an income statement and a sources and uses of funds statement, consistent with the accounting method described in Section 14.1 and otherwise consistent with the income tax method of accounting reflecting business transacted on or from the Premises during the preceding Accounting Year. Concessionaire shall additionally provide a Gross Receipts and Percentage Rent statement for such Accounting Year, certified by a Qualified CPA or the Chief Financial Officer, CEO, Manager or General Partner of Concessionaire, as the case may be, which statement shall include a certification (1) concerning Concessionaire's Gross Receipts (including a breakdown by category), and (2) that the correct amount of Percentage Rent has been paid to the County in connection with such Gross Receipts. All financial statements prepared by or on behalf of Concessionaire shall be prepared in a manner that permits County to determine the financial

results of operation in connection with Concessionaire's activities at, from or relating to the Premises, notwithstanding that Concessionaire may have income and expenses from other activities unrelated to its activities on the Premises.

14.10 Accounting Obligations of Sublessees. Concessionaire shall cause all Sublessees, licensees, concessionaires and others conducting business operations on or from the Premises, to the extent Percentage Rent is payable by such Sublessees, licensees, concessionaires or others, to comply with all terms of this Article 14 with respect to reporting of Gross Receipts. Concessionaire agrees to notify County of each sublease for which Percentage Rent is payable as a component of rent within thirty (30) days following the execution of such sublease. County shall provide written notice to Concessionaire of the failure of any Sublessee, concessionaire or other person or entity to comply with this Section after County's discovery of such failure, and provide Concessionaire with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit of Sublessee's Gross Receipts conducted by County, or on an audit supplied by Concessionaire or such Sublessee, concessionaire or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 14.11. In such event County shall permit Concessionaire to subrogate to any right of County to enforce this provision against such Sublessee, concessionaire or other person or entity, to the extent Concessionaire does not have a direct right of enforcement against such Sublessee, concessionaire or other person or entity.

14.11 Inadequacy of Records. In the event that Concessionaire or its Sublessees, as appropriate, fail to keep the records required by this Article 14 such that a Certified Public Accountant or Chief Financial Officer, CEO, Manager or General Partner of Concessionaire, as the case may be, is unable to issue an unqualified opinion as to total gross receipts, such failure (after lapse of applicable cure periods) shall be deemed a breach of this Agreement by Concessionaire. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Concessionaire during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past gross receipts on or from the Premises, or any other method as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Concessionaire shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment from the date upon which each unpaid installment of Percentage Rent was due, together with all costs and expenses incurred by County in connection with the attempted audit of the inadequate records and the reconstruction and estimation of gross receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Concessionaire, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Agreement, subject, however, to the terms and conditions of this Agreement.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Agreement, time is of the essence of this Agreement and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Concessionaire shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Agreement and the term sheets and memoranda that preceded it.

15.4 County Disclosure and Concessionaire's Waiver.

15.4.1 Disclosures and Waiver

15.4.1.1 "AS IS". Concessionaire accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Agreement, at the time of the execution of this Agreement by Concessionaire and Concessionaire hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS").

15.4.1.2 Concessionaire acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Agreement at the time of the execution hereof and Concessionaire agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3 Concessionaire hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Agreement), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Concessionaire now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this Subsection 15.4.1.3 shall not apply to the Excluded Conditions.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

By initialing this paragraph, Concessionaire acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of this Section 15.4.

Concessionaire's Initials

15.4.2 Right of Offset. Concessionaire acknowledges that the rent provided for in this Agreement has been agreed upon in light of Concessionaire's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Agreement or by applicable law, Concessionaire hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder. Notwithstanding, nothing herein is intended to diminish the TI Allowance or the Deferred Rent.

15.5 Holding Over. If Concessionaire holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Concessionaire to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided in Subsection 2.4.2 with respect to any Post Term Removal Period.

Nothing contained herein shall be construed as consent by County to any holding over by Concessionaire, and County expressly reserves the right to require Concessionaire to surrender possession of the Premises to County as provided in this Agreement upon the expiration or other termination of this Agreement. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Concessionaire fails to surrender the Premises upon the termination or expiration of this Agreement, in addition to any other liabilities to County accruing therefrom, Concessionaire shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding concessionaire (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Concessionaire that Concessionaire's failure to timely surrender the Premises will cause County to incur such lost profits.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this

Agreement, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Agreement be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of County and Concessionaire. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Concessionaire shall be required to restore or revive “**time of the essence**” after the waiver by County of any default. Except as specifically provided in this Agreement, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Agreement.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Agreement, or for exercise by County of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Concessionaire, Concessionaire hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Concessionaire.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Concessionaire agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Agreement shall be in compliance with and subject to this Section 15.10. Concessionaire shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Concessionaire for the service of process in any court action between Concessionaire and County, arising out of or based upon this Agreement, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Concessionaire.

If for any reason service of such process upon such agent is not possible, then any officer of Concessionaire may be personally served with such process outside of the State of California and such service shall constitute valid service upon Concessionaire; and it is further expressly agreed that Concessionaire is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Concessionaire at the addresses below-described, or to such other address that Concessionaire may in writing file with Director, shall be deemed sufficient if said notice is delivered either: (i) personally, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, FedEx or DHL, or such other services as Concessionaire and County may mutually agree upon from time to time; or (ii) by electronic mail. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

If so instructed by Concessionaire, copies of any written notice to Concessionaire shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Concessionaire as provided for herein shall be effective as to Concessionaire notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Concessionaire are as follows:

COUNTY:	Director Department of Beaches and Harbors Los Angeles County 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345 gjones@bh.lacounty.gov	Email: acaves@bh.lacounty.gov
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With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Attn: County Counsel
Phone: 213/974-1801
Fax: 213/617-7182
Email: pghaderi@counsel.lacounty.gov

With a Copy to: Glaser Weil LLP
10250 Constellation Boulevard
19th Floor
Los Angeles, California 90067
Attention: Roger Howard, Esq. and
Dora de la Rosa, Esq.
Phone: 310/553-3000
Fax: 310/556-2920
Email: rhoward@glaserweil.com;
ddelarosa@glaserweil.com

CONCESSIONAIRE: PCH Beach Associates LLC
P.O. Box 889
Santa Monica, California 90406
Attn: Thomas R. Tellefsen
Phone: 310/560-7919
Fax: 310/458-0265
Email: ttellefsen@me.com

With a Copy to: Law Offices of Jonathan Curtis
500 North Brand Blvd. 20th Floor
Glendale, California 91203
Attn: Jonathan C. Curtis, Esq.
Phone: 818/653-6157
Email: joncurtis@sbcglobal.net

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.10.

15.11 Interest. In any situation where County has advanced sums on behalf of Concessionaire pursuant to this Agreement, such sums shall be due and payable within five (5) days after Concessionaire's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Concessionaire repays sums advanced by County on Concessionaire's behalf with interest in excess of the maximum rate

permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.12 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

15.13 Attorneys' Fees. In the event of any action, proceeding or mediation arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Agreement may only be amended in writing executed by duly authorized officials of Concessionaire and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Agreement as are necessary to implement any mediation pursuant to this Agreement. Subject to Section 12.5, no amendment shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Agreement, whenever in this Agreement the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Concessionaire, Director either (a) approves such request in writing, or (b) notifies Concessionaire that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Agreement, then Director shall notify Concessionaire in writing of the specific reason or reasons and support thereof for such disapproval.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Agreement, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Agreement is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Agreement (or stating the grounds for default if such be the case); and (iii) if requested, the

amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Agreement. Prospective purchasers, Major Sublessees and Encumbrance Holders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Agreement there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Concessionaire or by its Sublessees, assignees, concessionaires, permittees or licensees.

15.20 CASp Disclosure. Pursuant to Section 1938 of the California Civil Code, County hereby advises Concessionaire that the Premises have not undergone an inspection by a Certified Access Specialist ("CASp"). The following statement is hereby included in this Agreement:

"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."

The parties hereby mutually agree that any inspection by a CASp shall be performed at Concessionaire's sole cost and expense and at a time reasonably satisfactory to County so that County may, at its option, have a representative present during any such inspection. The parties hereby mutually agree that any and all repairs or alterations necessary to correct violations of construction-related accessibility standards within the Premises or the Improvements shall be performed by Concessionaire at Concessionaire's sole cost and expense and in accordance with the requirements set forth elsewhere in this Agreement. The parties acknowledge and agree that, notwithstanding any presumption set forth in California Civil Code Section 1938, Concessionaire shall be solely responsible and liable to make any and all repairs or alterations necessary to correct violations of construction-related accessibility standards in any CASp inspection report. Concessionaire hereby agrees that, to the fullest extent permitted by law, Concessionaire shall treat any inspection by a CASp and the CASp inspection report as strictly confidential and shall not disclose the content of any such inspection report, except as necessary for Concessionaire to complete repairs and corrections of violations of construction-related accessibility standards. Concessionaire acknowledges that Concessionaire's obligations set forth in this section are in addition to (and not in lieu of) Concessionaire's obligations regarding compliance with the ADA and construction related accessibility standards set forth elsewhere in this Agreement, and

nothing in this section shall be construed to limit or diminish Concessionaire's obligations set forth elsewhere in this Agreement.

16. DISPUTE RESOLUTION.

16.1 Mediation: The parties agree to and shall mediate any dispute or claim between them arising out of this Agreement, before resorting to court action. The mediation shall be confidential and in accordance with California Evidence Code §1151.5. In the event the parties are not able to agree on a mediator within thirty (30) days of the first party seeking mediation, the parties shall submit the matter to mediation before JAMS Mediation, Arbitration and ADR Services (“**JAMS**”). The mediator, who shall be a retired state or federal judge employed by JAMS, shall determine all the mediation rules applicable to the mediation proceeding. Mediation fees and costs, if any, shall be divided equally by the parties to the dispute. If any party breaches its obligation to mediate, by commencing a court action without first attempting to resolve the matter through mediation, or by refusing to mediate, then THAT PARTY SHALL NOT BE ENTITLED TO ATTORNEYS' FEES OR COSTS THAT MIGHT OTHERWISE BE AVAILABLE TO THEM IN A COURT ACTION. Notwithstanding the foregoing, if such dispute or claim is not resolved via mediation, then either party may pursue a court action.

16.2 Disputes With Respect to Rental Amounts. Any disputes with regard to the rental amounts payable hereunder which is not resolved following mediation pursuant to Section 16.1 shall be resolved as provided in this Section 16.2.

16.2.1 Disputes Regarding Calculation of Rental Value. If the parties are not able to agree upon the Rental Value following mediation, Rental Value shall be determined by a single M.A.I appraiser (the “Appraiser”) as provided in this Section 16.2.1. If the parties are not able to agree upon an Appraiser within fourteen (14) days following the end of the mediation, each party shall submit to the other party the names of three (3) M.A.I. appraisers having at least the (10) years' experience in valuing unique trophy properties and who have not performed services for such party or its affiliates within the prior five year period. The Appraiser shall be selected by lot from the six (6) names. The parties shall meet with the appraiser within seven (7) days after the date the Appraiser was selected. The Appraiser shall act as an expert and not as an arbitrator. Each party may, but shall not be required to present evidence and other information (including its own appraisal) regarding the Rental Value to the Appraiser. The California rules of evidence shall not apply. The Appraiser shall determine in its sole discretion the manner by which the parties may present evidence. The Appraiser shall not be limited to the evidence presented by the parties and shall be permitted to conduct its own investigation of the Rental Value of the Premises. The Appraiser shall be requested to submit its determination of the Rental Value of the Premises within thirty (30) days of the date of its selection. The fees and expenses of the Appraiser shall be split equally between the County and the Concessionaire.

16.2.2 Disputes Regarding the Calculation of Rental Amounts. Any dispute regarding the amount of rent due (other than a dispute regarding the calculation of Rental Value), as well as any dispute regarding the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Los Angeles County, California before a single arbitrator. The

arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

16.3 Successors to JAMS : Should JAMS, or a successor of JAMS, not be in existence at the time an action arises, the parties agree to jointly select in good faith an alternate organization offering at that time services substantially similar to those now offer by JAMS and, when so selected, such alternate organization shall be substituted for JAMS wherever JAMS is referred to herein.

16.4 Exclusions. The following matters are excluded from mediation hereunder: (a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code 2985; (b) an unlawful detainer action; (c) the enforcement of a mechanic’s lien; (d) an action for bodily injury or wrongful death; (e) the filing of a court action to preserve a statute of limitations; (f) the filing of a court action to enable the recording of a notice of pending action, or for an order of attachment, receivership, injunction or other provisional remedy; or (g) disputes with respect to rental amounts, which shall be resolved by binding arbitration per JAMS. The parties to the dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the mediation proceeding.

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Agreement in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word “person” includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Agreement, “**business day**” shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include “Optional Bank Holidays” as defined in Section 7.1 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Concessionaire have entered this Agreement following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Agreement.

17.5 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard or an express response period is specifically provided herein, whenever the consent of County or Concessionaire is required under this Agreement, such consent shall not be unreasonably withheld, conditioned or delayed, and whenever this Agreement grants County or Concessionaire the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Concessionaire shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Concessionaire agree and acknowledge that this Agreement satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Agreement. The parties hereto shall execute and acknowledge a memorandum of agreement, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 Counterparts; Electronic Signatures. This Agreement and any other document necessary for the consummation of the transaction contemplated by this Agreement may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered had been signed using a handwritten signature. County and Concessionaire (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intended to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

17.10 Joint and Several. If more than one person or entity signs this Agreement, the obligations of each such person and entity under this Agreement shall be joint and several.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Concessionaire have entered into this Agreement as of the Effective Date.

THE COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

PCH BEACH ASSOCIATES LLC, a
California limited liability company

By: _____
Name: _____
Title: _____

ATTEST:

CECILIA ZAVALA,
Executive Officer – Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

DAWYN HARRISON,
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

Glaser Weil Fink Jacobs Howard & Shapiro LLP

By: _____
Roger H. Howard, Esq.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Subject to all reservations and easements set forth in the Agreement to which this Exhibit A is attached, including, those set forth in Section 3.8.

[Continued on Next Page]

EXHIBIT A

LEGAL DESCRIPTION

The Premises consists of the Restaurant Parcel and the Parking Lot Parcel, as more particularly described below:

Restaurant Parcel

That portion of Lot F, Tract No. 8940, in the City of Los Angeles, County of Los Angeles, State of California, as shown on map filed in Book 162, pages 42 to 45 inclusive, of Maps, in the office of the Registrar-Recorder of said County, and that portion of the Rancho Boca de Santa Monica, in said City, as shown on map recorded in Book 3, pages 12 and 13 of Patents, in the office of said Registrar-Recorder, within the following described boundaries:

Beginning at the northwesterly corner of that certain parcel of land described as Parcel No. 4 in deed to State of California, recorded on October 27, 1947 in Book 25674, page 296, of Official Records, in the office of said Registrar-Recorder; thence easterly along the general southerly boundary of Pacific Coast Highway, formerly Malibu Road, as shown on map of Tract No. 10238, filed in Book 206, pages 23 to 26 inclusive, of said Maps, to the easterly boundary of Sunset Boulevard, formerly Beverly Boulevard, as shown on the last mentioned map; thence southerly along said easterly boundary to the mean high tide line of the Pacific Ocean; thence westerly along said mean high tide line to the westerly line, or its southerly prolongation, of said certain parcel of land; thence northerly along said westerly line or said southerly prolongation and said westerly line to the point of beginning.

Parking Lot Parcel

That portion of Rancho Boca de Santa Monica, as shown on map recorded in Book 3, pages 12 and 13, of Patents, in the office of the Registrar-Recorder of the County of Los Angeles described as PARCEL 4, PARCEL 5 and PARCEL 6 all in deed to the State of California, recorded in Book 25674, page 296, of Official Records, in the office of said registrar-recorder within the following described boundaries:

Beginning at the intersection of the easterly line of Beverly Boulevard, 60 feet wide, now known as Sunset Boulevard, as shown on map of Tract No. 10238, filed in Book 206, pages 23 to 26 inclusive, of Maps, in the office of said registrar-recorder and that certain 2,370-foot radius curve in the southerly boundary of Malibu Road, 140 feet wide, now known as Pacific Coast

EXHIBIT B

REDEVELOPMENT PLAN

(to be provided prior to execution of the Option)

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to Proposed Transfers and to any Major Sublease. However, these standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by County or not required to be approved, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the concessionaire pursuant to the specific agreement involved (e.g. equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year for the leasehold proposed to be transferred). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.
2. The proposed transferee must have significant experience in the construction (if contemplated), operation and management of the type(s) of improvements existing on or to be constructed on the premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All approvals of the County will not be unreasonably withheld or delayed.
3. The individual or individuals who will acquire Concessionaire's interest in this Agreement or the Premises, or own the entity which will so acquire Concessionaire's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.
4. The price to be paid for the Proposed Transfer shall not result in a financing obligation of the proposed transferee that jeopardizes its ability to meet rental obligations to the County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the proposed transferee must agree that) the County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the agreement required under the agreement; provided however, that a transfer of ownership of a publicly held parent corporation of concessionaire that is not done primarily as a transfer of this leasehold will not be subject to County approval.
6. The terms of the Proposed Transfer will not detrimentally affect the efficient operation or management of the leasehold and the proposed transferee must be able to comply with all terms of the Agreement.
7. The proposed transferee must provide a replacement guarantor acceptable to the County if one is required pursuant to the terms of the Agreement.
8. The transfer otherwise complies with the terms of the Agreement and all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors.

EXHIBIT D

[INTENTIONALLY OMITTED]

EXHIBIT E

TREE TRIMMING POLICY

Policy No. 23 and Policy No. 34 of the Marina del Rey Land Use Plan dated February 8, 2012, as such policies are updated, modified or replaced from time to time by County.

EXHIBIT F

LOCAL HIRING REQUIREMENTS

SECTION 00 19 12

**COUNTYWIDE LOCAL AND TARGETED WORKER HIRE PROGRAM -
MANDATORY AND BEST EFFORTS**

- 18. PART 1 – GENERAL
- 19. 1.01 Summary

This Section 00 19 12 includes:

- 19.1.1.1. Part 1 – General
- 19.1.1.2. 1.01 – Summary

- 1.02 – Definitions
- 1.03 – Local and Targeted Worker Hire Program (LTWHP)

- 19.1.1.3. Part 2 – Administration

- 2.01 – Administration
- 2.02 – Examples of Community Service Providers

- 19.1.1.4. Part 3 – Forms

- 19.1.1.5. 3.01 - Form 00 19 12-1: LTWHP Craft Employee Request Form
- 19.1.1.5. 3.02 - Form 00 19 12-2: LTWHP Utilization Plan

- 3.03 - Form 00 19 12-3: FPL List of Zip Codes
- 3.04 - Form 00 19 12-4: Local and Targeted Worker Hire Status Report

CONTRACT ADMINISTRATOR PLEASE VERIFY THAT THE SET GOAL MATCHES WITH BOARD LETTER, 30% BEST EFFORT (PROJECT BUDGET between \$500K and \$2.5M); 30% MANDATORY (PROJECT BUDGET >\$2.5M)

If the project budget is greater than \$2.5 million with no federal funding:

1.01 MANDATORY HIRING GOALS FOR THIS PROJECT

The County of Los Angeles has implemented a Local and Targeted Worker Hire Policy (LTWHP) to facilitate the hiring of Local and Targeted workers. Pursuant to this policy, this project has a **mandatory goal** of at least 30 percent of total California Construction

Labor Hours worked be performed by a qualified Local Resident. In addition, at least 10 percent of total California Construction Labor Hours worked on this project shall be performed by County residents classified as a Targeted Worker. Hours worked by a Targeted Worker who is also a Local Resident may be applied towards both the mandatory 30 percent Local Hire and 10 percent Targeted Worker Hire goals.

If the project budget is between \$500,000 and \$2.5 million or is an affordable housing project with a budget greater than \$2.5 million with no federal funding:

1.01 BEST EFFORTS HIRING GOALS FOR THIS PROJECT

The County of Los Angeles has implemented a Local and Targeted Worker Hire Policy (LTWHP) to facilitate the hiring of Local and Targeted workers. Pursuant to this policy, this project has a **best efforts goal** of at least 30 percent of total California Construction Labor Hours worked by performed by a qualified Local Resident. There is no Targeted Worker hiring requirement.

1.02 definitions

Terms used in the implementation of the LTWHP shall be defined as follows:

- A. **California Construction Labor Hours** – Includes all craft worker hours performed on the project by California residents, excluding the hours performed by off-site material fabricators, designers, project office staff, or vendors.
- B. **Certified Payroll Reports** – The Contractor shall comply with the requirements of Section 1776 of the Labor Code, State of California for the submission of Certified Payroll Reports (CPR). The Contractor and Contractor’s subcontractors shall submit a copy of all CPR’s to the County on a monthly basis, no later than on the first Monday of the subsequent month. General contractor and all its subcontractors shall submit all CPR’s to the County electronically if an online system is designated by the County.
- C. **Community Service Providers** – A network of public and private partners working to support workers and businesses by serving their employment and training needs. These providers include local one-stop job/career centers funded by the Federal Workforce Innovation and Opportunities Act (WIOA). These centers help businesses find skilled workers and connect customers to work related training and education; most services are available at no cost. Examples of Community Service Providers are listed in Section 2.02.
- D. **Craft Employee Request Form** – The form used by the contractor and its subcontractors to request dispatch of craft workers (including, but not limited to,

apprentices and journeymen), who are Local Residents or Targeted Workers, from a Community Service Provider or union hiring hall in the event that assistance in obtaining such workers is needed. The request form is submitted by the contractor/subcontractor, completed and executed by the Community Service Provider or union hiring hall, and a copy retained by the General Contractor for auditing purposes.

- E. **Local and Targeted Worker Hire Status Report** – A monthly report required to be submitted to the County as listed on Form 00 19 12-4.
- F. **Local Resident** – A Local Resident is defined as an individual whose primary place of residence is within the Tier 1 or Tier 2 ZIP Codes of the County, as listed in Forms 00 19 12-1 and 00 19 12-3.
- G. **Targeted Worker** - A Targeted Worker is an individual who is a County resident and faces at least one or more of the following barriers to employment:

- Has a documented annual income at or below 100 percent of the Federal Poverty Level;
- No high school diploma or GED;
- A history of involvement with the criminal justice system;
- Protracted unemployment (receiving unemployment benefits for at least 6 months);
- Is a current recipient of government cash or food assistance benefits;
- Is homeless or has been homeless within the last year;
- Is a custodial single parent;
- Is a former foster youth; or
- Is a veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C.4215[a]).

- H. **Tier 1 Zip Codes** – Tier 1 ZIP Codes are those Zip codes listed in Form 00 19 12-1.
- I. **Tier 2 Zip Codes** – Tier 2 ZIP Codes are those Zip codes listed in Form 00 19 12-3.
- J. **Utilization Plan** – The form submitted by the general contractor on behalf of itself and its subcontractors prior to commencing work, specifying a Manpower Utilization Plan, which contains the manpower plan and schedule for the hiring of qualified Local Residents and Targeted Workers, including the use of the subcontractors' workforce to meet the LTWHP hiring goal. The general contractor shall submit updates of the Utilization Plan to reflect changes in project conditions, schedules, or subcontractors.

1.03 LOCAL and TARGETED WORKER HIRE PROGRAM

If mandatory:

- A. The Contractor and its Subcontractors shall meet the following minimum mandatory Local Resident and Target Worker hiring requirements:
 - 1. At least 30 percent of total California Construction Labor Hours worked on the project must be performed by a qualified Local Resident.
 - 2. Additionally, at least 10 percent of total California Construction Labor Hours worked on the project shall be performed by a Targeted Worker. The hours worked by a Targeted Worker who is also a Local Resident may also be applied towards the 30 percent Local Resident hiring goal.

If best efforts:

- A. The General Contractor and its Subcontractors shall use best efforts to meet the following Local Resident and Target Worker hiring requirements:
 - 1. Best efforts shall be used to ensure that at least 30 percent of total California Construction Labor Hours worked on the project are performed by a qualified Local Resident.
- B. The available pool of Local Residents whose primary place of residence is within Tier 1 ZIP Codes (listed under Form 00 19 12-1), must first be exhausted in the manner specified in Section 2.01E before employing worker(s) from Tier 2 ZIP Codes (listed under Form 00 19 12-3).
- C. All California Construction Labor Hours shall be included in the calculation for the percentage requirements set forth in Section 1.03 A.
- D. The General Contractor and its Subcontractors shall not discriminate against or give preference to any particular individual or group based on race, color, gender, sexual orientation, age or disability.

1.1 PART 2 – ADMINISTRATION

1.2 2.01 Administration & Compliance

- A. The Contractor and its Subcontractors shall use the Craft Employee Request Form (Form 00 19 12-1) for all requests for dispatch of qualified Local Residents and Targeted Workers craft workers (including apprentices and journeymen) in the event that assistance in obtaining such workers is needed from a Community Service Provider, union hiring hall, or other source.

- B. Prior to commencing work, the Contractor, on behalf of itself and its Subcontractors, shall submit a Manpower Utilization Plan (Form 00 19 12-2) to the County Project Manager that contains the manpower plan and schedule for the hiring of qualified Local and Targeted Workers and the assignment and use of the subcontractors' workforce to meet the Local Worker Hiring requirement. The Contractor, thereafter, shall submit updates of the Manpower Utilization Plan to reflect changes in project conditions, schedule, or subcontractors.

- C. No later than the first Monday of each month, the Contractor shall submit to the designated County representative a completed Local and Targeted Hire Status Report containing the relevant information for the preceding month. The Local and Targeted Hire Status Report shall contain, at a minimum, the information specified below for general contractor and each subcontractor:
 - 1. For each California Project Craft Worker (apprentices and journeymen): (a) the total labor hours, total number of all workers (apprentices and journeymen), hours worked on the project; and (b) the wages earned on the project.
 - 2. Total number of Local Residents (apprentices and journeymen), hours worked (apprentices and journeymen), segregated by Tier 1 and Tier 2 Residency Preference Areas, and wages earned by each Local Resident.
 - 3. Total number of Targeted Worker hours worked (apprentices and journeymen).(by Tier 1 and Tier 2 Residency Preference Areas)
 - 4. Total number of hours worked by Local Residents by subcontractor.

- C. (*sic*) On the first Monday of each month, the Contractor and all its Subcontractors shall submit the Local and Targeted Hire Status Report to the designated County representative (or submit the data online if the County elects to provide an online system), to demonstrate progress in meeting the Manpower Utilization Plan. Failure to submit the Local and Targeted Worker Hire Status Report to the designated County representative shall be deemed to constitute zero percent local hire participation for the month and the County may retain the Monthly Local Hire Participation Contract Compliance Value of \$1,000 for that month.

- D. The County may, in its sole discretion, elect to provide an online system for the Contractor and all of its subcontractors to input the data required in the Local and Targeted Worker Hire Status Report. If the County so elects, the Contractor and Subcontractors shall utilize that online system in lieu of completing and submitting the Local and Targeted Worker Hire Status Report.

- E. The Contractor and its Subcontractors shall first meet the Local and Targeted Worker Hire participation requirement by employing qualified workers from the Tier 1 Preference Area. If the Contractor is unable to meet their entire Local and Targeted Worker Hire need from this area, it must submit to the Project Manager a statement on company letterhead certifying that it has exhausted all available qualified Local and Targeted Workers from this area during a 48 hour period before pursuing manpower from the Tier 2 Preference Area.

- F. The Contractor’s compliance with the approved Manpower Utilization Plan will be evaluated monthly using the Local and Targeted Hire Status Report. The Local and Targeted Worker Hire Participation Compliance Rectification Amount will be determined by multiplying the Monthly Local Hire Participation Contract Compliance Value of \$1,000 by the number of months since the issuance of the Notice to Proceed multiplied by the fraction (percentage) generated by dividing the Cumulative Actual Local Hire Participation (numerator) by the Cumulative Forecast Local Hire Participation (denominator). To this end, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Contractor and as forecasted in the Manpower Utilization Plan.

Monthly Local Hire Participation Contract Compliance Value	X	Number of Months Since Notice to Proceed (NTP)	X	$\frac{\text{Cumulative Actual Local Hire Participation}}{\text{Cumulative Forecast Local Hire Participation}}$	=	Local Hire Participation Compliance Rectification Amount
(\$1,000)	(Multiply)		(Multiply)	(Divide)	(Equals)	

- G. On a monthly basis, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Contractor consistent with the Manpower Utilization Plan. If the Cumulative Actual Local Hire Participation exceeds the Cumulative Forecast Local Hire Participation, the County will release the Local Hire Participation Compliance Rectification Amount based on a value not to exceed 100percent. The total aggregate amount to be withheld, or released, for the

Local Worker Hiring Requirement shall not exceed \$_____ (based on \$1,000 / month for __ months).

Local Hire Participation Compliance Rectification Amount	-	Cumulative Value of Previous Monthly Releases	=	Current Month's Release
		(Minus)		(Equals)

- H. At the conclusion of the project, the County will conduct a final evaluation of the General Contractor's compliance with the Manpower Utilization Plan as described in Section 2.01.B and execute a final release of funds, if applicable, as described in Section 2.01.F. The General Contractor's failure to meet the Local and Targeted Worker Hiring Requirement in Section 1.01 by the conclusion of the project shall result in the County imposing liquidated damages and deducting such amount otherwise owed to the General Contractor in its final payment. The County will not be required to pay interest on any amounts withheld during the term of the contract.

- I. The County and General Contractor specifically agree that the Local and Targeted Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted hire participation levels achieved by the General Contractor consistent with the Manpower Utilization Plan, shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained due to the General Contractor's inability to achieve the Local and Targeted Worker Hiring Requirement in Section 1.01.

- J. For construction contracts where the work is performed for a private County Concessionaire, the Concessionaire shall be responsible for administration of all aspects of this Section 2.01, including the calculation and collection of the Local Hire Participation Compliance Rectification Amount. At the conclusion of the project, the Concessionaire shall pay over the designated County representative any such amounts collected, and shall provide a full report to the designated County Representative of all monthly information required to be collected in this Section 2.01.

1.3 2.02 COMMUNITY SERVICE PROVIDERS

Examples of Community Service Providers that may be used by Contractors and Subcontractors to identify Local Residents and Targeted Workers include:

Los Angeles County Community and Senior Services: <http://css.lacounty.gov/>

Los Angeles County America's Job Centers of California: <http://workforce.lacounty.gov/>

Cal Jobs: <http://www.caljobs.ca.gov/vosnet/Default.aspx>

LA Jobs: <https://www.jobsla.org/vosnet/Default.aspx>

Helmetts to Hardhats: <https://www.helmetstohardhats.org>

America's Job Center of California: <http://www.americasjobcenter.ca.gov/>

20. part 3 – forms

21. Form 00 19 12-1: LTWHP Craft Employee Request Form

21.1.1.1 Form 00 19 12-2: LTWHP Utilization Plan for **PROJECT NAME**

Form 00 19 12-3: FPL List of Zip Codes

Form 00 19 12-4: Local and Targeted Worker Hire Status Report

EXHIBIT G

PREVAILING WAGE REQUIREMENTS

In connection with any and all construction projects undertaken pursuant to this Lease, this project is a Public Work as defined in Section 1720 of the California Labor Code. Lessee shall comply, and shall cause all of its contractors and subcontractors to comply, with the prevailing wage requirements of the California Labor Code and the prevailing wage rate determinations of the California Department of Industrial Relations. Lessee and all of its contractors and subcontractors shall obtain these rates from the Department of Industrial Relations, County or online at <http://www.dir.ca.gov/dlsr>, and shall keep them on file at their main office. Lessee shall cause its contractors and subcontractor to post a copy of the applicable rates at the Premises during all periods of construction during the Term.

Under the provisions of said Labor Code, the State Department of Industrial Relations will ascertain the prevailing hourly rate in dollars and details pertinent thereto for each craft, classification or type of workers, or mechanic needed to execute any contract that may be awarded by the awarding entity.

Lessee shall cause all contractors and subcontractors performing work at the Premises to comply with all applicable Labor Code provisions, including without limitation, requirements respecting contractor registration with the Department of Industrial Relations, employment of apprentices, and the payment of not less than the required prevailing rates and overtime. County and Lessee agree that the provisions of California Labor Code sections 1771, 1771.1, 1771.4, 1772, 1773.2, 1774, 1775, 1776, 1777.5, 1777.7, 1813 and 1815 shall be deemed attached hereto and incorporated by reference into this Lease. In addition, Lessee shall require that all such sections be recited in and incorporated by reference into all of its contracts with contractors and into all contracts with subcontractors (of any tier).

EXHIBIT H
LINE ITEM BUDGET

CONCESSION AGREEMENT
EXHIBIT H

Project Cost Breakdown Categories

PROJECT:
ADDRESS:
ARCHITECT:
PROJECT #:
ESTIMATOR:
DATE:

PROJECT REQUIREMENTS

Temp. Construction
Site Safety
Temp. Hoisting
Scaffolding & Staging
Temporary Facilities
Beach Maintenance
Jobsite Office
Progress Cleaning - General Laborers
Waste Management & Disposal
Final Cleaning
Site Safety
Other

PROJECT REQUIREMENTS

DEMOLITION

Demolition of Existing Restaurant Building
Remove Existing Piles
Demolition of Minor Sidewalk, Curb and Gutter
Abatement of Hazardous Materials (Allowance)
Removal of Existing "Riprap" Rock Underneath Building
Removal of Existing Asphalt Paving
Other

DEMOLITION

CONCRETE

Structural Cast-In-Place Piles / Caissons
Structural Cast-In-Place Exterior Foundation
Structural Cast-In-Place Interior Foundation
Repave and Restripe Entire Asphalt Parking Lot
Bus Turnaround Area
Minor Sidewalk, Curb and Gutter at Bus Turnaround Area
Pedestrian Walk Path at West of Parking Lot
Misc. Ramps / Stairs / Pads
Misc. Parking Lot / Entry / Hardscape
Shoring Allowance
Seawall / Erosion Control (Allowance)
5'-0" Wide Beach Path at West of Restaurant Building Line
Other

CONCRETE

MASONRY

Enter Scope Here
Other

MASONRY

STONE

STONE

STRUCTURAL STEEL

STRUCTURAL STEEL

MISC. METALS

Misc. Metals / Structural Supports (Allowance)
Other

MISC. METALS

ORNAMENTAL METALS

Patio Railings
Roof Screens (Allowance)
Other

ORNAMENTAL METALS

WOOD FRAMING / ROUGH CARPENTRY

Structural Wood Framing / PSL / Truss / Moment Frames
Architectural Wood Framing Details (Allowance)
Protection of Interior Finishes
Other

WOOD FRAMING / ROUGH CARPENTRY

WOOD DECKING

Exterior Wood Decking at Patio Dining
Exterior Wood Decking at Entry Deck
Protection of Exterior Finishes

WOOD DECKING

MILLWORK

Furnish and Install Interior Restaurant Millwork
Front and Back Bar Assemblies
Banquettes
FOH Finishes
Baseboard
Built-In Casework
POS Station
Server Station
Other
Public Deck (Allowance)

MILLWORK

WATERPROOFING

Waterproofing Membrane at Kitchen
Waterproofing Membrane at Bathrooms
Exterior Waterproofing Allowance
Other

WATERPROOFING

ROOFING

PVC Membrane Roofing System
Other

ROOFING

FIREPROOFING

FIREPROOFING

JOINT SEALANTS

Caulking of Dissimilar Materials
Exterior Decorative Sealants
Other

JOINT SEALANTS
DOORS, FRAMES & HARDWARE Interior Doors, Frames and Hardware Other
DOORS, FRAMES & HARDWARE
SPECIAL DOORS Sliding / Operable Partitions Counter Roll Down / Shutter System at Bar Patio Other
SPECIAL DOORS
STOREFRONT Fixed Storefront Wall Systems at 11'-0" H Other
STOREFRONT
MONUMENTS Frank Gehry "Monuments" with Incorporated Signage Other
MONUMENTS
DRYWALL Interior Metal Stud Framing and Drywall Acoustical Treatment FRP for Kitchen Walls Other
DRYWALL
PLASTER Exterior Stucco - Integral Color 3/8" Cement Plaster Other
PLASTER
TILE Restroom Ceramic Floor Tile Restroom Ceramic Wall Tile BOH Kitchen Quarry Tile Other
TILE
ACOUSTICAL CEILINGS BOH Washable Ceiling Tile at Kitchen Other
ACOUSTICAL CEILINGS
CARPET/RESILIENT FLOORING Other
CARPET/RESILIENT FLOORING
FLOOR PREPARATION Other
FLOOR PREPARATION
WOOD FLOORING Wood Flooring Finish at Banquet Rooms & Interior Dining Other
WOOD FLOORING
RESINOUS FLOORING Enter Scope Here

Other
RESINOUS FLOORING
PAINTING
Painting Budget
Staining/Treatment of Exterior Millwork at Patio Dining and Entry
Other
PAINTING
SPECIALTIES
New Bathroom Accessories
Toilet Partitions
BOH Employee Lockers
Other
SPECIALTIES
SIGNAGE
Signage Budget
Other
SIGNAGE
FOOD SERVICE EQUIPMENT
Food Service Equipment Budget
FOOD SERVICE EQUIPMENT
ARTWORK
Artwork Budget
ARTWORK
FURNISHINGS, FIXTURES & EQUIPMENT (FF&E)
FF&E Budget
FURNISHINGS, FIXTURES & EQUIPMENT (FF&E)
WINDOW TREATMENT
Manual Curtains / Blinds Budget
Other
WINDOW TREATMENT
ELEVATORS
ELEVATORS
FIRE PROTECTION
Fire Protection Budget
Fire Riser
NFPA-13 Compliant Sprinkler Heads
Dry Pendant at Walk-Ins
Piping
Drawings, Calculations & Submittals
FIRE PROTECTION
PLUMBING
Plumbing Budget
Kitchen Equipment Connections
Plumbing Equipment & Connections
Water Supply/Return Piping
Sanitary/Waste Piping
Gas Piping
Rough-Ins

Water Meter Tie-In
Other
PLUMBING
HVAC
HVAC Budget
Rooftop Units
Equipment
Direct Digital Controls & Thermostats
Supply & Return Distribution
Supply & Return Register, Diffusers & Grille
Commissioning
Other
HVAC
ELECTRICAL
Electrical Budget
Safe-Off Prior to Demolition
New 2000AMP Service
Transformers
Panels
Branch Feeder System
Receptacles
Back Boxes
Lighting Installation
Power to Mechanical Equipment
Power to Kitchen Equipment
Power to Lighting
6" PVC Soda/Beer Conduit
Low Voltage - Conduit and Pull String Only
Patio Dining & Entry Deck - Wayfinding/Pathway & Service Terminals (Allowance)
Other
ELECTRICAL
LIGHTING
FOH Lighting Budget
BOH Lighting Budget
Exterior Lighting Budget
Parking Lot Lighting Budget (Allowance)
Lighting Controls / Lutron / T-24 Budget
Other
LIGHTING
LOW VOLTAGE SYSTEMS
A/V IT/POS/Security/Wi-Fi Equipment & Systems
Other
LOW VOLTAGE SYSTEMS
FIRE ALARM
Fire Alarm Budget
Control Panel
Strobes, Annunciators, Devices, Etc.
Wiring
Design
Other
FIRE ALARM
EARTHWORK
Enter Scope Here
Other
EARTHWORK
LANDSCAPING
Landscaping and Plantings Budget

Irrigation Budget
Landscaping and Plantings at Parking Lot Budget
Other
LANDSCAPING
TRELLIS SYSTEMS
Trellis / Sun Treatment at Bar Patio
Trellis / Sun Treatment at Outdoor Deck
Trellis / Sun Treatment at Dining Patio
Other
TRELLIS SYSTEMS
SITE UTILITIES
Electrical Service Connection
Domestic Water Service Connection
Fire Service Connection
Sewer Connection
Gas Service Connection
Rework Existing DWP Pole on Building
Stormwater Mitigation at Parking Lot
Other
SITE UTILITIES
PRECONSTRUCTION
Preconstruction
PRECONSTRUCTION
GENERAL CONDITIONS
General Conditions
GENERAL CONDITIONS
BONDS
ESTIMATED SUBTOTAL
FLOOD AND EARTHQUAKE INSURANCE
GENERAL LIABILITY INSURANCE
BUILDERS RISK INSURANCE
C.M. FEE
ESTIMATED SUBTOTAL
LOCAL BUSINESS TAX
DESIGN CONTINGENCY
CONTRACTOR CONTINGENCY
ESCALATION CONTINGENCY (2.0%)
ESTIMATED TOTAL

ALTERNATES (NOT INCLUDED IN BASE TOTAL; SUBJECT TO INSURANCES, FEE AND CONTINGENCY)

- Food Service Equipment Budget
 - Back Kitchen
 - Cold & dry storage areas
 - Ice production
 - Prep areas
 - Dish room
 - Cold meat & fish cutting
 - Service areas
 - Banquet pantry
 - Prep cook line

- Special custom chef's island suites
 - Pizza oven
 - Chef's counters
 - Pick up areas
 - Pastry pantry
 - Lobster display
 - Wine display
 - Bar area
 - Remote refrigeration
 - Refrigerated wine display
 - Remote beer system
 - Entry deck bar and kitchen
 - Installation
 - Freight
 - Shop drawings
 - Storage & staging
 - Delivery
 - Sales tax
 - Coordination

FF&E Budget

- Furnishings
 - Exterior entry deck furniture
 - Cabana enclosures and furnishings
 - Stools
 - Chairs
 - Tables
 - Bench seating
 - Umbrellas
 - Patio furniture
 - Chairs
 - Tables & bases
 - Lounge furniture
 - Banquet chairs
 - Tables & dollies
 - Dining booth seating
 - Dining chairs
 - Tables & bases
 - Stools
 - Décor lighting
 - Installation
 - Handling
 - Freight
 - Storage & staging
 - Sales tax
 - Coordination
 - Miscellaneous Items
 - POS system
 - Signs & graphics
 - Smallwares
 - Pots & pans
 - Bar smallwares & glasses
 - Audio video
 - Misc. small appliances

Artwork Budget

- Art, sculptures
- Accessories

Other

- IT/Security/Wi-Fi Budget
- Electrical Service Connection
- Domestic Water Service Connection
- Fire Water Service Connection
- Sewer Connection
- Gas Service Connection

Air Scrubber Allowance
 Entry Deck Design Elements
 18'-0" to 20'-0" Cast In Place Seawall - Assumes 67'-0" Length
 Removal of Existing Riprap Rocks to Nearby Existing Groins
 5'-0" Wide Beach Path at West of Restaurant Building Line

ESTIMATED TOTAL WITH ALTERNATES

BELOW THE LINE ITEMS

Rework Existing Pole on Building
 Replace Existing Riprap Rock Underneath Building
 Stormwater Mitigation at Parking Lot

Consultants
Coastal Engineer
Environmental Assessment
Misc reports/consultants
PTR
Utility Investigation
OTHER
Miscellaneous

Construction Soft Cost Costs

Development Fees
 Misc Dev Expenses (Reimbursables)
 Liquor License
 Project management
 Legal Fees
 Consultants

DESIGN AND ENGINEERING

Architect RFP (Gehry Partners)
 Architect - Frank Gehry (Gehry Partners)
 Architect - Frank Gehry Design Fee - Equity
 Architect - Executive Architect (HansonLA)
 MEP
 Interior Design
 Arch/Int Design Reimbursables
 Hanson Arch Reimb
 Structural Engineer
 Landscape Architect
 Site Survey + As Builts
 Geotechnical Engineer/Soils
 Civil Engineer-Grading Plans/Drainage Plans
 Food Service Design
 Low Voltage Consultants
 Lighting Design
 Code Consultant
 Specification Writer
 ADA Consultant
 Permit Expeditor
 Permit Fees
 Preliminary Haz Mat Report Documentation
 Phase 1 Environmental Review
 Coastal Commission Consultant
 Website/CoUrban
 Property Tax During Construction
 Inspections - Geotech Deputy
 Inspections - Structural Deputy
 Other
 SUB TOTAL
 SOFT COST CONTINGENCY
 TOTAL SOFT COSTS

Acquisition Cost

Rent During Construction
ENA Deposit+ Payments made during RFP
Reimbursement of County Expenses
Option Payments
Other
SUB TOTAL
ACQUISITION COSTS CONTINGENCY
TOTAL ACQUISITION COSTS

Preopening

Financing Costs

Fundraising Fees
Lender Fees
Interest
Other