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ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

39 JUNE 16, 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

Los Angeles County Department of Beaches & Harbors
Caring for Your Coast

Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

June 16, 2009

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 AND EXECUTION OF REVISED AMENDED AND RESTATED LEASE NO. 6573 TO FACILITATE REDEVELOPMENT – PARCEL 27R (JAMAICA BAY INN - 4175 ADMIRALTY WAY) - MARINA DEL REY (FOURTH DISTRICT) (4 VOTES)

SUBJECT

Request for approval and execution of Amended and Restated Lease No. 6573 that extends the current lease for an additional 39 years for the Jamaica Bay Inn (Parcel 27R), incorporates a change in the lessee's ownership structure, and includes other revisions to the terms and provisions of the lease to facilitate redevelopment.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the Regional Planning Commission, acting on behalf of the County, has previously considered and adopted a negative declaration for the proposed redevelopment/replacement project contemplated by Amended and Restated Lease No. 6573 with respect to Parcel 27R (Jamaica Bay Inn).

2. Authorize the Chairman to execute the Amended and Restated Lease No. 6573 for Parcel 27R, attached as Exhibit A, extending the term of the existing ground lease on Parcel 27R by 39 years, approving and incorporating the restructured limited partnership of the lessee, Marina del Rey Innvestors, a California limited partnership, and incorporating other revisions to the terms and provisions of the Amended and Restated Lease to facilitate redevelopment.

3. Authorize the Chairman to execute a Memorandum of Lease that has been approved as to form by County Counsel when presented by the Director of the Department of Beaches and Harbors.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of a ground lease for Parcel 27R in Marina del Rey, currently improved with a 42-room hotel (Jamaica Bay Inn). Your Board granted an Option for a lease extension for Parcel 27R on May 30, 2006 to the Parcel 27R lessee, Marina del Rey Innvestors, a California limited partnership ("Lessee"). The Amended and Restated Lease your Board approved upon granting of the Option needs to be revised to incorporate, most importantly, the lessee's new ownership structure and identification of the new ownership structure as the baseline for determining future transfers, as well as provisions for the dedication of a portion of the premises for the proposed Admiralty Way street widening; revision of the new construction square footage to 52,006 to conform to the final development plan; and permission for the Lessee to connect its leasehold improvements to the County storm drain system subject to certain requirements.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department policy provides that the County's approval or denial of any assignment will be based on one or more of the following: a) the financial condition of the assignee; b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and c) the management of the leasehold by the new lessee being in the best interest of the total Marina project.

Our review has found: 1) IWF Jamaica Bay, LLC, the proposed assignee of the general partner interest, is financially sound and that its principals, Dale and Matt Marquis, are experienced hotel developers; 2) no sale of the current leasehold is involved; and 3) the leasehold will continue to be managed by the current manager, the Pacifica Hotel Company, which has been successfully managing the parcel since 1995.

The Lessee has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. Accordingly, your Board's approval and execution of the attached Amended and Restated Lease is appropriate.

The Amended and Restated Lease calls for both the Lessee and the County to sign a memorandum of lease in recordable form following the effective date of the Lease.

Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to transfer partnership interests in lessee's limited partnership to accommodate completion of an internal reorganization and investment of equity for the redevelopment work, while maintaining appropriate management of the leasehold and proactively redeveloping the leasehold improvements, which will result in fulfillment of approved Strategic Plan Goal Nos. 1 and 3, "Operational Effectiveness" and "Community and Municipal Services", respectively.

FISCAL IMPACT/FINANCING

There will be no revenue change from that previously identified when your Board approved the original Amended and Restated Lease. Briefly, as already approved, the Lessee will pay: 1) an extension fee of $450,000, with $100,000 having been paid in the form of the Option fee and the remaining $350,000 to be paid in ten equal annual installments, plus interest, starting on the effective date of the Amended and Restated Lease; 2) rent increases due to construction of additional hotel rooms and the complete remodeling of the existing hotel, anticipated to rise by approximately $176,000 annually after construction and stabilization; and 3) a maximum contribution of $150,000, adjusted annually, towards the cost of installing new public improvements at Marina Beach (including, but not limited to, picnic facilities, restrooms and showers, playground equipment and other amenities and related costs).

Operating Budget Impact

Upon your Board's approval of the Amended and Restated Lease, the Department of Beaches and Harbors' operating budget will receive a $350,000 extension fee, payable in ten equal annual installments of $35,000 each, plus interest on the unpaid balance at the prime rate per annum. The $35,000 annual revenue payment is included in the Marina Budget Unit of the Department's Fiscal Year 2009-10 Adopted Budget. The installment payments received from FY 2010-11 through FY 2018-19 will be subsequently budgeted as one-time revenue. In addition, the annual minimum rent during construction shall be reset to $16,619 per month (75% of the previous three years' average annual rent paid to the County), which is anticipated to comprise the total rent from Parcel 27 during construction. The resulting reduction of approximately $49,000 per year in total rent until the completion of construction is included in the Marina Budget Unit of the Department's Fiscal Year 2009-10 Adopted Budget.

Costs of consultants involved in the negotiation and development of the Option and Amended and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the lease for Parcel 27R commenced on January 1, 1963 and expires on December 31, 2023. The Amended and Restated Lease extends the expiration date to December 31, 2062.

Parcel 27 contains approximately 117,270 square feet of land, which is improved with the 42-room Jamaica Bay Inn hotel with a coffee shop and the former Casa Escobar restaurant, for a total of approximately 33,207 square feet of improvements. The Amended and Restated Lease calls for the demolition of the restaurant and for the complete renovation of the existing hotel to include the addition of 69 new rooms, for a total of 111 rooms, with a smaller sized restaurant on-site. When completed, the new hotel will total approximately 73,225 square feet, which includes 21,219 square feet of renovated area.

Lessee's general partners are currently comprised of the PREG Holding Group at 45%; Somera Capital Management, LLC at 45%; and Abel Realty Co., Inc. at 10%. Concurrent with the execution of the attached Amended and Restated Lease, the existing general partners intend to assign 100% of their general partner interests to IWF Jamaica Bay, LLC, an entity wholly owned by Invest West Financial Corporation, which, in turn, is wholly owned by Dale and Matt Marquis. In connection with the assignment of their general partner interests, all of the former general partners will become limited partners. Following the partnership restructuring, IWF Jamaica Bay, LLC will own a 25% interest in Lessee as general partner and the remaining 75% interest in Lessee will be owned by the following limited partners: existing limited partners at 18.8%; PREG Holding Group at 3.1%; Somera Capital Management, LLC at 3.1%; Abel Realty Co., Inc. at .7%; and IWF Jamaica Bay L.P. at 49.2%. IWF Jamaica Bay L.P. is a new entity in which the general partner is an Invest West Financial Corporation affiliate and the limited partners of which are new limited partners each holding less than a 5% beneficial interest in Lessee, except for one limited partner, Shupe Revocable Trust, that holds a 13.1% beneficial interest.

Extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

County Counsel has approved the Amended and Restated Lease as to form and will approve the Memorandum of Lease as to form prior to its presentation to the Chairman for execution by the Director of the Department of Beaches and Harbors.

ENVIRONMENTAL DOCUMENTATION

On August 15, 2007, the Regional Planning Commission considered and adopted a negative declaration for the proposed redevelopment/replacement project prior to approving the Coastal Development Permit and Conditional Use Permit for the project, concluding that the proposed project will have no significant effect on the environment. The recommended action does not raise any new or different environmental impacts.

CONTRACTING PROCESS

The Lessee's proposal for a lease extension was received in response to the release of a Board-authorized solicitation document seeking proposals for new development and redevelopment on parcels on the westside of Marina del Rey. Upon completion of successful negotiations with the Lessee, your Board approved, on May 30, 2006, an Option to Amend Lease Agreement to facilitate redevelopment and expansion of the hotel. The Option, as extended initially upon approval by the Director of the Department of Beaches and Harbors and subsequently upon approval by your Board, was exercised by Lessee on May 28, 2009.

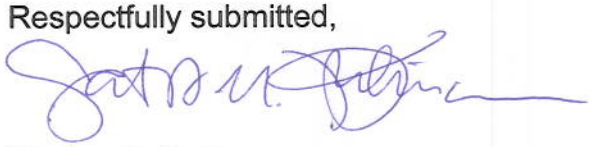
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The execution of the Amended and Restated Lease and the Memorandum of Lease will allow construction of the redevelopment project to commence.

CONCLUSION

Please authorize the Executive Officer of the Board to send two copies of the executed Amended and Restated Lease to the Department of Beaches and Harbors.

Respectfully submitted,



Santos H. Kreimann
Director

SK:GB:ks
Attachments (1)

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

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Marina Del Rey Innvestors,
a California limited partnership

(Parcel 27R — Lease No. 6573)

Dated as of JUNE 26, 2009

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39

JUN 16 2009

TABLE OF CONTENTS

Page

1. BACKGROUND AND GENERAL 1
   - 1.1 Definitions 1
   - 1.2 Lease 9
     - 1.2.1 As-Is 9
     - 1.2.2 Title 10
     - 1.2.3 Excluded Conditions 10
2. TERM 10
   - 2.1 Term 10
   - 2.2 Extension Fee Installment Payments 11
   - 2.3 Ownership of Improvements During Term 11
   - 2.4 Reversion of Improvements 11
     - 2.4.1 County's Election to Receive Improvements 11
     - 2.4.2 Duty to Remove 11
     - 2.4.3 County's Right to Remove Improvements 13
     - 2.4.4 Duty to Remove Equipment, Etc 13
     - 2.4.5 Title to Certain Improvements Passes to County; Lessee to Maintain 14
3. USE OF PREMISES 14
   - 3.1 Specific Primary Use 14
   - 3.2 Prohibited Uses 14
     - 3.2.1 Nuisance 14
     - 3.2.2 Restrictions and Prohibited Uses 14
   - 3.3 Active Public Use 15
   - 3.4 Days of Operation 15
   - 3.5 Signs and Awnings 15
   - 3.6 Compliance with Regulations 16
   - 3.7 Rules and Regulations 17
   - 3.8 Reservations 17
   - 3.9 Street Widening and Waiver of Abutter's Rights of Access 17
4. PAYMENTS TO COUNTY 18
   - 4.1 Net Lease 18

TABLE OF CONTENTS
(continued)

Page

4.1.1 Utilities 19
4.1.2 Taxes and Assessments 19
4.2 Rental Payments 19
4.2.1 Annual Minimum Rent and Monthly Minimum Rent 19
4.2.2 Percentage Rent 20
4.3 Renegotiation of Annual Minimum and Percentage Rents 28
4.3.1 Fair Market Rental Value 28
4.3.2 Renegotiation Period 28
4.3.3 Negotiation of Fair Market Rental Value 29
4.3.4 Arbitration 29
4.3.5 Retroactivity 29
4.4 Payment 30
4.5 Late Fees 30
4.6 Changes of Ownership and Financing Events 31
4.6.1 Change of Ownership 31
4.6.2 Excluded Transfers 31
4.6.3 Aggregate Transfer 32
4.6.4 Beneficial Interest 32
4.7 Calculation and Payment 32
4.7.1 Transfer of Less Than Entire Interest 34
4.7.2 Purchase Money Notes/Stock Consideration 34
4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge 35
4.8 Net Proceeds Share 35
4.8.1 Transaction by Original Lessee 36
4.8.2 Transfer by Lessee's Successor 37
4.8.3 Transfers of Major Sublessee's Interest 38
4.8.4 Other Transfers 38
4.8.5 Net Refinancing Proceeds 38
4.8.6 Transfers to which Sections 4.6 through 4.8 Apply 38
4.8.7 Payment 39
4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List 39

TABLE OF CONTENTS
(continued)

Page

5. REDEVELOPMENT WORK; ALTERATIONS 39

5.1 Redevelopment Work 39

5.2 Application of Article 5 to Redevelopment Work 40

5.3 Plans and Specifications for Alterations 40

5.3.1 Schematics and Narrative 40

5.3.2 Preliminary Plans and Specifications 41

5.3.3 Final Plans and Specifications 42

5.4 Conditions Precedent to the Commencement of Construction 43

5.4.1 Permits and Other Approvals 43

5.4.2 Copies of Construction Contracts 43

5.4.3 Performance and Payment Bonds 43

5.4.4 Alternative Security 44

5.4.5 Evidence of Financing 45

5.4.6 Work Schedule 45

5.5 County Cooperation 45

5.6 Completion of Redevelopment Work 45

5.7 Manner of Construction 48

5.7.1 General Construction Standards 48

5.7.2 Utility Work 48

5.7.3 Construction Safeguards 48

5.7.4 Compliance with Construction Documents and Laws; Issuance of Permits 48

5.7.5 Notice to Director; Damage to County Improvements 49

5.7.6 Rights of Access 49

5.7.7 Notice of Completion 49

5.7.8 Final Certificate of Completion 49

5.8 Use of Plans 50

5.9 Where Director Approval Not Required 50

5.10 Protection of County 50

5.10.1 Posting Notices 51

5.10.2 Prompt Payment 51

TABLE OF CONTENTS
(continued)

Page

5.10.3 Liens; Indemnity 51
5.11 Subsequent Renovation 51
5.12 Subsequent Renovation Fund 52
5.13 Capital Improvement Fund 53
5.14 FF&E Fund 55
6. CONDEMNATION 56
6.1 Definitions 56
6.1.1 Condemnation 56
6.1.2 Date of Taking 57
6.1.3 Award 57
6.1.4 Condemnor 57
6.2 Parties' Rights and Obligations to be Governed by Lease 57
6.3 Total Taking 57
6.4 Effect of Partial Taking 57
6.5 Effect of Partial Taking on Rent 58
6.6 Waiver of Code of Civil Procedure Section 1265.130 58
6.7 Payment of Award 58
6.7.1 Partial Taking Without Termination 58
6.7.2 Taking For Temporary Use 59
6.7.3 Total Taking and Partial Taking with Termination 59
6.7.4 Disputes 59
7. SECURITY DEPOSIT 60
7.1 Amount and Use 60
7.2 Replacement 60
7.3 Renewal 60
8. INDEMNITY 61
9. INSURANCE 61
9.1 Lessee's Insurance 61
9.2 Provisions Pertaining to Property Insurance 63
9.3 General Insurance Requirements 64
9.4 Additional Required Provisions 64

TABLE OF CONTENTS
(continued)

Page

9.5 Failure to Procure Insurance 65
9.6 Adjustment to Amount of Liability Coverage 65
9.7 Notification of Incidents, Claims or Suits 66
10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION 66
10.1 Lessee's Maintenance and Repair Obligations 66
10.2 Maintenance Deficiencies 67
10.3 Option to Terminate for Uninsured Casualty 68
10.4 No Option to Terminate for Insured Casualty 69
10.5 No County Obligation to Make Repairs 69
10.6 Repairs Not Performed by Lessee 69
10.7 Other Repairs 70
10.8 Notice of Damage 70
10.9 Waiver of Civil Code Sections 70
11. ASSIGNMENT AND SUBLEASE 70
11.1 Subleases 70
11.1.1 Definition 70
11.1.2 Approval Required 70
11.1.3 Major Sublease 71
11.2 Approval of Assignments and Major Subleases 71
11.2.1 County's Use of Discretion and Limitation on Permissible Assignees 71
11.2.2 Involuntary Transfers Prohibited 72
11.2.3 Procedure 72
11.2.4 County Right to Recapture 74
11.2.5 County Credits Toward Purchase Price 75
11.3 Terms Binding Upon Successors, Assigns and Sublessees 76
12. ENCUMBRANCES 77
12.1 Financing Events 77
12.2 Consent Requirements in the Event of a Foreclosure Transfer 78
12.3 Effect of Foreclosure 78
12.4 No Subordination 80

TABLE OF CONTENTS
(continued)

Page

12.5 Modification or Termination of Lease 80
12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees 81
12.7 New Lease 81
12.8 Holding of Funds 82
12.9 Participation in Certain Proceedings and Decisions 83
12.10 Fee Mortgages and Encumbrances 83
12.11 No Merger 84
12.12 Rights of Encumbrance Holders With Respect to Reversion 84
12.13 Acceleration of Extension Fee 85
13. DEFAULT 85
13.1 Events of Default 85
13.1.1 Monetary Defaults 85
13.1.2 Maintenance of Security Deposit 85
13.1.3 Failure to Perform Other Obligations 85
13.1.4 Nonuse of Premises 85
13.2 Limitation on Events of Default 86
13.3 Remedies 86
13.3.1 Terminate Lease 87
13.3.2 Keep Lease in Effect 87
13.3.3 Termination Following Continuance 87
13.4 Damages 87
13.4.1 Unpaid Rent 87
13.4.2 Post-Termination Rent 87
13.4.3 Other Amounts 87
13.5 Others' Right to Cure Lessee's Default 88
13.6 Default by County 88
14. ACCOUNTING 88
14.1 Maintenance of Records and Accounting Method 88
14.2 Cash Registers 89
14.3 Statement; Payment 89
14.4 Availability of Records for Inspector's Audit 89

TABLE OF CONTENTS
(continued)

Page

14.4.1 Entry by County 89
14.5 Cost of Audit 90
14.6 Additional Accounting Methods 90
14.7 Accounting Year 90
14.8 Annual Financial Statements 90
14.9 Accounting Obligations of Sublessees 90
14.10 Inadequacy of Records 90
15. MISCELLANEOUS 90
15.1 Quiet Enjoyment 90
15.2 Time is of the Essence 91
15.3 County Costs 91
15.4 County Disclosure and Lessee's Waiver 91
15.4.1 Disclosures and Waiver 91
15.4.2 Right of Offset 91
15.5 Holding Over 92
15.6 Waiver of Conditions or Covenants 93
15.7 Remedies Cumulative 93
15.8 Authorized Right of Entry 93
15.9 Place of Payment and Filing 93
15.10 Service of Written Notice or Process 93
15.11 Interest 95
15.12 Captions 95
15.13 Attorneys' Fees 95
15.14 Amendments 96
15.15 Time For Director Approvals 96
15.16 Time For County Action 96
15.17 Estoppel Certificates 96
15.18 Indemnity Obligations 96
15.19 Controlled Prices 96
15.20 Waterfront Promenade 97
15.21 Lessee Responsibility for Marina Beach Public Improvements Costs 97

TABLE OF CONTENTS
(continued)

Page

15.22 Storm Drain System 98

16. ARBITRATION 100

16.1 Selection of Arbitrator 101

16.2 Arbitrator 101

16.3 Scope of Arbitration 101

16.4 Immunity 101

16.5 Section 1282.2 101

16.6 Statements of Position 103

16.7 Written Appraisal Evidence 103

16.8 Evidence 103

16.9 Discovery 104

16.10 Awards of Arbitrators 104

16.10.1 Monetary Issues 104

16.10.2 Nonmonetary Issues 104

16.11 Powers of Arbitrator 105

16.12 Costs of Arbitration 105

16.13 Amendment to Implement Judgment 105

16.14 Impact of Gross Error Allegations 105

16.15 Notice 105

17. DEFINITION OF TERMS; INTERPRETATION 106

17.1 Meanings of Words Not Specifically Defined 106

17.2 Tense; Gender; Number; Person 106

17.3 Business Days 106

17.4 Parties Represented by Consultants, Counsel 106

17.5 Governing Law 106

17.6 Reasonableness Standard 106

17.7 Compliance with Code 106

17.8 Memorandum of Lease 106

EXHIBIT A LEGAL DESCRIPTION OF PREMISES A-1

EXHIBIT B DEVELOPMENT PLAN B-1

#39 of JUN 16, 2009

AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 27R — MARINA DEL REY

THIS AMENDED AND RESTATED LEASE AGREEMENT ("**Lease**") is made and entered into as of the 26th day of JUNE, 2009 ("**Effective Date**"), by and between the COUNTY OF LOS ANGELES ("**County**"), as lessor, and MARINA DEL REY INNVESTORS, a California limited partnership (together with its permitted successors and assigns, "**Lessee**"), as lessee.

WITNESSETH

WHEREAS, County and Spencer Investment Company, a California corporation, and Michael Sims, an individual (collectively, the "**Original Lessee**"), entered into Lease No. 6573 dated February 11, 1963 (as amended prior hereto, the "**Existing Lease**") whereby prior to the Effective Date Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 27R and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**"), the term of which commenced on January 1, 1963 and currently extends through December 31, 2022 (the "**Existing Expiration Date**"); and

WHEREAS, Lessee has succeeded to the Original Lessee's right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated May 30, 2006 (as amended, the "**Option Agreement**"), pursuant to which County has granted Lessee an option (the "**Option**") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (a) the extension of the term of the Existing Lease through December 31, 2061, and (b) the redevelopment of the Premises in accordance with the terms and provisions hereof; and

WHEREAS, Lessee 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 other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. **BACKGROUND AND GENERAL**.

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

1.1.1 "**ACCOUNTING YEAR**" shall have the meaning set forth in Section 14.7.

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39

JUN 16 2009

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, (ii) costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.3 "**ADA**" shall have the meaning set forth in Section 1.2.

1.1.4 "**ADDITIONAL HOTEL ROOMS**" shall have the meaning set forth in Section 5.1.

1.1.5 "**ADJUSTMENT DATES**" shall have the meaning set forth in subsection 4.2.1.4.

1.1.6 "**ADMINISTRATIVE CHARGE**" shall have the meaning set forth in Section 4.6.

1.1.7 "**AGGREGATE TRANSFER**" shall have the meaning set forth in subsection 4.6.3.

1.1.8 "**ALTERATIONS**" shall have the meaning set forth in Section 5.2.

1.1.9 "**ANNUAL MINIMUM RENT**" shall have the meaning set forth in subsection 4.2.1.

1.1.10 "**APPLICABLE COSTS**" shall have the meaning set forth in subsection 4.8.1 or 4.8.2, as applicable.

1.1.11 "**APPLICABLE LAWS**" shall have the meaning set forth in subsection 1.2.1.

1.1.12 "**APPLICABLE RATE**" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.3.5, plus three percent (3%) per annum; however, 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 first 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.

1.1.13 "**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.

1.1.14 "**ASSIGNMENT STANDARDS**" shall have the meaning set forth in Section 11.2.

1.1.15 "**AUDITOR-CONTROLLER**" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.16 "**AWARD**" shall have the meaning set forth in subsection 6.1.3.

1.1.17 "**BASE VALUE**" shall have the meaning set forth in subsection 4.8.1.1.

1.1.18 "**BENEFICIAL INTEREST**" or "**BENEFICIAL RESIDUAL INTEREST**" shall have the meaning set forth in subsection 4.6.4.

1.1.19 "**BOARD**" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.20 "**BUSINESS DAY**" shall have the meaning set forth in Section 17.3.

1.1.21 "**CALCULATION NOTICE**" shall have the meaning set forth in Section 4.7.

1.1.22 "**CAPITAL IMPROVEMENT FUND**" shall have the meaning set forth in Section 5.13.

1.1.23 "**CHANGE OF OWNERSHIP**" shall have the meaning set forth in subsection 4.6.1.

1.1.24 "**CHANGE OF CONTROL**" shall have the meaning set forth in subsection 4.6.1.

1.1.25 "**CITY**" shall mean the City of Los Angeles, California.

1.1.26 "**CO DATE**" shall mean the date of the issuance of the first certificate of occupancy (whether temporary or permanent) for any of the Additional Hotel Rooms.

1.1.27 "**CONDEMNATION**" shall have the meaning set forth in subsection 6.1.1.

1.1.28 "**CONDEMNOR**" shall have the meaning set forth in subsection 6.1.4.

1.1.29 "**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 agreed upon by County and Lessee.

1.1.30 "**COUNTY**" shall have the meaning set forth in the first paragraph of this Lease.

1.1.31 "**COUNTY OPTION**" shall have the meaning set forth in subsection 11.2.4.

1.1.32 "**COUNTY OPTION PRICE**" shall have the meaning set forth in subsection 11.2.4.

1.1.33 "**COUNTY POOL RATE**" shall have the meaning set forth in subsection 4.3.5 of this Lease.

1.1.34 "**DATE OF TAKING**" shall have the meaning set forth in subsection 6.1.2.

1.1.35 "**DEDICATION AREA**" shall have the meaning set forth in subsection 3.9.1 of this Lease.

1.1.36 "**DEPARTMENT**" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.37 "**DEVELOPMENT PLAN**" shall have the meaning set forth in Section 5.1.

1.1.38 "**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 Lease.

1.1.39 "**DISQUALIFICATION JUDGMENT**" shall have the meaning set forth in subsection 16.15.1.

1.1.40 "**DOCUMENTED TRANSACTION COSTS**" shall have the meaning set forth in subsection 4.8.1.3.

1.1.41 "**EFFECTIVE DATE**" shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.42 "**ENCUMBRANCE**" shall have the meaning set forth in subsection 12.1.1.

1.1.43 "**ENCUMBRANCE HOLDER**" shall have the meaning set forth in subsection 12.1.1.

1.1.44 "**ENR INDEX**" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.45 "**EVENTS OF DEFAULT**" shall have the meaning set forth in Section 13.1.

1.1.46 "**EXCLUDED TRANSFERS**" shall have the meaning set forth in subsection 4.6.2.

1.1.47 "**EXISTING EXPIRATION DATE**" shall have the meaning set forth in the preamble to this Lease.

1.1.48 "**EXISTING LEASE**" shall have the meaning set forth in the preamble to this Lease.

1.1.49 "**EXTENDED TIME**" shall have the meaning set forth in Section 15.15.

1.1.50 "**FAIR MARKET RENTAL VALUE**" shall have the meaning set forth in subsection 4.3.1.

1.1.51 "**FINAL PLANS AND SPECIFICATIONS**" shall have the meaning set forth in subsection 5.3.3.

1.1.52 "**FINANCING EVENT**" shall have the meaning set forth in Section 12.1.

1.1.53 "**FIRST DEPOSIT MONTH**" shall have the meaning set forth in Section 5.14.

1.1.54 "**FORCE MAJEURE**" means fire, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo or other similar cause or event beyond the control of Lessee.

1.1.55 "**FORCE MAJEURE DELAY**" shall have the meaning set forth in subsection 5.6.1.

1.1.56 "**GROSS ERROR**" shall have the meaning set forth in subsection 16.15.4.

1.1.57 "**GROSS PROCEEDS**" shall have the meaning set forth in Section 4.8.

1.1.58 "**GROSS RECEIPTS**" shall have the meaning set forth in subsection 4.2.2.3.

1.1.59 "**IMPROVEMENTS**" means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways,

plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.60 "**IMPROVEMENT COSTS**" shall have the meaning set forth in subsection 4.8.1.2.

1.1.61 "**INCOME APPROACH**" shall have the meaning set forth in Section 6.5.

1.1.62 "**INITIATING PARTY**" shall have the meaning set forth in the first paragraph of Article 16.

1.1.63 "**INSTITUTIONAL LENDER**" shall have the meaning set forth in subsection 12.1.3.1.

1.1.64 "**INSURANCE RENEGOTIATION DATE**" shall have the meaning set forth in Section 9.3.

1.1.65 "**LATE FEE**" shall have the meaning set forth in Section 4.5.

1.1.66 "**LEASE**" shall mean this Amended and Restated Lease Agreement.

1.1.67 "**LEASE YEAR**" shall have the meaning set forth in Section 2.1.

1.1.68 "**LESSEE**" shall have the meaning set forth in the first paragraph of this Lease.

1.1.69 "**LESSEE SALE PRICE**" shall have the meaning set forth in subsection 11.2.4.

1.1.70 "**MAJOR SUBLEASE**" shall have the meaning set forth in subsection 11.1.1.

1.1.71 "**MAJOR SUBLESSEE**" shall have the meaning set forth in subsection 11.1.1.

1.1.72 "**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 one percent (1%) of the total estimated construction cost of the Redevelopment Work (or the other Alterations that are then proposed to be constructed by Lessee); (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 this Lease; (5) the modification (a) changes the number of hotel rooms by more than ten percent (10%), or (b) reduces the number of parking spaces; or (6) the modification pertains to the Promenade.

1.1.73 "**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 Marina del Rey.

1.1.74 "**MONTHLY MINIMUM RENT**" shall have the meaning set forth in subsection 4.2.1.

1.1.75 "**NET AWARDS AND PAYMENTS**" shall have the meaning set forth in Section 6.7.

1.1.76 "**NET PROCEEDS SHARE**" shall have the meaning set forth in Section 4.6.

1.1.77 "**NET REFINANCING PROCEEDS**" shall have the meaning set forth in subsection 4.8.5.

1.1.78 "**NET TRANSFER PROCEEDS**" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.79 "**NOTICE OF COMPLETION**" shall have the meaning set forth in subsection 5.7.7.

1.1.80 "**OPTION AGREEMENT**" shall have the meaning set forth in the preamble to this Lease.

1.1.81 "**PARTIAL TAKING**" shall have the meaning set forth in Section 6.5.

1.1.82 "**PAYMENT BOND**" shall have the meaning set forth in subsection 5.4.3.2.

1.1.83 "**PERCENTAGE RENT**" shall have the meaning set forth in subsection 4.2.2.

1.1.84 "**PERFORMANCE BOND**" shall have the meaning set forth in subsection 5.4.3.1.

1.1.85 "**PERMITTED CAPITAL EXPENDITURES**" shall have the meaning set forth in Section 5.13.

1.1.86 "**PERMITTED USES**" shall have the meaning set forth in Section 3.1.

1.1.87 "**PREMISES**" shall have the meaning set forth in the preamble to this Lease.

1.1.88 "**PRIME RATE**" shall have the meaning set forth in subsection 4.3.5.

1.1.89 "**PROMENADE**" shall have the meaning set forth in Section 15.20.

1.1.90 "**PROPOSED TRANSFER**" shall have the meaning set forth in subsection 11.2.4.

1.1.91 "**PUBLIC WORKS DIRECTOR**" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.92 "**PURCHASE MONEY NOTE**" shall have the meaning set forth in subsection 4.7.2.

1.1.93 "**REDEVELOPMENT WORK**" shall have the meaning set forth in Section 5.1.

1.1.94 "**REMOVAL SECURITY FUND**" shall have the meaning set forth in subsection 2.4.2.

1.1.95 "**RENEGOTIATION DATES**" shall have the meaning set forth in Section 4.3.

1.1.96 "**REPLY**" shall have the meaning set forth in Section 16.5.

1.1.97 "**REQUIRED COMPLETION DATE**" shall have the meaning set forth in Section 5.6.

1.1.98 "**RESPONDING PARTY**" shall have the meaning set forth in the first paragraph of Article 16.

1.1.99 "**REVERSION AMENDMENT**" shall have the meaning set forth in subsection 5.6.3.

1.1.100 "**SECTION**" shall mean a section of this Lease.

1.1.101 "**SECURITY DEPOSIT**" shall have the meaning set forth in Section 7.1.

1.1.102 "**SHALL**" and "**WILL**" are mandatory and the word "**MAY**" is permissive.

1.1.103 "**STATE**" shall mean the State of California.

1.1.104 "**STATEMENT OF POSITION**" shall have the meaning set forth in subsection 16.6.

1.1.105 "**SUBLEASE**" shall have the meaning set forth in subsection 11.1.1.

1.1.106 "**SUBLESSEE**" shall have the meaning set forth in subsection 11.1.1.

1.1.107 "**SUBSECTION**" shall mean a subsection of a Section of this Lease.

1.1.108 "**SUBSEQUENT RENOVATION**" shall have the meaning set forth in Section 5.11.

1.1.109 "**SUBSEQUENT RENOVATION FUND**" shall have the meaning set forth in Section 5.12.

1.1.110 "**SUBSEQUENT RENOVATION PLAN**" shall have the meaning set forth in Section 5.11.

1.1.111 "**TERM**" shall have the meaning set forth in Section 2.1.

1.1.112 "**TIME OF THE ESSENCE**" shall have the meaning set forth in Section 15.2.

1.1.113 "**UNINSURED LOSS**" shall have the meaning set forth in Section 10.2.

1.1.114 "**UNREASONABLE COUNTY ACTIVITY**" shall have the meaning set forth in subsection 5.6.2.

1.1.115 "**WRITTEN APPRAISAL EVIDENCE**" shall have the meaning set forth in subsection 16.7.

1.2 **Lease**. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates and supercedes the Existing Lease.

1.2.1 **As-Is**. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1963, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.3, Lessee 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 Lease, at the time of the Effective Date and Lessee 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 WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee 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 and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/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, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (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/or any 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 and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("**Applicable Laws**") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) subject to subsection 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon. Notwithstanding the foregoing, this subsection 1.2.1 shall not alter the parties' rights and obligations under the Existing Lease with respect to any environmental conditions existing on the Premises as of the Effective Date.

1.2.2 **Title**. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County 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 Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 **Excluded Conditions**. Notwithstanding anything to the contrary set forth herein, the terms and provisions of subsection 1.2.1 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 of the County ("**Excluded Conditions**"); provided, however, that this Lease (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. **TERM**.

2.1 **Term**. The term of the Lease ("**Term**") commenced on January 1, 1963. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on December 31, 2061. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. Notwithstanding the foregoing, with respect to any provision in this Lease that refers to a specified number of Lease Years after the Effective Date, the number of Lease Years after the Effective Date shall be calculated based on

the following: (a) if the Effective Date is prior to July 1 of a calendar year , then the first Lease Year after the Effective Date shall mean the period from the Effective Date through December 31 of the calendar year during which the Effective Date occurs, and (b) if the Effective Date is on or after July 1 of a calendar year, then the first Lease Year shall mean the period from the Effective Date through December 31 of the calendar year following the calendar year during which the Effective Date occurs.

2.2 **Extension Fee Installment Payments**. In consideration of the extension of the term of the Existing Lease as provided herein, Lessee shall be required to pay to County the Extension Fee Installment Payments described in Section 4.2 of the Option Agreement. The Extension Fee Installment Payments shall be considered as additional rent payable by Lessee under this lease. The parties hereto agree and acknowledge that prior to the execution of the Option Agreement County conducted an appraisal of the thirty-nine (39) year extension of the Term from January 1, 2023 to December 31, 2061 as provided herein, and that such appraisal determined that the Extension Fee payable under the Option Agreement was not less than the appraised value of the Lease extension provided herein.

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

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

2.4.1 **County's Election to Receive Improvements**. At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.2 **Duty to Remove**. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of

removing all Improvements on the Premises at the expiration of the Term. County may give written notice (the "**County Removal Notice**") at any time, no later than the later of (a) one (1) year following Lessee's delivery of the removal cost report described above, or (b) nine (9) years prior to the expiration of the Term, or concurrently upon any earlier termination, of County's election to reserve the right to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If County reserves the right to require the removal of Improvements in the County Removal Notice, then County shall have the right to notify Lessee in writing not later than two (2) years prior the expiration of the Term as to whether County in fact desires to exercise such reserved right. If County fails to notify Lessee in writing pursuant to the immediately preceding sentence by the date that is two (2) years prior to the expiration of the Term, then County shall be deemed to have elected to require Lessee to remove the Improvements in accordance with the County Removal Notice. If County requires Lessee to remove the Improvements, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps.

If County has elected to require Lessee to remove the Improvements, Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the expiration of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this subsection 2.4.2 and/or the Lessee's removal obligations under subsection 2.4.4 below, for a period (the "**Removal Extension Period**") of not more than one hundred twenty (120) days after the expiration of the Term; provided, however, that Lessee shall be required to pay to County concurrent with Lessee's extension notice Monthly Minimum Rent (calculated at the rate in effect immediately prior to the expiration of the Term) for the Removal Extension Period. The aggregate amount of Monthly Minimum Rent for the entire Removal Extension Period shall be paid by Lessee to County in advance as a condition to the extension described in this paragraph. During the Removal Extension Period all of the Lessee's other obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises and other than the obligation to pay any Monthly Minimum Rent over and above the advance Monthly Minimum Rent paid by Lessee as provided above) shall be applicable, including without limitation, the Lessee's obligations with respect to insurance and indemnification.

If County elects to reserve the right to require Lessee to remove Improvements hereunder pursuant to the County Removal Notice, then Lessee shall, no later than the date which is thirty (30) days after Lessee's receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee (the "**Removal Security Fund**"), 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, and (ii) a schedule satisfactory to County for the delivery by Lessee of the Removal Security Fund, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. If County requires Lessee to establish a Removal Security Fund, then Lessee shall have the right to credit to such removal fund the monthly Capital Improvement Fund deposits thereafter required to be made by Lessee during the remaining Term pursuant to Section 5.13 of this Lease, to the extent that in the Director's sole and absolute judgment sufficient funds remain available from time to time in the Capital Improvement Fund to satisfy the purposes of Section 5.13 of this Lease. Any uncured failure by Lessee to fund the Removal Security Fund as required under this subsection 2.4.2 shall constitute an Event of Default.

If County requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the Term for the Improvement removal purposes described in this subsection 2.4.2, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but County does not require the removal of the Improvements at the end of the Term, then the Removal Security Fund (including any Capital Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 5.13) shall be returned to Lessee.

If County decides not to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3 **County's Right to Remove Improvements**. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then County may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4 **Duty to Remove Equipment, Etc**. No later than the expiration of the Term or sooner termination of this Lease (or within the additional one hundred twenty (120) day period described in subsection 2.4.2 above), Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture,

equipment and personal property within said period, and said failure continues for thirty (30) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.4.5 **Title to Certain Improvements Passes to County; Lessee to Maintain**. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee 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 that title shall vest in County, all 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 Lease), shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. **USE OF PREMISES**.

3.1 **Specific Primary Use**. The Premises shall be used by Lessee for the operation and management of a hotel of approximately 111 hotel rooms, with associated business center, meeting rooms, dining and function patio, and other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as the "**Permitted Uses**").

The Premises shall initially be operated under the trade name "Jamaica Bay Inn" or another trade name reasonably acceptable to Director. Lessee shall have no right to change the trade name of the Premises without the prior written consent of Director, which consent shall not be unreasonably withheld. Throughout the Term of the Lease the Premises shall be operated by an experienced hotel operator with a nationwide reservation system in which the Premises participates. Lessee shall have no right to change the operator of the Premises without County's prior written consent, which consent shall be granted or denied in accordance with the reasonable judgment of County.

Except as specifically provided herein, the Premises 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 Lessee bears all risk of an adverse change in Applicable Laws.

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

3.2.1 **Nuisance**. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, 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 in appropriate receptacles intended for such purposes, nor shall any

portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property. Lessee shall be permitted to perform the Redevelopment Work on the Premises, provided that such work is conducted in compliance with Article 5 of this Lease.

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

3.2.2.1 The Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 The Premises 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 No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

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 shall be erected, used or maintained by Lessee 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 or other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law;

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 (a) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform 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 any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate

from the Premises or any portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws; and

3.3 **Active Public Use**. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises fully and continuously (except to the extent that Lessee 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 Lessee under this Lease (collectively, "**Operating Covenant Exceptions**")) in light of these objectives, consistent with the operation of comparable hotel facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 **Days of Operation**. The 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 hotel facilities in Los Angeles County, California, subject to Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses in Marina del Rey 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 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), whether pursuant to Article 5 of this Lease or otherwise, in writing, 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 arbitration pursuant to Article 16 of this Lease.

3.6 **Compliance with Regulations**. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No. 200500006, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

3.7 **Rules and Regulations**. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other hotel and/or commercial facilities in Marina del Rey, and delivered in writing to Lessee. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.8 **Reservations**. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the date of the Existing Lease, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that this Lease 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 Lessee, 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 Lessee, at Lessee's cost, in Lessee's efforts to address title matters, if any, which would prevent Lessee 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 Lessee in the relocation at Lessee's cost of any easements which interfere with the Redevelopment Work, to the extent such relocation is reasonably acceptable to County).

3.9 **Street Widening and Waiver of Abutter's Rights of Access**. The leasehold interest in the Premises granted to Lessee under this Lease is also subject to the following additional reservations, covenants, waivers, releases and restrictions:

3.9.1 **Street Widening**. Upon written notice from County to Lessee, the Premises shall be reduced to exclude from the Premises that portion of the Premises necessary for the future widening of Admiralty Way associated with the Admiralty Way Widening project and the Admiralty Way/Via Marina Reconfiguration project (the "Dedication Area"). The Dedication Area shall consist of the area described on Exhibit F attached to this Lease, or such portion thereof as elected by County. Until written notice from County of the exclusion of the Dedication Area from the Premises, the Dedication Area shall remain a part of the Premises under this Lease. Lessee shall not construct any Improvements in the Dedication Area other than any landscape or hardscape Improvements approved by County in its sole discretion. All Improvements in the frontage along Admiralty Way shall be constructed by Lessee in accordance with the geometric design plan dated February 25, 2009 issued by the Department of Public Works of the County ("Public Works"), or as otherwise directed by Public Works in connection with the issuance of the permits for the construction of the Redevelopment Work. Upon written notice from County of the exclusion of the Dedication Area from the Premises, the Dedication Area shall be automatically excluded and deleted from the Premises as of the effective date elected by County, without further action by the parties. Any Encumbrance granted with respect to the Premises shall be subject and subordinate to the terms and provisions

of this Section 3.9, and upon County's election to exclude the Dedication Area from the Premises, no Encumbrance shall thereafter encumber the Dedication Area in any manner. Notwithstanding that no further action or consent by Lessee or an Encumbrance Holder shall be required to remove the Dedication Area from the Premises or to terminate all Encumbrances with respect to the Dedication Area, upon the request of County, Lessee and all Encumbrance Holders shall execute (in recordable form if requested by County) such documentation as requested by County to confirm the exclusion from the Premises of, and the termination of any Encumbrance with respect to, the Dedication Area. Lessee shall not be entitled to any compensation in connection with the exclusion from the Premises of the Dedication Area.

3.9.2 **Street Access**. Vehicular access from or to Admiralty Way or Palawan Way to or from the Premises shall be subject to approval by Public Works of the location of curb cuts in accordance with the standards of Public Works, and there shall be no such vehicular access except over and through such approved curb cuts.

4. PAYMENTS TO COUNTY.

4.1 **Net Lease**. The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County. 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 expressly set forth in this Lease. Except as specifically set forth herein, Lessee 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, including without limitation the parking areas included within the Premises.

4.1.1 **Utilities**. In addition to the rental charges as herein provided, Lessee 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, to said Premises.

4.1.2 **Taxes and Assessments**. Lessee 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 Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to 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. Lessee'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 the grant to Lessee of the Option or Lessee's exercise thereof. Lessee 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 Lessee.

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 Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall

include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee'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, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 **Annual Minimum Rent and Monthly Minimum Rent**. Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 below) during each Lease Year of the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any Lease Year is shorter or longer than a full calendar year, or if any month during the Term is less than a full calendar month, then the Annual Minimum Rent and Monthly Minimum Rent, as applicable, shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to the number of days in such full calendar year or month, as applicable.

4.2.1.1 During the period from the Effective Date through the earlier of the CO Date or the Required Completion Date, the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total annual rent (including, without limitation, minimum rent and percentage rent) which was payable to County under the Existing Lease during the three (3) year period immediately preceding the Effective Date. Lessee shall provide written notice to County of the CO Date promptly upon the occurrence thereof.

4.2.1.2 During the period commencing on the day after the end of the period described in subsection 4.2.1.1 above and continuing until the end of the calendar year during which the third anniversary of the last day of the period described in subsection 4.2.1.1 occurs, the Annual Minimum Rent shall be equal to the product of (a) the average total Annual Minimum Rent and Percentage Rent projected to be payable by Lessee for the three (3) year period after the CO Date, multiplied by (b) .75; provided, however, in no event shall the Annual Minimum Rent payable by Lessee under this subsection 4.2.1.1 be less than the Annual Minimum Rent payable by Lessee pursuant to subsection 4.2.1.1 above. Not later than three (3) months prior to the earlier of the projected CO Date or the Required Completion Date, Lessee shall deliver to County for County's reasonable approval Lessee's projected Gross Receipts for the three (3) year period following the CO Date, which projected Gross Receipts, as reasonably approved by County, shall be used to calculate the Annual Minimum Rent payable by Lessee under this subsection 4.2.1.2.

4.2.1.3 Effective at the end of the period described in subsection 4.2.1.2 and every three (3) years thereafter until the first Renegotiation Date, and thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "**Adjustment Date**" and collectively the "**Adjustment**

Dates"), the Annual Minimum Rent shall be adjusted as provided in this subsection 4.2.1.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the three (3) year period immediately preceding the Adjustment Date.

4.2.2 **Percentage Rent**. For the purposes of this Lease, "**Percentage Rent**" for any given month or year shall be defined as the sum of the amounts set forth in this subsection 4.2.2. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee and/or any sublessee shall be reported under the applicable percentage category set forth below in this subsection 4.2.2. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this subsection 4.2.2, 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 hereof, Lessee shall file a report of Gross Receipts by category and pay to County a sum equal to the total of the percentages set forth in categories (a) through (t) below of Gross Receipts for the previous month. Lessee shall be entitled to offset against each such Percentage Rent payment the amount of the installment of Monthly Minimum Rent paid by Lessee for such previous month.

(a) That percentage determined pursuant to category (t) below, of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats;

(b) That percentage determined pursuant to category (t) below, of Gross Receipts from the rental or other fees charged for the use of dry storage facilities and landside storage space;

(c) SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts or other fees charged for the rental, occupancy or use of the following structures: (1) apartments, (2) hotel and/or motel accommodations, and (3) meeting rooms; and SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts from filming or other television and/or motion picture activities, or from other activities not otherwise provided for in this subsection 4.2.2;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities, business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that, except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the

occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses are required to be reported under other categories of this subsection 4.2.2;

(d) That percentage determined pursuant to category (t) below, of Gross Receipts from the sale of new or used boats, house trailers, trailer cabanas;

(e) That percentage determined pursuant to category (t) below, of Gross Receipts received for boat brokerage, car rental, marine insurance, or other similar services; and FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee for commissions or other fees for laundry, dry cleaning or other similar activities where earnings are normally received on a commission basis, in the case in which Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(f) With respect to service enterprises not otherwise described in this subsection 4.2.2, including without limitation, cable, internet, satellite, telecommunication or other antennae fees, telephone, electricity co-generation and other utility services. FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee from such enterprise if Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(g) That percentage determined pursuant to category (t) below, of Gross Receipts from the rental of boats, or from ticket sales or other fees, charges or Gross Receipts from sport fishing or other commercial boating activities such as charter boat or bareboat charters, but not including the boating activities described in category (n) below;

(g1) FIVE PERCENT (5%) of Gross Receipts from the rental of bicycles, cycle carriages, scooters or other similar equipment;

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

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in subsection (j);

(j) THREE AND ONE-HALF PERCENT (3.5%), of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated

as a take-out food operation shall be reported under subsection (s1); a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) That percentage determined pursuant to category (t) below, of Gross Receipts from the sale of gasoline, diesel fuel or mixed fuel sold;

(l) That percentage determined pursuant to category (t) below, of Gross Receipts from sales by a fuel sales facility of petroleum or fuel products other than those covered by paragraph (k) above;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees, and assessments, except that separate assessments for capital improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by the Director;

(n) That percentage determined pursuant to category (t) below, of Gross Receipts from the operation of excursion, sightseeing or tour boats, or any water taxi;

(o) RESERVED;

(p) That percentage determined pursuant to category (t) below, of Gross Receipts from the operation of boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities;

(q) FIVE PERCENT (5%) of Gross Receipts of cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reportable under subsection (s);

(r) (1) In the case where parking facilities are operated by a third party operator under a parking operation agreement with Lessee or a Sublessee , (i) TWENTY PERCENT (20%) of the fee or other compensation paid by such third party operator to Lessee (or Sublessee) if the operator is entitled to receive parking revenue and is responsible for the payment of operating expenses; or (ii) FIVE PERCENT (5%) of the Gross Receipts from the operation of such parking if the operator collects such Gross Receipts on behalf of Lessee (or Sublessee) and Lessee (or Sublessee) is responsible for the payment of the operating expenses for such parking operation (which operating expenses include a fee or other compensation to the parking operator for the rendering of such parking services); or

(2) In the case where parking facilities are operated by Lessee or a Sublessee, FIVE PERCENT (5.0%) of Gross Receipts from such parking.

Notwithstanding the foregoing, if other comparable hotel projects in the Relevant Market (as defined below) generally provide parking at no charge or for a charge less than that charged by Lessee, then at Director's election the Gross Receipts under this Lease

attributable to parking charges in excess of the market hotel rate for such parking shall not be included in Percentage Rent under this category (r) but shall instead be considered Gross Receipts from the rental, occupancy or use of hotel accommodations under category (c) above; the "Relevant Market" shall mean the following hotels (or successor operations at the same location) that are then in operation: (I) Marina del Rey Marriott located on Parcel 141V; (II) Ritz Carlton Hotel located on Parcel 125H; (III) Marina del Rey Hotel located on Parcels 42/43; (IV) Courtyard Los Angeles Marina del Rey located at 13480 Maxella Avenue; and (V) any other then existing hotel located in Marina del Rey with 50 or more hotel rooms; provided, however, that a hotel that is otherwise included in the Relevant Market as described above and that is located on a leasehold with County that requires the lessee to pay to County percentage rent shall not be included in the Relevant Market unless in such lessee's lease with County the percentage rental rate applicable to gross receipts from parking revenues collected by or for the benefit of such lessee (i.e., gross receipts collected on a basis similar to that described in clauses (r)(1)(ii) and (r)(2) above and not gross receipts consisting of compensation paid to the lessee by the operator for the right to operate such parking facilities as in clause (r)(1)(i) above) is less than the percentage rental rate applicable to gross receipts from hotel room occupancy;

(s) FIVE PERCENT (5%) 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 4.2.2;

(s1) FOUR PERCENT (4%) of the Gross Receipts from the operation of any stores, shops or boutiques selling items at retail; and

(t) In the case where a specific percentage in the foregoing schedule has not been provided, then concurrent with County's or Director's approval of a specific additional or related use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, or (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this subsection (t) shall remain in effect until the next Renegotiation Date.

4.2.2.1 **Other Activities**. If Director or Lessee 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 Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. 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.

4.2.2.2 **Accounting Records and Procedures**. Lessee agrees to and shall comply with, and shall cause all of its sublessees, licensees, permittees and concessionaires to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.3 **Gross Receipts**. Except as herein otherwise provided, the term "**Gross Receipts**" as used in this Lease means the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance, promotional expenses or charges, and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires, 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, food, beverages or merchandise, calculated in accordance with the accounting method described in the last sentence of 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)(h) below), insurance and taxes.

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

(3) Gross Receipts reported by Lessee and its Sublessees, assignees, licensees, Lessees and permittees must include the usual charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees, assignees, licensees, concessionaires or permittees. Bona fide bad debts actually accrued by Lessee for amounts owed by subtenants, assignees, licensees concessionaries, permittees, 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.

(4) Gross Receipts shall not include any of the following 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 Lessee, where such returns or deliveries are made

solely for the convenient operation of the business of Lessee 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 Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee'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 Lessee 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 Lessee'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 Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee 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 one percent (1%) of the Gross Receipts from such business operation in any year;

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.

(5) Gross Receipts shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (1) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay

rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such utilities; and, (3) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's usage of utilities shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublesse's submetered consumption of such utilities, 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 Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

4.2.2.4 **Excess Payments Credit**. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Percentage Rent otherwise due under this Section 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days of its discovery and verification of such overpayment.

4.2.2.5 **Effect of Sublessee, etc. Doing Business**. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold, Lessee shall pay Percentage Rent based on whichever of the following results in the greater Percentage Rent: (1) the Gross Receipts of each Sublessee under one or more of categories (a) through (t) of this Section 4.2.2; or (2) the Gross Receipts received by Lessee from such Sublessee; provided, however, that this subsection 4.2.2.5 shall not be applicable to the uses described in clause (1) of category (c1) of this Section 4.2.2.

4.2.2.6 **Interest; Etc**. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 **Percentage Rent Does Not Affect Permitted Uses**. It is understood and acknowledged by Lessee that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee; thus, the Percentage Rent categories listed in subsection 4.2.2 are not all necessarily applicable to this Lease and are in no way intended to expand the Permitted Uses.

4.2.2.8 **Policy Statements**. Director, by Policy Statement and with the approval of Lessee, 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 Lease.

4.2.2.9 **CVB Surcharge**. Lessee funds its share of the cost of the operation of the Marina del Rey Convention and Visitor's Bureau ("**CVB**") through the self-imposed collection from its customers of a one percent (1%) surcharge against the fees charged to its customers for the occupancy of hotel and motel sleeping accommodations (the "**Surcharge**") and the monthly payment of the Surcharge to the CVB (the "**CVB Payment**"). In recognition of the mutually beneficial services provided by the CVB and in acknowledgment of the intended use of the Surcharge, County and Lessee agree that the Surcharge shall be excluded from Gross Receipts to the extent that Lessee pays the Surcharge to the CVB in the form of the CVB Payment prior to the date on which the monthly Gross Receipts report for the month during which the Surcharge is collected is due. Lessee shall report, as separate line items in the monthly Gross Receipts report, the amounts of the Surcharge excluded from Gross Receipts and the CVB Payment for such reported month. If for any month the CVB Payment is less than the Surcharge, then the allowable exclusion shall be limited to the actual CVB Payment, and Percentage Rent shall be payable under category (c) of subsection 4.2.2 with respect to the amount by which the Surcharge exceeds the CVB Payment. All records relating to the Surcharge and CVB Payments shall be maintained by Lessee in conformance with the requirements of Article 14 of this Lease.

4.3 **Renegotiation of Annual Minimum and Percentage Rents**. Effective as of the first January 1 following the tenth (10th) anniversary of the earlier of the CO Date or the Required Completion Date, and each ten (10) years thereafter (each a "**Renegotiation Date**" and collectively, the "**Renegotiation Dates**"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.3.1 **Fair Market Rental Value**. As used herein, "**Fair Market Rental Value**" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, 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 Lease, 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.

4.3.2 **Renegotiation Period**. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises.

Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee. Lessee shall have fifteen (15) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such fifteen (15) day period and County's notice to Lessee conspicuously stated in bold faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.3.3 **Negotiation of Fair Market Rental Value**. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.3.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.3.4 **Arbitration**. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.3.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by

arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.3.5 **Retroactivity**. In the event that, pursuant to subsections 4.3.3 or 4.3.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates, compounded quarterly:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("**County Pool Rate**"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "**Prime Rate**") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.4 **Payment**. Monthly Minimum Rent shall be paid by Lessee 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 Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth day of the calendar month following each month of the Term, calculated as follows: the Lessee 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, Lessee 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 4.2.2.5.

Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee 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 Lessee has received no such statement, invoice or demand.

4.5 **Late Fees**. In the event any payment hereunder is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") of six percent (6%) 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 Lessee shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Lessee within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after 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 Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, 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).

4.6 **Changes of Ownership and Financing Events**. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (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 Change of Ownership or Financing Event ("**Administrative Charge**") and (2) subject to the remaining provisions of this paragraph, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "**Net Proceeds Share**" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 12 and 13 of this Lease.

4.6.1 **Change of Ownership**. "**Change of Ownership**" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) of greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsection 4.6.1(a) or subsection 4.6.1(b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial residual interests in Lessee or a

Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee.

For the purposes of this Lease, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

4.6.2 **Excluded Transfers**. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date or the date on which a Change of Ownership occurred as to the interest transferred, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of any direct or indirect partner or member of Lessee who is an individual;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease 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 Lessee 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 Lessee 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 and/or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with subsections 4.6.2.1 through 4.6.2.4 above;

4.6.2.6 any transfer resulting from a Condemnation by County; or

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

4.6.3 **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 residual interests in Lessee or a Major Sublessee, as appropriate) 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 Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership 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 transaction 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.

4.6.4 **Beneficial Interest**. As used in this Lease, "**beneficial interest**" or "**beneficial residual interest**" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.4.1 **Interests Held By Entities**. Except as otherwise provided herein, an interest in Lessee, this Lease 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 Lessee or a Major Sublessee, as appropriate, 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 Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2 **Ownership of Multiple Assets**. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of

the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 **Calculation and Payment**. A deposit of Fifteen Thousand and 00/100 Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (that is not an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership 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 Lessee 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 Lessee 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 Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. 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 Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share 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 arbitration of the dispute pursuant to Article 16 of this

Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 **Transfer of Less Than Entire Interest**. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share 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 most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share, but excluding any event as to which the Net Proceeds Share is expressly stated to be $0 under the provisions of Section 4.9 below) with respect to this Lease (or a Major Sublease), or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

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 Lessee 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 arbitration pursuant to Article 16 below.

4.7.3 **Obligation to Pay Net Proceeds Share and Administrative Charge**. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof; provided, however, in the case of a transfer of an interest in Lessee (as opposed to a transfer by Lessee of an interest in the Lease or the Premises) in which the transferor and transferee fail to pay the Administrative Charge and/or Net Proceeds Share due hereunder, as long as Lessee uses its best efforts to cause the payment of the required Administrative Charge and Net Proceeds Share to be made, County shall, for a period of up to three (3) years following the Change of Ownership, forebear from exercising any right to terminate the Lease as a result thereof; provided further that at the end of such three (3) year period County shall no longer have any obligation to forebear from terminating the Lease if the Administrative Charge and Net Proceeds Share, plus interest as described below, has not been paid in full. An Administrative Charge and Net Proceeds Share not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%). For purposes of determining whether County is required to forebear from terminating the Lease as described above, Lessee's obligation to use its best efforts to cause the payment of the unpaid Administrative Charge and/or Net Proceeds Share shall include the obligation at Lessee's expense, to institute a legal action against the

transferor and transferee within ninety (90) days following the date of the transfer and to diligently prosecute such legal action to completion..

4.8 **Net Proceeds Share**. In the case of the first Change of Ownership occurring during the first ten (10) years after the Effective Date (and any Financing Event to fund such first Change of Ownership), the Net Proceeds Share shall be $0. In the case of the second and each subsequent Change of Ownership (excluding Excluded Transfers) during the ten (10) year period after the Effective Date, and in the case of each Change of Ownership (excluding Excluded Transfers) after the first ten (10) years following the Effective Date, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (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 deemed to be less than the fair value of the interests transferred) (the "**Gross Proceeds**"), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. Notwithstanding the foregoing, if the Gross Proceeds are less than 105.26% of the Applicable Costs (as defined in subsection 4.8.1 or 4.8.2 below, as applicable), then the Net Proceeds Share under the immediately preceding sentence shall be calculated only in accordance with clause (b) in such sentence (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer).

In the case of the following Financing Events (collectively, the "**Financing Event Net Proceeds Share Exclusions**"), the Net Proceeds Share shall be $0: (i) the origination of the initial construction loan for the construction of the Redevelopment Work (the "**Initial Construction Loan**"), (ii) the first conversion or refinancing of the Initial Construction Loan to permanent financing within two (2) years following the completion of construction of the Redevelopment Work, and (iii) the first Financing Event occurring during the first ten (10) years after the CO Date (excluding any Financing Event described in clauses (i) or (ii) above). With respect to any other Financing Event not described in the immediately preceding sentence or in the first sentence of this Section 4.8 above, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee 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.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

4.8.1 **Transaction by Original Lessee**. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "**Net Transfer Proceeds**" shall mean the Gross Proceeds less the sum of the following costs with respect to Lessee (but not its successors or assignees) ("**Applicable Costs**"):

4.8.1.1 The sum of (a) $4,970,000, plus (b) the amount of the Extension Fee that has been paid by Lessee as of the date of the Change of Ownership, plus (c) actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (d) actual costs incurred by Lessee for the reimbursement of County's Actual Costs in connection with the negotiation and consummation of the Option Agreement and this Lease (collectively, the "**Base Value**").

4.8.1.2 The final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work, and other capital renovations to the Premises, or other physical capital Improvements or Alterations to the Premises in compliance with Article 5 herein, to the extent applicable (including in each case all hard and soft costs (including out-of-pocket design and predevelopment costs incurred prior to the Effective Date for the Redevelopment Work or for other physical Improvements constructed after the Effective Date, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed four percent (4%) of hard construction costs), which costs have been submitted to County within ninety (90) days after the completion of such Improvements, along with evidence reasonably satisfactory to Director that such costs have been incurred (the amounts described in this subsection 4.8.1.2 are referred to as "**Improvement Costs**"). Notwithstanding the foregoing, with respect to Improvements or Alterations which are not part of the Redevelopment Work, Lessee shall submit Improvement Costs on an annual basis within ninety (90) days following the end of each fiscal year. If by the date that is ninety (90) days after the completion of the Redevelopment Work (or other Improvements) the final amount of the Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Lessee 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.

4.8.1.3 Commissions, title and escrow costs, documentary transfer taxes, reasonable attorneys' fees, prepayment, defeasance or yield maintenance premiums, and other bona fide closing costs actually paid to third parties and documented to the satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share, and the Administrative Charge paid by Lessee to County in connection with the transaction (collectively, "**Documented Transaction Costs**").

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 Lessee paid County a Net Proceeds Share.

4.8.2 **Transfer by Lessee's Successor**. In the case of a transfer by a Lessee other than the original Lessee, "**Net Transfer Proceeds**" shall mean the Gross Proceeds minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or the fair market value of the interests transferred in connection with the seller's acquisition of the leasehold if utilized in connection with the calculation of Net Transfer Proceeds with respect to that sale) or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication.

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate Lessee certification and evidence reasonably satisfactory to Director that such costs have been incurred, as provided in subsection 4.8.1.2.

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 **Transfers of Major Sublessee's Interest**. With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and with respect to which a percentage is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 **Other Transfers**. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (e.g., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the amounts described in either subsections 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, 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 of the amounts described in subsection 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, for such interest or for

each interest in the aggregation pool in the case of an Aggregate Transfer) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5 **Net Refinancing Proceeds**. "**Net Refinancing Proceeds**" shall mean the gross principal amount of any Financing Event after the Effective Date as described in Section 4.8 above for which a Net Proceeds Share may be owed, 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 (i) the greatest of (a) the Base Value plus Improvement Costs, (b) the original principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share or would have been paid a Net Proceeds Share but for the Financing Event Net Proceeds Share Exclusions (plus if the financing described in this clause (b) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), or (c) in the case of a successor Lessee, the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, (ii) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (iii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iv) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no duplication of the Improvement Costs or any other amounts subtracted pursuant to clauses (i) through (iv) above.

4.8.6 **Transfers 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 Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 **Payment**. Net Proceeds Share 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. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid; provided that in the case of a dispute as to the correct amount of the Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share 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). In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market

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value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 **Shareholder, Partner, Member, Trustee and Beneficiary List.** Attached to this Lease as Exhibit G are materials showing the ownership structure of Lessee as of the Effective Date and the identity and individual percentage ownership interests of the direct and indirect constituent partners, members, shareholders, entities or persons that hold beneficial interests in Lessee as of the Effective Date (except that with respect to IWF Jamaica Bay, L.P. Exhibit G identifies only the one partner of IWF Jamaica Bay, L.P. that holds a five percent (5%) or greater beneficial interest in Lessee). Prior to each Change of Ownership or Financing Event after the Effective Date, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names, mailing addresses and beneficial interest percentages of (i) all shareholders, partners, or members of Lessee (or any Major Sublessee), and (ii) all shareholders, partners, members and other holders of equity or beneficial interests that directly or indirectly hold a beneficial interest in any of the constituent shareholders, partners or members of Lessee (or any Major Sublessee) to the extent that each such interest under this clause (ii) constitutes a five percent (5%) or greater beneficial interest in Lessee (or a Major Sublessee). In the event that such shareholder, partner, member or other interest holder is a trust that owns a five percent (5%) or greater direct or indirect equity or beneficial interest in Leseee or a Major Sublessee, Lessee 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 with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best 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 Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 **Redevelopment Work.** Promptly following the Effective Date Lessee shall commence the performance of the redevelopment work on the Premises described in the development plan attached to this Lease as Exhibit B (the "**Development Plan**"). The construction work described in the Development Plan, along with all associated improvements, hardscape, landscape and other site work approved by County and to be performed in connection with the work described in such Development Plan, is referred to herein as the "**Redevelopment Work.**" The Redevelopment Work shall include, without limitation, (a) the complete renovation

of the existing 42 room Jamaica Bay Inn (including without limitation, room interiors, building facades, interior and exterior common areas, landscaping and hardscape), retaining approximately 21,760 square feet of the existing improvements; (b) the expansion of the Improvements to include approximately 52,000 square feet of new construction, including without limitation, 69 additional hotel rooms, a business center, meeting rooms,expanded restrooms, dining and function patio, an upgraded pool and spa, and an upgraded courtyard space and gardens; and (c) an upgraded second main entry to the Premises on the Palawan Way side of the Premises, including new driveways and landscaping, in accordance design and architectural plans approved by Director prior to their submittal to the Design Control Board.

There shall be no changes, modifications or exceptions to the Development Plan, except as expressly approved in advance in writing by the Director or otherwise in accordance with this Article 5. The scope, design, density, site coverage, layout and open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be in accordance with the Development Plan, and shall be subject to County's approval as set forth in this Article 5. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals for the Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend not less than $10,602,000 for the cost of the design, entitlement and construction of the Redevelopment Work (which amount may include a development fee not to exceed four percent (4%) of the hard construction costs), which expenditures shall be subject to verification and reasonable approval by County.

5.2 **Application of Article 5 to Redevelopment Work**. The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Subsequent Renovation described in Section 5.11 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Redevelopment Work and the Subsequent Renovation 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 Lease shall be applicable to the Redevelopment Work and the Subsequent Renovation.

5.3 **Plans and Specifications for Alterations**. Lessee shall make no Alterations without the prior written approval of the Director. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 **Schematics and Narrative**. Lessee shall submit to the Director six (6) sets of schematic plans 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. Director shall have sixty (60) days within which to approve or disapprove such submission. Failure of Director to approve such submission in writing within said sixty (60) 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 Lessee, disclose to Lessee in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary or final plans) 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, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.3.2 **Preliminary Plans and Specifications**. After Director's approval of the materials submitted pursuant to subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, 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 evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any 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. Director shall have twenty-one (21) days 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. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE

TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission.

5.3.3 **Final Plans and Specifications**. After approval of the preliminary plans, Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations, 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. Lessee shall file duplicate copies of the final 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. Director shall have twenty one (21) days 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 materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

"PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO

DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee 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 final plans, specifications and costs (the "**Final Plans and Specifications**") without the prior written approval of Director, which shall not be unreasonably withheld.

5.4 **Conditions Precedent to the Commencement of Construction**. No Redevelopment Work or Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 **Permits and Other Approvals**. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Redevelopment Work or Alterations, as the case may be. All permits, licenses and other governmental approvals necessary for subsequent stages of the Redevelopment Work or Alterations shall be furnished to the County prior to commencement of such stages.

5.4.2 **Copies of Construction Contracts**. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Redevelopment Work or Alterations, as the case may be.

5.4.3 **Performance and Payment Bonds**. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County:

5.4.3.1 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 work. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, 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**"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, 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 Lessee required by this subsection 5.4.3. Any bonds provided by Lessee or its general contractor pursuant to this subsection may name the Lessee's lender as an additional obligee.

5.4.4 **Alternative Security**. In lieu of providing the Payment and Performance Bonds, Lessee may, in its discretion, provide any one or a combination of the following alternative security reasonably acceptable to Director : (i) a completion guaranty, in form and substance reasonably acceptable to County, made by an individual or entity with a sufficient net worth and liquidity, in the sole 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 Lessee's construction lender. The security described in clauses (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 Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 **Evidence of Financing**. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Redevelopment Work or Alterations, as applicable. Lessee 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.

5.4.6 **Work Schedule**. With respect to the Redevelopment Work, Lessee shall have provided County with a construction schedule which will result in the substantial completion of the Redevelopment Work on or before the Required Completion Date, as such date may be extended as provided in this Article 5.

5.5 **County Cooperation**. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work described in Section 5.1 above and the Subsequent Renovation described in Section 5.11 below, as applicable. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee'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 Lease 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 Lease.

5.6 **Completion of Redevelopment Work**. Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Redevelopment Work, subject to Force Majeure Delay (as such term is defined in subsection 5.6.1 below). Lessee'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. Subject to the provisions of this Section 5.6, all of the Redevelopment Work shall be substantially completed on or before two (2) years following the Effective Date (the "**Required Completion Date**"). For purposes of this Lease, the terms "substantial completion" or "substantially completed" as they pertain to the Redevelopment Work shall mean the completion of the Redevelopment Work in accordance with the Final Plans and Specifications, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Redevelopment Work. Without limitation of any other requirements for substantial completion, the Redevelopment Work shall not be considered substantially completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of all of the Redevelopment Work.

5.6.1 **Force Majeure Delay**. Lessee shall diligently pursue the substantial completion of the Redevelopment Work by the Required Completion Date. Any Force Majeure Delay in the construction of the Redevelopment Work shall extend the Required

Completion Date by the length of time of such Force Majeure Delay, although Lessee shall to the extent possible commence and proceed to complete the portions, if any, of the Improvements that can be completed notwithstanding such Force Majeure Delay. Any extension of the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such delay. The aggregate amount of extensions to the Required Completion Date due to Force Majeure Delay shall not exceed six (6) months.

For purposes of this Article 5, "**Force Majeure Delay**" shall mean delays in construction due to (a) fire, earthquake, flood, tornado or other act of God; (b) civil disturbance, war, organized labor dispute or freight embargo; (c) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity; (d) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee or any person or entity affiliated with Lessee; (e) Unreasonable County Activity (as defined in subsection 5.6.2 below) after the commencement of construction; or (f) other unforeseeable event beyond the control of Lessee. As a condition to clause (d) above constituting a Force Majeure Delay, Lessee shall, regardless of whether it is a named party in the action, diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

Lessee and Director shall discuss and attempt to agree on the length of time of any entitled Force Majeure Delay pursuant to this subsection 5.6.1. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to an entitlement to a Force Majeure Delay under this subsection 5.6.1, the matter shall be arbitrated as set forth in Article 16.

Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to substantially complete the Redevelopment Work by the Required Completion Date shall relieve Lessee of its obligation to pay County the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease.

5.6.2 **Unreasonable County Activity**. For the purposes of this Lease, the following shall be deemed to be "**Unreasonable County Activity**": (i) County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Final Plans and Specifications before any governmental agency; or (ii) County's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to County, which are necessary for Lessee to proceed with the permit/approval process or County's having taken such actions without Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the construction; or (iii) County's failure to comply with the time periods imposed upon County under this Article 5, except in the case where a failure of County to notify Lessee 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 subsection 5.6.2 or this Lease shall be construed as obliging 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/approval process. An extension for Unreasonable County Activity under subsection 5.6.1 above shall be available only if all of the following procedures have been followed:

(a) Within a reasonable time under the circumstances, Lessee 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 Lessee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this subsection 5.6.2, in no event shall Lessee be entitled to an extension for any period of the delay occurring prior to the date of Lessee'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 Lessee 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 appropriate length of time of any extension pursuant to this subsection. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the extension time shall equal the amount of actual 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 Lessee), then Lessee and Director shall establish the length of time of any extension based on the actual delay likely to be caused by the Unreasonable County Activity.

(c) If, within fourteen (14) days following receipt of notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether or not an extension is appropriate, or if appropriate, the length of any such extension, then the matter shall be referred to binding arbitration in accordance with Article 16 of this Lease. The arbitrator shall be instructed that, if Unreasonable County Activity has occurred, then the standards set forth in subsection (b) above will be applied to determine the length of any extension.

5.6.3 **County's Inducement; Failure to Complete**. Lessee acknowledges that the principal inducement to County to enter into this Amended and Restated Lease Agreement and to extend the Term as provided herein is the timely completion of the Redevelopment Work. In the event that Lessee fails to substantially complete the Redevelopment Work on or before the Required Completion Date (as such date may be extended by any Force Majeure Delay), then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically

amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "**Reversion Amendment**").

5.7 **Manner of Construction**.

5.7.1 **General Construction Standards**. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all 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. Lessee 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, Lessee 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. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 **Utility Work**. Any work performed by or on behalf of Lessee 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 that minimizes interference with the provision of such services to the Premises and other persons.

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

5.7.4 **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 local, state and federal laws and regulations. Lessee 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.

5.7.5 **Notice to Director; Damage to County Improvements**. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may, upon at least one (1) business day advance notice, timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged as a result of construction activity by Lessee or its contractors, Lessee agrees to repair such damage immediately at no cost or

expense to County. Lessee shall add the work necessary to repair such damage to the construction schedule for the Redevelopment Work (or other Alteration work, as applicable), and shall complete such repair work in accordance with such schedule; provided that if such damage to County-owned improvements creates a threat to public health and safety or materially adversely affects the condition, appearance or operation of any County-owned improvement or of any other property, then Lessee shall promptly commence the completion of such repair work and complete such repair work as soon as reasonably possible thereafter. In the event that Lessee fails to effectuate such repair in accordance with the foregoing requirements, County may upon written notice to Lessee enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within five (5) business days after demand by County. This subsection 5.7.5 shall not be deemed to impose upon Lessee any obligation to repair damage to County-owned improvements existing on or around the Premises if such damage was not incurred as a result of Lessee's construction activities.

5.7.6 **Rights of Access**. Representatives of the Department of Beaches and Harbors of the County 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 Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of the County 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 Lessee.

5.7.7 **Notice of Completion**. Upon completion of the Redevelopment Work or any other Alterations, Lessee 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 Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of reproducible final as-built plans and specifications of the relevant Improvements.

5.7.8 **Final Completion Certificate**. Promptly after completion of the Redevelopment Work and the Subsequent Renovation described in Section 5.11, upon Lessee's request, County shall execute and deliver to Lessee 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 Lessee in accordance with the terms of this Lease.

5.8 **Use of Plans**. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to

County, for the assignment thereof to County (and Lessee's Encumbrance Holder(s) if required by Lessee's Encumbrance Holder(s)) as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County (or if County enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee'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, 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 trade marks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to County and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender.

5.9 **Where Director Approval Not Required**. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) 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); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee 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.

5.10 **Protection of County**. Nothing in this Lease 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 Lessee 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 County's interest in the Premises or County.

5.10.1 **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's interest in the Premises from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises under this Article 5, in order to enable County timely to post such notices.

5.10.2 **Prompt Payment**. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee 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 Lessee.

5.10.3 **Liens; Indemnity**. Subject to Lessee's rights to contest the same prior to payment, Lessee 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 Lessee and/or any parties claiming through Lessee. Lessee 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 Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within five (5) business days after demand, furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, (ii) a set aside letter from Lessee's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Lessee'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.

5.11 **Subsequent Renovation**. In addition to the Redevelopment Work to be performed by Lessee pursuant to Section 5.1, approximately thirty (30) years prior to the scheduled expiration of the Term Lessee shall be required to complete a renovation of the Improvements in accordance with the terms and provisions of this Section 5.11 (the "**Subsequent Renovation**"). The Subsequent Renovation shall consist of such renovation and construction work as necessary in the reasonable judgment of Director to position the Improvements to a condition and appearance at least equal to comparable hotel projects in Marina del Rey and the surrounding market. The construction of the Subsequent Renovation shall be commenced by Lessee not earlier than January 1, 2030 and completed by Lessee not later than December 31, 2032.

Prior to the commencement of construction of the Subsequent Renovation, Lessee shall submit to Director a renovation plan for the Subsequent Renovation (the "**Subsequent Renovation Plan**"), which renovation plan shall (a) describe the proposed renovation work in detail reasonably acceptable to Director, (b) include a design, governmental approval and construction schedule for the work, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to Director not later than such date (taking into consideration the approval periods described in this Section 5.11 and Section 5.3 above, the estimated time required to obtain all necessary governmental approvals and permits, and the estimated time required to complete the work) as will permit the completion by Lessee of the applicable Subsequent

Renovation by no later than December 31, 2032. Director shall have sixty (60) days within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in its reasonable judgment. Failure of Director to notify Lessee in writing of its approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. If Director disapproves (or is deemed to have disapproved) the Subsequent Renovation Plan, then within thirty (30) days after written request from Lessee Director shall notify Lessee in writing of the reasons for such disapproval.

Upon Director's approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Subsequent Renovation shall proceed in accordance with the protocol for plan submission and approval set forth in Section 5.3 of this Lease, except that the schematic plan submittal requirements set forth in subsection 5.3.1 shall not be applicable to the extent that the Subsequent Renovation Plan approved by Director satisfies the requirements of such subsection 5.3.1. Lessee's failure to comply with the schedule approved by Director as part of the Subsequent Renovation Plan and/or to meet the construction completion deadline pertaining to the Subsequent Renovation set forth in this Section 5.11 (subject to any Force Majeure Delay) shall, if not cured within the cure period set forth in subsection 13.1.2, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan shall be submitted to arbitration pursuant to Article 16 of this Lease. If the arbitrator determines that Director failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan and as a result thereof Lessee is delayed in the completion of the Subsequent Renovation by the required completion date set forth in the first paragraph of this Section 5.11, then the required date for the completion of such Subsequent Renovation shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Subsequent Renovation Plan, provided that the required date for the completion of the Subsequent Renovation shall not be extended beyond the date reasonably required for the completion by Lessee of the Subsequent Renovation.

5.12 **Subsequent Renovation Fund**. Commencing with the month following the month during which the tenth (10th) anniversary of the Effective Date occurs, and continuing each month thereafter until the commencement of the Subsequent Renovation (or if as of the commencement of the Subsequent Renovation there are not sufficient funds in the Subsequent Renovation Fund to pay for all costs of the Subsequent Renovation based on the Subsequent Renovation Plan approved by Director, then continuing until the earlier of (a) the date that there are sufficient funds in the Subsequent Renovation fund to pay for all costs of the Subsequent Renovation, or Lessee provides a lender set-aside letter or other security reasonably acceptable to Director for the balance of any such costs, or (b) the date of the lien-free completion of the Subsequent Renovation), Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Section 5.12 for the purpose of funding a portion of the cost of the Subsequent Renovation. Lessee shall expend funds for the Subsequent Renovation that are at least equal to the amounts in the Subsequent Renovation Fund, but the amount of the Subsequent Renovation Fund shall not limit Lessee's obligation to

perform and fund the full cost and expense of the Subsequent Renovation. The Subsequent Renovation Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.12. The amounts to be added to the Subsequent Renovation Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.12. On or before the fifteenth (15th) day of each month during the period during which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovation Fund in an amount equal to two percent (2%) of total Gross Receipts for the previous month. All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against, or otherwise reduce, the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.12.

Disbursements shall be made from the Subsequent Renovation Fund only for costs for the design and construction of the Subsequent Renovation which have been approved by Director. Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Subsequent Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Director has approved the Subsequent Renovation Plan and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources to pay for all costs of the Subsequent Renovation. All amounts in the Subsequent Renovation Funds shall be used for the costs of the Subsequent Renovation. Lessee shall not be required to make further contributions to the Subsequent Renovation Fund after the completion of the Subsequent Renovation.

In lieu of the periodic Subsequent Renovation Fund contributions described in this Section 5.12, Director shall have the authority, in the exercise of the Director's discretion, to consider the delivery by Lessee of substitute security acceptable to Director (e.g., a letter of credit or bonding mechanism) to secure the performance by Lessee of the Subsequent Renovation. Such substitute security shall be in not less than the same amounts and delivered not later than the same times, as amounts that would have otherwise been required to be delivered into the Subsequent Renovation Fund.

5.13 **Capital Improvement Fund**. Commencing with the month following the month during which the CO Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.13 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the

Improvements or their major systems, after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on Exhibit E attached to this Lease are categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.13.

Commencing on the fifteenth (15th) day of the month following the month during which the CO Date occurs and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in the amount of two percent (2%) of total Gross Receipts for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.13. For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices,

evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All then-existing amounts in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Thereafter, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.13 towards Lessee's obligations to fund the Removal Security Fund in subsection 2.4.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's sole and absolute discretion.

5.14 **FF&E Fund**. Commencing with the month (the "**First Deposit Month**") that is the earlier of (i) the month following the month during which the CO Date occurs, or (ii) the month following the month during which the second (2nd) anniversary of the Effective Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "**FF&E Fund**") in accordance with the provisions of this Section 5.14 to fund the cost of 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) maintenance or repair purposes, (b) the cost of the Redevelopment Work or the initial furniture, fixtures and equipment to be installed in the Premises in connection with the Redevelopment Work, (c) the cost of the Subsequent Renovation, or (d) the cost of Permitted Capital Expenditures to be funded by the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the FF&E Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld.

The FF&E Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.14. The amounts to be added to the FF&E Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.14.

Commencing on the fifteenth (15th) day of the First Deposit Month and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the FF&E Fund in the following amounts:

(a) during the first (1st) year of the required deposits, one percent (1%) of total Gross Receipts for the previous month;

(b) during the second (2nd) year of the required deposits, two percent (2%) of total Gross Receipts for the previous month; and

(c) during the third (3rd) and each subsequent year of the required deposits, three percent (3%) of total Gross Receipts for the previous month.

If the First Deposit Month occurs prior to the CO Date, then until the CO Date occurs the monthly deposits to the FF&E Fund shall not be based on actual Gross Receipts, but instead shall be based on the Tenant's projected Gross Receipts (as reasonably approved by County) for the same period following the CO Date assuming that the First Deposit Month had been the first month following the month during which the CO Date occurred. All interest and earnings on the FF&E Fund shall be added to the FF&E Fund, but shall not be treated as a credit against the FF&E Fund deposits required to be made by Lessee pursuant to this Section 5.14.

Disbursements shall be made from the FF&E Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.14. For the purpose of obtaining Director's prior approval of any FF&E Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a furniture, fixtures and equipment expenditure plan for the upcoming year which details the amount and purpose of anticipated FF&E Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such furniture, fixtures and equipment expenditure plan which is approved by Director as an acceptable FF&E Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual furniture, fixtures and equipment expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current furniture, fixtures and equipment expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted furniture, fixtures and equipment expenditure plan. Prior to the disbursement of any amounts from the FF&E Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the FF&E Fund.

Amounts in the FF&E Fund shall be expended periodically as necessary for Lessee to comply with the standard of operation for the Premises applicable under this Lease. If County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute to the Removal Security Fund any amounts in the FF&E Fund that are not (and will not be) required for the purposes of this Section 5.14, as determined by Director in Director's reasonable judgment. If County does not require the removal of the Improvements, and at the end of the Term there are amounts remaining in the FF&E Fund that in Director's reasonable judgment were not required for the purposes of this Section 5.14, then Lessee shall be entitled to the return of such funds.

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 date the Condemnor has the right to possession of the Premises being condemned.

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 Lease**. If, during the Term of this Lease, there is any taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease 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 Lease 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 Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction (to the extent that funds therefor are available from the anticipated Award), Lessee's business on the Premises could not be operated at an economically feasible level. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. 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 Lease'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 Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such taking 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 taking, taking into account, however, any necessary reduction in size or other change resulting from the taking; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

6.5 **Effect of Partial Taking on Rent**. If any portion of the Premises is taken by Condemnation and this Lease 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 fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Annual Minimum Rent Adjustment Date, as described in subsection 4.2.1.4 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration 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 arbitration 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 Lessee under this Lease, 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 Lease in the event of a Partial Taking of the Premises.

6.7 **Payment of Award**. Awards and other payments on account of a taking, 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 Taking other than a total Taking 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 Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee 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 Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the taking pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a taking other than a total taking or a taking for temporary use, Lessee 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 Lessee; 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 Taking and Partial Taking with Termination**. Net Awards and Payments received on account of a total taking or a Partial Taking which results in the termination of this Lease 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 Minimum Rent, Percentage 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.

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 Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, 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 Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total taking or a partial taking that results in the termination of the Lease, and the taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

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 Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. **SECURITY DEPOSIT**.

7.1 **Amount and Use**. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted on each Adjustment Date or Renegotiation Date to reflect any change in the Monthly Minimum Rent during the Term of this Lease). If as of an Adjustment Date (or Renegotiation Date, as applicable) Lessee has not at any time during the immediately preceding three (3) year period committed an Event of Default under this Lease, then effective on such Adjustment Date (or Renegotiation Date, as applicable) and continuing until the earlier of the occurrence of an Event of Default or the next Adjustment Date (or Renegotiation Date, as applicable), the amount of the Security Deposit required to be maintained by Tenant shall be reduced to two (2) times the Monthly Minimum Rent placed into effect as of such Adjustment Date (or Renegotiation Date, as applicable).

The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in lieu or replacement of the cash Security Deposit requirement described above, 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 Lessee exists under the Lease, Lessee 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 Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee'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 Lessee under the Lease.

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 Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee 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 reissue the letter of credit, such that Lessee once again maintains a Security Deposit equal to three (3) times the then effective Monthly Minimum Rent. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 **Renewal**. Any letter of credit procured by Lessee 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, Lessee 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 Lessee's

obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

8. **INDEMNITY**.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, 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 Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises (other than the Promenade) by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee 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 Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. Notwithstanding anything in this Lease to the contrary except for the construction of the Promenade as part of the Redevelopment Work and except as provided in Section 15.22 of this Lease, Lessee and County acknowledge that their respective liability, if any, arising out of the operation, maintenance, use and/or occupation of the Promenade shall be governed by Applicable Law.

9. **INSURANCE**.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	$20,000,000

Products/Completed Operations Aggregate:	$20,000,000
Personal and Advertising Injury:	$10,000,000
Each Occurrence:	$10,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage ("Primary Coverage") and excess liability coverage ("Umbrella Coverage") (as long as (a) Lessee's Primary Coverage is at least One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Section 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars ($1,000,000) of Primary Coverage and One Million Dollars ($1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this

subsection 9.1.4 shall not be applicable so long as the insurance coverage described in subsection 9.1.5 below is carried.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to 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 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. 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 Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this subsection 9.1.5.4 shall be (a) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that

Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. 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 order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's of subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than $500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Alterations. All certificates of insurance shall (a)

specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $25,000 or such other commercially reasonable amount as approved by the Director; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written

notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 **Lessee's Maintenance and Repair Obligations**. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (including the Promenade, but excluding the Excluded Conditions), in conformance with the Minimum Standards regarding the use and occupancy of commercial (including hotel) projects in Marina del Rey (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 projects in Marina del Rey (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 arbitration

pursuant to Article 16 of this Lease. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises (including the Promenade) 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. Lessee's obligations shall include the obligation to keep all dock facilities in good repair and condition in accordance with the Minimum Standards.

Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, the Maintenance Standard and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises (other than the Excluded Conditions) in a safe, clean, wholesome and sanitary condition, in the commercially reasonable judgment of Director, and in compliance with all Applicable Laws. Lessee 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 is necessary in the commercially reasonable judgment of the Director to maintain the appearance of the Premises in a manner consistent with the Maintenance Standard. Lessee 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 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 Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Conditions caused by Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 **Maintenance Deficiencies**. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee 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 Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, 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 Lessee), then as long as during the specified cure period Lessee 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 the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.2 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 a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee 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 Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then 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 Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest, and the daily penalty set forth above in this Section 10.2 shall not be applicable during the period that the cure period is tolled. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease 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 Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 **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 Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.3, 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 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease 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 Lease (an "**Uninsured Loss**"), and where all of the following occur:

10.3.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 10.3.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.3.2 No more than sixty (60) days following the giving of the notice required by subsection 10.3.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee'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.

10.3.3 No more than sixty (60) days following the loss, Lessee 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 Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.3.4 Within ten (10) days following the County's receipt of the notice referred to in subsection 10.3.1, County has not received both written notice from the Encumbrance Holder, if any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 **No Option to Terminate for Insured Casualty**. Lessee shall have no option to terminate this Lease 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 Lease.

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

10.6 **Repairs Not Performed by Lessee**. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee 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 Lessee as provided in Section 13.5.

10.7 **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 10.7, 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 Lessee 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 Lessee as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or it contractors on the Premises pursuant to this Section 10.7.

10.8 **Notice of Damage**. Lessee shall give prompt notice to County of any fire or material damage affecting the Premises from any cause whatsoever.

10.9 **Waiver of Civil Code Sections**. The parties' rights shall be governed by this Lease 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 (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**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 Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**".

11.1.2 **Approval Required**. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease, or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or amendment or assignment thereof) to Director for approval, which approval shall not be unreasonably withheld. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. 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 Lease applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Lessee in writing of the reason or reasons for such disapproval.

11.1.3 **Major Sublease**. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable hotel facilities such as exist on the Premises.

In light of the inherent detailed nature of a Major Sublease, Lessee 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 sixty (60) 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 hereinbefore provided in this Article 11, Lessee 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**"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (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. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following matters (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 Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (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; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity that owns, or is a general partner or managing member of an entity that owns, an interest in this Lease. Lessee 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 Lessee's interest in the Lease 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 CO Date, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the CO Date, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease if (a) the assignee or Major Sublessee, either directly or through its affiliate or through a contractual relationship with a third party hotel operator that will operate and manage the Premises, has adequate experience in the operation of hotels and has a nationwide reservation system in which the Premises will participate; 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 Lessee in writing of the reason or reasons for such disapproval.

11.2.2 **Involuntary Transfers Prohibited**. Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, 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 Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, 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 formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

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 Lessee 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 Lessee's interest under this Article 11.

11.2.3.4 Lessee 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 duplication with any Administrative Charge payable under Section 4.6.

11.2.3.5 Lessee 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 Lease 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 Lessee'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 Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, 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 Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, 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 Lessee 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 Lease 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 information which it reasonably requests of Lessee to assist in 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 Lessee, 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**. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

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 approved or supplied by the 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 **County Right to Recapture**. If Lessee proposes to assign its interest in this Lease or the Premises after January 1, 2023, or proposes to enter into any Major Sublease affecting the Premises after January 1, 2023 (with either such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire and the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months

from the date of County's notice of its election to acquire such option. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to acquire the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than ninety-five percent (95%) of the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b) (subject to extension to the extent that County unreasonably delays it approval of the transaction beyond such twelve (12) month period). In the event of a proposed Major Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to the portion of the Premises that is the subject of the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or those events identified in subsection 4.6.2 of this Lease.

11.2.5 **County Credits Toward Purchase Price**. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection

with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

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 Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease 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 Lease 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 Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

11.4 **Family Transfers**. Notwithstanding any contrary provision of this Article 11, the County's approval shall not be required, nor shall the County's rights of recapture under subsection 11.2.4 be applicable, with respect to any transfer of ownership interests in Lessee or in constituent entities of Lessee, if such transfer is to a member of the immediate family of the transferor (or to a trust for the benefit of a member of the immediate family of the transferor) for estate planning purposes, whether such transfer is the result of gift, devise, intestate succession or operation of law.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 **Definitions**. For the purposes of this Lease, 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 Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); 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) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) 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 Lease, 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 Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 **County Approval Required**. Lessee 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). Lessee 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. Lessee 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 Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee 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 Lease or of all of the Ownership Interests in Lessee 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 Lease or to all of the Ownership Interests in Lessee 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 Lessee.

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 Lease 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 Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its 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 Lease, 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.

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 or other similar financial institution 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

Lessee under this Lease (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 Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease 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 Section 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (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 Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease 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 lessee, (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 lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

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

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 Net Proceeds Share, (ii) any acceleration of the Extension Fee or Extension Fee Installment Payments payable by Lessee under Section 2.2 of this Lease and Section 4.2 of the Option Agreement, or any other financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. 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 "**Change of Ownership**" for all purposes of this Lease. 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 Section 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 renovation work described in Sections 5.1, 5.11 or 5.14 above (other than any obligations to make deposits into the Subsequent Renovation 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 Lease 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 Section 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, 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 Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 **No Subordination**. County's rights in the Premises and this Lease, 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 Lease, including the right to commence an action against Lessee 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 Lessee 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 Lease**. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease 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 Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

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 10.2 in the case of emergency situations), 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 Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. 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 Lease 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 Lessee breaches set forth in Section 10.2.

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, Lessee 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 Lessee'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 Lessee commences to cure the default within Lessee'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 Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee 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 (a) 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 Lessee.

12.7 **New Lease**.

12.7.1 **Obligation to Enter Into New Lease**. In the event that this Lease 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 Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease 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 Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease 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 lease or the Premises. From and after the effective date of the new lease, 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 lease shall be subject to all of the requirements of Article 11 of this Lease. 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 lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease 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 lease, or no Encumbrance Holder so elects.

12.7.2 **Priority of New Lease**. The new lease 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 Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease 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 Lease), and (ii) any funds required to be held in the Subsequent Renovation Fund, Capital Improvement Fund and FF&E Fund (provided that such funds shall be used for the purposes required by this Lease). 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 arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease 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 Lease 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 Lease 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 **Rights of Encumbrance Holders With Respect to Reversion**. As used in this Section 12.12, the "**Reversion**" refers to the automatic amendment of this Lease described in subsection 5.6.3 whereby the terms and conditions of this Lease are automatically amended in accordance with the Reversion Amendment described in such subsection 5.6.3, and the "Reversion Condition" refers to the condition that causes the Reversion, namely the failure of Lessee to substantially complete the Redevelopment Work on or before the Required Completion Date. Notwithstanding anything in subsection 5.6.3 of this Lease to the contrary, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee, the Reversion shall not occur unless and until (i) the County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder in accordance with subsection 12.6.2 (which notice shall describe the Reversion Condition that has occurred, and shall include the following statement in all capital and bold letters: "**YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBE IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3(b) OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE IN ACCORDANCE WITH THE REVERSION AMENDMENT DESCRIBED IN SUBSECTION 5.6.3 OF THE LEASE**"), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice and thereafter pursues such cure to completion in accordance with the provisions of subsection 12.6.3(b) of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the "new lease" provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.7 and the "new lease" to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease, not the Existing Lease).

12.13 **Acceleration of Extension Fee**. So long as (i) no Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment payable by Lessee pursuant to Section 2.2. of this Lease and Section 4.2 of the Option Agreement (even if any other Event of Default exists that is not based on nonpayment of an individual Extension Fee Installment Payment), or (ii) if an Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment, an Encumbrance Holder, Foreclosure Transferee or the single

subsequent transferee of a Foreclosure Transferee pursuant to subsection 12.2.3 cures such Event of Default by paying to County all past-due individual Extension Fee Installment Payments together with any default interest and/or Late Fees that may be owing thereon; then County shall not declare the entire remaining unpaid Extension Fee immediately due and payable, or, if County has previously declared the entire remaining unpaid Extension Fee immediately due and payable, County shall rescind such acceleration and permit the reinstatement of the original payment terms of the Extension Fee (i.e., by annual Extension Fee Installment Payments).

13. **DEFAULT**.

13.1 **Events of Default**. The following are deemed to be "**Events of Default**" hereunder:

13.1.1 **Monetary Defaults**. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, Extension Fee Installment Payments or deposits to the Subsequent Renovation Fund, Capital Improvement Fund and/or FF&E Fund), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, if any, within such ten (10) day period.

13.1.2 **Maintenance of Security Deposit**. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.3 **Failure to Perform Other Obligations**. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee 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 Lessee 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. Notwithstanding any contrary provision of this Section 13.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any failure of Lessee to comply with the Required Completion Date set forth in Section 5.1 above (as such date may be extended pursuant to such Section 5.1, and subject to Section 12.12).

13.1.4 **Nonuse of Premises**. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, the termination of

operations in a portion of the Premises by a Sublessee shall not constitute an Event of Default under this Section 13.1.4 if Lessee uses its best efforts to recover possession of such portion of the Premises from such Sublessee and to re-sublease such portion of the Premises to another Sublessee as soon as possible; provided, further, that except as provided below operations in such portion of the Premises in accordance with this Lease must recommence no later than one hundred eighty (180) days following the date that operations in such portion of the Premises first terminated. The one hundred eighty (180) day period set forth in the immediately preceding sentence shall be tolled for delays incurred by Lessee beyond such one hundred eighty (180) day period in recovery of possession of the Premises due to the Sublessee's bankruptcy or contest of unlawful detainer proceedings, as long as Lessee diligently continues to prosecute its action to recover possession of the Premises. In addition, notwithstanding any contrary provision of this subsection 13.1.4, an Event of Default shall not be triggered under this subsection 13.1.4 due to the termination of operations by a Sublessee as long as (i) Lessee diligently attempts to re-open the subject space as soon as reasonably possible and the subject space is re-opened for business not later than three hundred sixty five (365) days after the date that such operations were closed, and (ii) during any period between the end of the one hundred eighty (180) day period set forth above in this subsection 13.1.4 (as such period may be extended as provided above) and the date that the subject portion of the Premises is re-opened for business, Lessee pays County Percentage Rent for such space based upon an imputed Gross Receipts for such space equal to the actual Gross Receipts for such space during the one year period prior to the closure of business for such space.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.3 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**. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee 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 Lease**. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee 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 Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to

County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee'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 Lessee to comply with its removal obligations.

13.3.2 **Keep Lease in Effect**. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee'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 Lease unless County gives Lessee 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 Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee 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 Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee 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 Lease;

13.4.2 **Post-Termination Rent**. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 **Other Amounts**. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, 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, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 **Others' Right to Cure Lessee's Default**. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee 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 Lessee'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 Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee 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. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person or entity having a recorded security interest in County's fee title to the Premises whose identity and address have been disclosed in writing to Lessee. Such person or entity shall then have the right to cure such default, and County shall not be deemed in default if such person or entity 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 Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease 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. During any period that County is in default of its obligation to pay a sum of money to Lessee, any amount of money that may be owed by Lessee to County (but not in excess of the undisputed amount of money owed by County to Lessee for which County is in default) shall not accrue interest or late charges during such period as County remains in default of its obligation to pay Lessee such sum of money.

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, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, 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 Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (B) Gross Receipts are reported monthly on a cash basis with full reconciliation to accrual treatment on the annual statement of Gross Receipts, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

14.2 **Cash Registers**. To the extent retail sales are conducted on 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.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval or disapproval shall not be unreasonably withheld or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 **Statement; Payment**. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement certified by Lessee's chief financial officer showing Gross Receipts during the preceding calendar month, along with a calculation in such detail as reasonably acceptable to County of any other amounts to be calculated under Sections 4.2 through 4.8 inclusive. Lessee shall accompany same with remittance of any amount required to be paid by Lessee under such Sections 4.2 through 4.8.

14.4 **Availability of Records for Inspector's Audit**. Books of account and records for the then current and five (5) prior Accounting Years as hereinabove required 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 prior 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 Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 **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 Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 **Cost of Audit**. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee 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 two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 **Additional Accounting Methods**. County may require the installation of any additional accounting methods or machines which are typically used by major hotel management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

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

14.8 **Annual Financial Statements**. Within six (6) months after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 **Accounting Obligations of Sublessees**. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.10 **Inadequacy of Records**. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. 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 Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, 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, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost 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**. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

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

15.3 **County Costs**. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. As of the Effective Date, the parties acknowledge that Lessee has an unapplied deposit balance of Seven Thousand Seven Hundred One and 33/100 Dollars ($7,701.33) on account with County available for application against Actual Costs for which County had not been invoiced as of April 3, 2009. Within ninety (90) days after the Effective Date, County shall deliver to Lessee a report detailing any such expenditures (along with invoice summaries or other supporting documentation) for which Lessee has not previously been invoiced.

15.4 **County Disclosure and Lessee's Waiver**.

15.4.1 **Disclosures and Waiver**.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1963. Lessee 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 Lease, at the time of the execution of this Lease by Lessee and Lessee 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 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee 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.

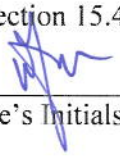
15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or 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 (i) shall not apply to the Excluded Conditions, and (ii) shall not alter the parties' rights and obligations under the Existing Lease with

respect to any environmental conditions existing on the Premises as of the Effective Date.

15.4.1.4 California Civil Code Section 1542 provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee 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 subsection 15.4.1.3 above.



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Lessee's Initials

15.4.2 **Right of Offset**. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee 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.

15.5 **Holding Over**. If Lessee 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 Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. 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 Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee 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 tenant arising from such failure to surrender, and any lost profits to County resulting therefrom,

provided that County notifies Lessee that Lessee'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 Lease 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 Lease, 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 Lease 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 Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. 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 Lessee 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 Lease, 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 Lease.

15.8 **Authorized Right of Entry**. In any and all cases in which provision is made herein for termination of this Lease, 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 Lessee, Lessee 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 Lessee.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee 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 Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee 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 Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee 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 Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, 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, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. 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, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee 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 Lessee as provided for herein shall be effective as to Lessee 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 Lessee 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
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

LESSEE: Marina Del Rey Innvestors
1933 Cliff Drive, Suite 1
Santa Barbara, CA 93109
Attn: Thomas J. Gamble
Phone: 805/957-0095
Fax: 805/957-0082

With a Copy to: Cox, Castle & Nicholson LLP
2049 Century Park East
28th Floor
Los Angeles, California 90067
Attention: Ira J. Waldman, Esq.
Phone: 310/277-4222
Fax: 310/277-7889

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 Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee'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 Lessee repays sums advanced by County on Lessee'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 Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 **Attorneys' Fees**. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, 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 Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than one implemented through an arbitration judgment, 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 Lease, whenever in this Lease 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 Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee 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 Lease, then Director shall notify Lessee in writing of the reason or reasons for such disapproval.

15.16 **Time For County Action**. Notwithstanding anything to the contrary contained in this Lease, 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 Lease 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 Lease (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 Lease. Prospective purchasers, Major Sublessees and lenders may rely on such statements.

15.18 **Indemnity Obligations**. Whenever in this Lease 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**. Lessee 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 Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires,

permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 **Waterfront Promenade**. As part of the Redevelopment Work Lessee shall construct waterfront improvements at Marina Beach, including a boardwalk and other pedestrian attractions with landscaping, lighting, seating, fencing and other improvements (the "**Promenade**") in accordance with the Development Plan, the Local Coastal Plan and Marina del Rey design guidelines. County hereby reserves a public easement for access over and use of the Promenade for fire lane uses, pedestrian purposes and such other related uses (including, if approved by County bicycling, rollerblading and the like) as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards for the Promenade established by the County from time to time on a nondiscriminatory basis. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of this Lease. At the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.21 **Lessee Responsibility for Marina Beach Public Improvement Costs**. In addition to the Promenade improvements to be constructed by Lessee, County contemplates the development of certain public improvements, alterations and amenities to Marina Beach, including without limitation, picnic facilities, public restrooms, showers, playground equipment and other amenities ("**Marina Beach Improvements**"). Lessee shall be responsible for twenty-five percent (25%) of all costs (including hard, soft and related costs) incurred in connection with the development, design, permitting, installation and construction of the Marina Beach Improvements; provided, however, that Lessee's share of such costs shall not exceed One Hundred Fifty Thousand Dollars ($150,000.00), adjusted annually to reflect any percentage increase in the ENR Index during the period between the CO Date and the date of the payment of Lessee's share of such costs to County. Lessee shall pay its share of the Marina Beach Improvement costs described above within thirty (30) days after receipt of written notice from County. Lessee shall be entitled to a credit against the remaining unpaid Extension Fee Installment Payments in an aggregate amount of fifty percent (50%) of the amounts paid by Lessee under this Section 15.21. If the aggregate amount of the remaining Extension Fee Installment Payments is less than the credit to which Lessee is entitled hereunder, then Lessee shall be entitled to offset the shortfall against the Marina Beach Improvement cost reimbursement amount otherwise required to be paid by Lessee.

15.22 **Storm Drain System**. The construction drawings and drainage plan for the Redevelopment Work provide for the connection by Lessee to an existing low-flow diversion storm drain system owned by County, the catch basin for which is located in the Promenade between the Premises and Mother's Beach. Such storm drain system, including all improvements, facilities and equipment pertaining thereto, is referred to herein as the "County Storm Drain System." Lessee shall install a filtration system approved by County intended to filter storm water or other drainage from the Premises that enters the County Storm Drain

System. Lessee shall maintain the filtration system in good working order. Lessee shall make no material alterations or modifications to the filtration system without the approval of County, which approval shall not be unreasonably withheld or delayed.

Certain portions of the County Storm Drain System, including without limitation, the catch basin and storm drain cover, are located in an area designated for emergency vehicle response to the Premises. As part of the Redevelopment Work, Lessee shall install all upgrades to the County Storm Drain System required to structurally support or otherwise accommodate emergency vehicle ingress and egress over and around the County Storm Drain System. Such upgrades shall be installed in accordance with plans and specifications approved by County. Lessee shall be responsible for the repair of any damage to the County Storm Drain System incurred in connection with the performance by Lessee of the Redevelopment Work, including without limitation, construction of the structural upgrades described above or the installation of the Storm Drain Equipment (as defined below) or connection thereof to the County Storm Drain System. During the Term of the Lease, Lessee shall be responsible for all required maintenance, repair or replacement of (a) all pipes, valves, connections and other facilities and equipment from the Premises, including without limitation the filtration system installed by Lessee as provided above (the "Premises Storm Drain Equipment") to and including the point of connection to the County Storm Drain System, arising from, incurred in connection with, or necessitated by, any cause, occurrence or condition whatsoever and (b) any and all portions of the County Storm Drain System, to the extent arising from, incurred in connection with, or necessitated by, (i) access over or around the County Storm Drain System by emergency response vehicles serving the Premises, or (ii) Lessee's alteration, modification, maintenance or repair of any portion of the County Storm Drain System as a result of the initial structural improvements by Lessee to the County Storm Drain System; provided, however, that Lessee's obligations under clauses (a) and (b) above shall not be applicable to the extent of the negligence or willful misconduct of County or any defects in the County Storm Drain System existing as of the commencement of the Redevelopment Work. All maintenance or repair work with respect to the County Storm Drain System for which Lessee is responsible shall, at County's option, be performed either by (x) Lessee, at Lessee's cost, in accordance with plans, specifications, procedures and other requirements imposed by County, or (y) County, at Lessee's cost, provided, however, that Lessee and County shall cooperate to minimize all costs associated with such work.

If County is ordered by the California Coastal Commission to discontinue use of the County Storm Drain System or if use of the County Storm Drain System is discontinued for health, safety or environmental reasons or to comply with Applicable Law, then County shall provide Lessee with written notice of the scheduled date that the County Storm Drain System

will be taken out of service and Lessee, at Lessee's cost, shall be required to disconnect from the County Storm Drain System and to re-route its storm water flow through a different drainage system approved (but not necessarily provided) by County. Disconnection from the County Storm Drain System and reconnection to a different drainage system shall be simultaneous, provided that Lessee shall take all action necessary to facilitate such reconnection by the scheduled date for the County Storm Drain System to be taken out of service. Excluding costs incurred by Lessee associated with disconnecting and reconnecting to a new or different drainage system (including any costs that Lessee might incur to acquire and/or construct such new or different drainage system for Lessee's use), all expenses incurred by County associated with taking the County Storm Drain System out of service shall be the sole responsibility of County. Following any discontinuance of the use by Lessee of the County Storm Drain System, Lessee's obligations described above in connection with usage of the County Storm Drain System, except obligations in connection with the Premises Storm Drain Equipment, shall terminate.

As long as Lessee continues to use the County Storm Drain System, the indemnification, defense and hold harmless obligations of Lessee under Article 8 of the Lease shall include the death of or injury to persons or damage to property, including without limitation property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or in connection with the matters described in clauses (b)(i) and (ii) of the second paragraph of this Section 15.22 or any maintenance, repair or replacement work performed by Lessee in connection with such matters.

16. **ARBITRATION**.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "**Initiating Party**") may initiate the arbitration process by sending written notice ("**Request for Arbitration**") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "**Response**" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "**Additional Disputes**" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 **Selection of Arbitrator**. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 **Arbitrator**. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 **Scope of Arbitration**. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 **Immunity**. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 **Section 1282.2**. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 **Statements of Position**. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 **Written Appraisal Evidence**. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.3.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 **Evidence**. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not

have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 **Discovery**. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 **Awards of Arbitrators**.

16.10.1 **Monetary Issues**. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.3 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 **Nonmonetary Issues**. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 **Powers of Arbitrator**. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 **Costs of Arbitration**. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 **Amendment to Implement Judgment**. Within seven (7) days after the issuance of any award by the arbitrator becomes final, the County will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to Lessee, Lessee will sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration award) and return the executed copy to the County, which shall thereafter be executed by County as soon as reasonably practicable.

16.14 **Impact of Gross Error Allegations**. Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 **Notice**.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

Initials of Lessee _____ Initials of County _____

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 Lease 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 Lease, "**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 Lessee have entered this Lease 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 draftsperson shall not apply to this Lease.

17.5 **Governing Law**. This Lease 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 is specifically provided otherwise herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee 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 Lessee agree and acknowledge that this Lease 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 Lease**. The parties hereto shall execute and acknowledge a Memorandum of Lease Extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

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

THE COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

MARINA DEL REY INNVESTORS, a California limited partnership

By: IWF Jamaica Bay, LLC, a California limited liability company, its general partner

By: Invest West Financial Corporation, a California corporation, its sole member

By: _____
Name: Dale J. Marquis
Its: Chairman + Chief Financial Officer

ATTEST:

SACHI A. HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy JUN 16 2009

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

39 JUN 16 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

6573 SUPPLEMENT 10

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 397 to 401 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county, and that portion of Parcel 391, in said county, as shown on said map, within the following described boundaries:

Beginning at the northerly corner of said Parcel 391; thence southeasterly along the northeasterly boundary of said last mentioned parcel to the beginning of a curve concave to the west, having a radius of 20 feet, tangent to said northeasterly boundary and tangent to the southeasterly line of the northwesterly 30 feet of said last mentioned parcel; thence southerly along said curve to said southeasterly line; thence southwesterly along said southeasterly line to the beginning of a curve concave to the northwest, tangent to said southeasterly line and having a radius of 73 feet, said last mentioned curve also passes through a point in the southwesterly line of said last mentioned parcel distant southeasterly thereon 16.79 feet from the westerly corner of said last mentioned parcel; thence southwesterly along said last mentioned curve to said southwesterly line; thence northwesterly along said southwesterly line 16.79 feet to said westerly corner; thence northeasterly along the northwesterly line of said last mentioned parcel a distance of 157.28 feet to the point of beginning.

Excepting therefrom that portion thereof within the following described boundaries:

Commencing at the southeasterly terminus of a curve concave to the south, having a radius of 25 feet, tangent to a line parallel with and 6.5 feet northwesterly, measured at right angles, from the straight line in the northwesterly boundary of said Parcel 398 and reverse at said southeasterly terminus to a curve concentric with and 0.5 foot northeasterly, measured radially, from that certain 1027 foot radius curve in the northeasterly boundary of said last mentioned parcel; thence southwesterly along a radial of said 25 foot radius curve 0.5 foot to a point in said northeasterly boundary, said point being the true point of beginning; thence

southeasterly along said northeasterly boundary to a line parallel with and 2 feet southeasterly, measured at right angles, from said radial; thence southwesterly along said last mentioned parallel line 4.00 feet; thence northwesterly at right angles to said last mentioned parallel line to the northerly boundary of said last mentioned parcel; thence easterly and southeasterly along said northerly and northeasterly boundaries to said true point of beginning.

Reserving and excepting therefrom unto the County of Los Angeles a right of way for sanitary sewer and harbor utility purposes over that portion thereof designated on said map as an easement to be reserved by said county for such purposes.

DESCRIPTION APPROVED
February 8, 1967
JOHN A. LAMBIE
County Engineer
By _____ Deputy

Subject to all reservations set forth in the Lease, including the terms and provisions of Sections 3.8 and 3.9, and the public easement reserved by County in Section 15.20.

EXHIBIT B

DEVELOPMENT PLAN

1) SCOPE OF WORK	
A reasonably detailed, written narrative description of the work to be done, including each of the following: ▫ **All new construction and renovation** ▫ **Timing for the start of the work** ▫ **Timing for the completion of the work** **The narrative shall include all applicable components of the project, grouped as set forth below.**	
a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Renovation Comparison Worksheet" instead of this section)	
• **Demolition (of existing improvements prior to commencing work)**	Demolition of existing pool and spa area; however, most improvements will be retained in connection with renovation program.
• **New building construction**	Complete renovation of existing 42 room hotel, together with 52,000 sq. ft. (plus or minus 5%) expansion of the existing project, which will include: ▫ 69 new additional guest rooms; ▫ a new business center, including new meeting rooms and new expanded restrooms; ▫ new courtyard space consisting of approximately 2,900 sq. ft., including events/meeting space and outdoor dining area, in a setting of terraced gardens; ▫ construction of a promenade on the frontage of Marina Beach, including public use elements, in conformance with the LCP and Marina design guidelines; ▫ landscape and greenscape will provide an upscale ambiance and tie directly to the Promenade, including setbacks for seating and viewing Marina Beach; and ▫ construction to include surface parking of 135 spaces.

	The renovation program will include: ▫ construction of a new upgraded resort type pool at the center of the property, including a pool deck area, concrete decking and walkways, and public restrooms; ▫ a food and beverage outlet; ▫ new room interiors; ▫ new building facades; and ▫ new interior and exterior common areas. Construction will be implemented in a single phase. Project construction start to completion (date of 1st occupancy) is estimated to be 18 months. Starting with date of term sheet approval, DCB filing within 3 months, DRP filing within 2 months of DCB conceptual approval.
• **Remodeled building exteriors**	New building facades and staircases, new parking areas, and restriped parking spaces including required ADA spaces.
• **Remodeled building interiors**	Remodeled building interiors, including guest bedroom interiors, guest baths/showers, sinks and faucets and toilets (including ADA handicap grab bars, and toilet seats to extent required).
• **Remodeled interior building common areas**	The entire building interior common area will receive a facelift, including the main lobby, hallways, entryways, waiting & meeting areas, lounges, staircases, walkways, restrooms, elevators, sitting areas, phone/communication areas, community rooms, service counters and necessary lighting and illumination. New facility to be fully ADA compliant . All surfaces will either be coated with a fresh updated paint scheme or covered with appropriate wall covering. Interior furnishings such as sofas, chairs, lamps, tables shall be replaced.

• **Remodeled exterior building common areas**	The entire building exterior will receive a facelift that will tie into the design scheme of the new building. Remodeled exterior elements will include spa, courtyard function space, terraced gardens, patio and dining areas, walkways, stairways and exterior common areas, including landscaping and hardscape. In addition: ❑ Driveways shall be replaced or resealed. ❑ Any required ADA accommodations shall be updated to meet current ADA codes. ❑ All exterior surfaces will be coated with a fresh updated paint scheme. ❑ Existing exterior lighting will be replaced to increase light levels, efficiency and enhance walkways and building design. ❑ All remaining building exteriors will receive a facelift that will tie in with the design scheme of the new building. All new stucco to be provided throughout. All patios and balconies will also have extensive renovations to include removal of all existing wood facing and replacement with new comparable materials. All parapet walls will also be reconstructed to match the new building design. ❑ Existing windows shall be removed and replaced with new along with new sliding glass doors.
• **Landscaping**	Terraced landscaped gardens and greenscape will provide an upscale ambiance and tie directly to the Marina Promenade with setbacks for seating and viewing of Marina Beach. In addition: ❑ Any landscape upgrades will conform to the contour of the newly remodeled building and walkways and to the new building. ❑ Any site drainage problems will also be addressed and/or repaired during this landscaping process. ❑ Lessee will comply with DBH requirements for Basin D drainage project.

b) Marina	
• **Replacement of docks and slips, including design and materials**	Not applicable (no water area).
• **Retention of existing slip count, including slip count before and after by slip size**	Not applicable (no water area).
• **Retention of marine commercial facilities, including area count before and after for each category**	Not applicable (no marine commercial facilities).

c) Promenade	
• **Walkway design and materials**	All concrete walkways shall be replaced. The walkways shall meet all requirements of fire access, but will first be a pedestrian space with paving treatments, landscape pockets, spots for benches and viewing opportunities. The walkway shall offer pedestrian access to the adjacent parcels. Construction of an ADA-compliant promenade on the frontage of Marina Beach, including public use elements, in conformance with the LCP and Marina design guidelines. Lessee shall work cooperatively with County and lessees of adjacent parcels to develop an integrated plan for an enhanced waterfront at Marina Beach, including but not limited to a boardwalk and other pedestrian attractions, railings, fencing, landscaping, hardscapes, lighting, seating, signage, trash receptacles, drainage, restrooms, showers, playgrounds, picnic shelters, and other promenade and beach related improvements. Lessee will be fully responsible for constructing, operating and maintaining all the improvements designed to be on its leasehold and will be required to contribute its proportionate share of the costs of design and construction of other public amenities located in common and/or public areas as provided in section 14 of the term sheet.
• **Fencing design and materials**	Fencing design and materials will be constructed in conformance with the LCP and Marina design guidelines.
• **Lighting design and materials**	To create ambience at night, new accent lighting will be added to all walkways, driveways, staircases and common areas. All hallways, entryways, stairwells and elevators shall include appropriate emergency lighting. Thematic lighting along the promenade will personalize the area and tie it to the overall design concept of the project.

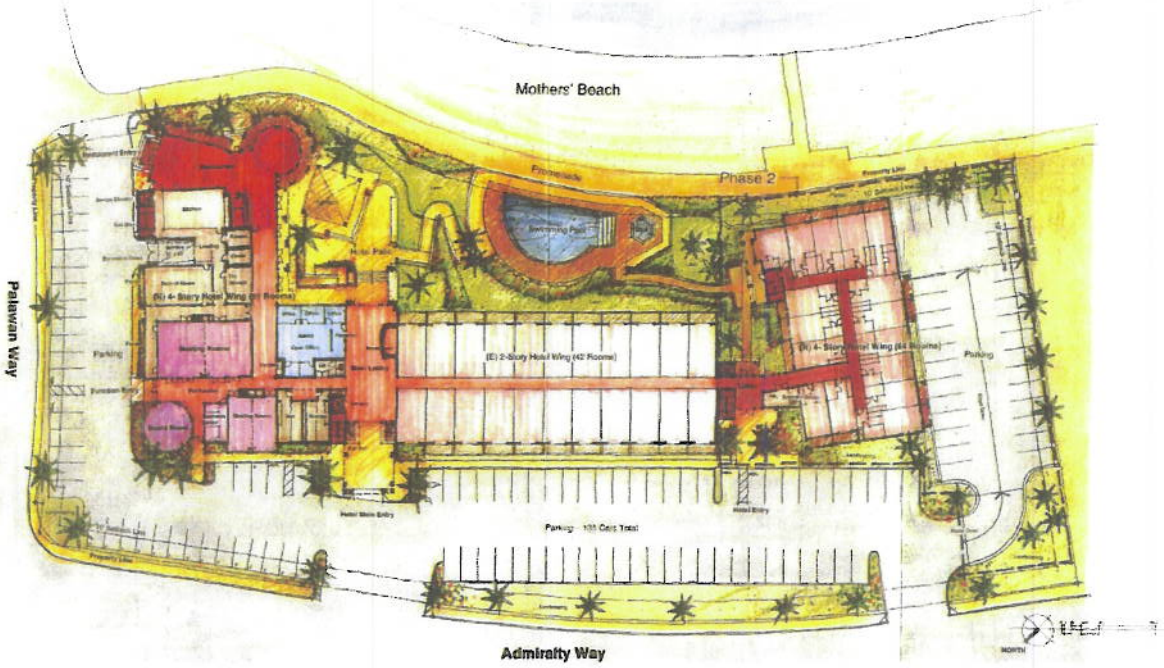
d) Signage	
• **New signage program**	The development of this parcel shall include a distinct signage package that will include monument signage and directional signage for the guests and appropriate signage for building identification.

2) PLANS & DRAWINGS	
Preliminary plans for all work to be done	
a) Site Plan	
• **Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips**	See Exhibit A-1, "Jamaica Bay Inn – Site Plan" Also see Exhibit A-3, "Jamaica Bay Inn – Second Floor Plan"
b) Building Elevation	
• **A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations**	See Exhibit A-2, "Jamaica Bay Inn – Elevation"
c) Landscaping Plan	
• **If not already included in the above materials**	See Exhibit A-1, "Jamaica Bay Inn - Site Plan"
d) Dock Construction Plan	
Dock construction plan, including physical layout of docks and slips	Not applicable (no water area).

3) BUDGET	
a) Budget worksheet	
• **Estimated cost for all of the work agreed upon**	

Cost Component	*Total Cost*
Hotel Hard Construction Cost	$ 6,018,000
Construction bonds	$ 45,000
Architect/Engineering	$ 420,000
Permits, Fees & testing	$ 300,000
Legal, Accounting & Insurance	$ 90,000
Developer overhead & Project Management	$ 450,000
Pre-opening advertising & promotion	$ 55,000
Loan fees	$ 70,000
Interest during construction	$ 210,000
Furniture, fixtures & equipment	$ 1,665,000
Supplies	$ 150,000
Contingency	$ 1,000,000
Total development cost	$10,473,000

Exhibit A-1
Jamaica Bay Inn – Site Plan



Site Plan

Jamaica Bay Inn
MARINA DEL REY **CALIFORNIA**

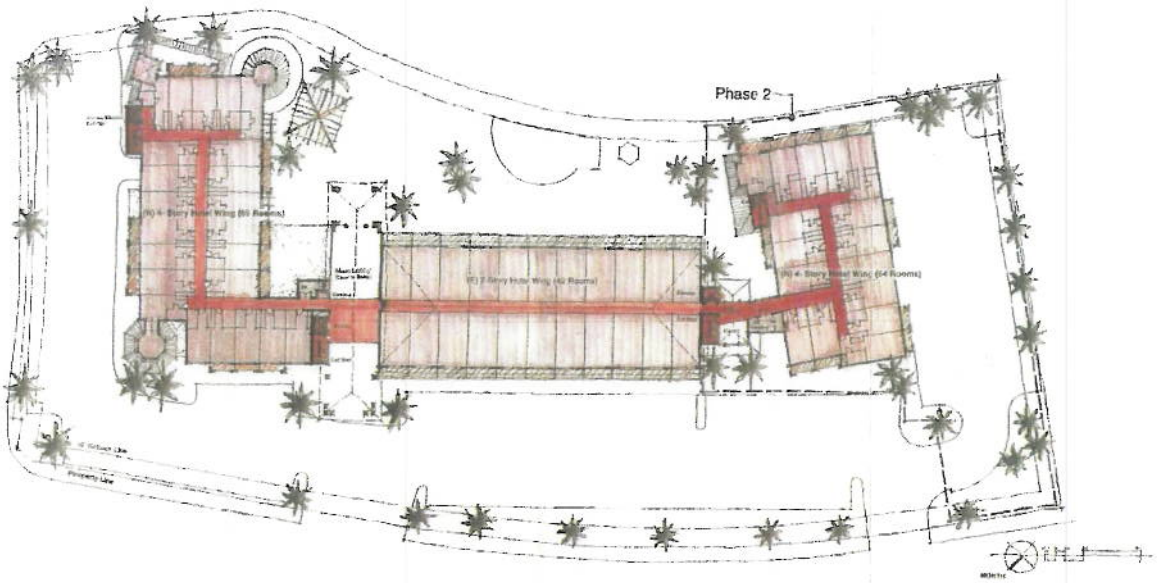
08.22.03

Exhibit A-2
Jamaica Bay Inn – Elevation

Jamaica Bay Inn
MARINA DEL REY **CALIFORNIA**

08.22.03

Exhibit A-3
Jamaica Bay Inn – Second Floor Plan



Second Floor Plan

Jamaica Bay Inn
MARINA DEL REY **CALIFORNIA**

08.22.03

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. 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, (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 lessee and Major Sublessee (if applicable) must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal). 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 lessee (or Major Sublessee, if applicable) 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 Lessee's interest in this Lease or the Premises, or own the entity which will so acquire Lessee'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 in connection with the transaction shall not result in a financing obligation which jeopardizes the Lessee's (or Major Sublessee's) ability to meet its rental obligations under the Lease or the Major Sublease. 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 assignee must agree that) the County will have reasonable approval rights regarding any future direct or

indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any Excluded Transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.

7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.

8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

EXHIBIT D

CONDITIONS TO COASTAL DEVELOPMENT PERMIT

See attached.

1. This grant authorizes a **Coastal Development Permit (CDP 200500006)** for the renovation and expansion of the existing hotel, including 69 additional guest rooms (total of 111 guest rooms), an expanded and renovated restaurant, outdoor dining, new swimming pool and spa, patio, demolition of the existing one-story hotel building section and replacement with a four-story hotel building section, demolition of an existing one-story accessory building, new landscaping plan, parking and authorizes a **Conditional Use Permit (CUP 200500233)** for the sale of a full-line of alcoholic beverages for on-site consumption in association with a hotel, restaurant, patio café, and hotel accessory uses on Parcel 27 in Marina del Rey, in substantial compliance with the approved Exhibit "A," and subject to all of the following conditions:

    a. The Permittee shall submit, to the County of Los Angeles, an in-lieu fee payment for on-site affordable accommodations in the amount of **$90,321**. These fees shall be placed in a separate interest bearing trust account, pursuant to Sections 22.46.1180 (A) (16) (b) and 22.46.1190 (A) (8) (b) of the county code. This account shall be administered by Los Angeles County and/or its designees, according to said section(s) of the county code, and may be adjusted pursuant to consumer price index changes in subsequent years;

    b. The Permittee shall submit, to the County of Los Angeles, a Youth Hostel Fund fee payment in the amount of **$9,032**. These fees shall be placed in an interest bearing trust account and shall only be expended pursuant to Sec. 22.46.1960 (E) of the county code. This account shall be administered by Los Angeles County and/or its designees, according to said section(s) of the county code, and may be adjusted pursuant to consumer price index changes in subsequent years;

    c. The permittee shall maintain a minimum of 161 on-site automobile parking spaces. No more than 63 spaces may be compact;

    d. At least four bicycle parking spaces shall be maintained in close proximity and convenient to the hotel entrance. The bicycle parking spaces shall be a stand or other device constructed so as to enable the user to secure by locking the frame and one wheel of each bicycle parked therein. Racks must be easily usable with both U-locks and cable locks. Racks should support the bikes in a stable upright position so that a bike, if bumped, will not fall or roll down. Racks that support a bike primarily by a wheel, such as standard 'wire racks' are damaging to wheels and thus are not acceptable; and

    e. The project shall dedicate the necessary right-of-way along Admiralty Way for the future widening of Admiralty Way, associated with the Admiralty Way Widening project and the Admiralty Way / Via Marina Reconfiguration project, as specified by the Department of Public Works.

2. Prior to the issuance of any building permits for the project, the permittee shall record said Covenant and Agreement in the office of the County Recorder. The permittee shall, prior to recordation in the Office of the County Recorder, submit a copy to County Counsel of the Department of Regional Planning, the Department of Beaches and Harbors for review and approval.

3. Unless otherwise apparent from the context, the term "permittee" shall include the applicant

and any other person, corporation, or other entity making use of this grant.

4. This grant shall not be effective for any purpose until the permittee, and the owner of the subject property if other than the permittee, have filed at the office of the Department of Regional Planning their affidavit stating that they are aware of, and agree to accept, all of the conditions of this grant and that the conditions of the grant have been recorded as required by Condition No. 2, and until all required monies have been paid pursuant to Condition Nos. 1(a), 1(b), 15 and 20.

5. To the extent permitted by law, the permittee shall defend, indemnify and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65009. The County shall notify the permittee of any claim, action, or proceeding and the County shall reasonably cooperate in the defense.

6. In the event that any claim, action, or proceeding as described above is filed against the County, the permittee shall within ten days of the filing pay the Department of Regional Planning an initial deposit of $5,000, from which actual costs shall be billed and deducted for the purpose of defraying the expenses involved in the department's cooperation in the defense, including but not limited to, depositions, testimony, and other assistance to permittee or permittee's counsel. The permittee shall also pay the following supplemental deposits, from which actual costs shall be billed and deducted:

7. If during the litigation process, actual costs incurred reach 80 percent of the amount on deposit, the permittee shall deposit additional funds sufficient to bring the balance up to the amount of the initial deposit. There is no limit to the number of supplemental deposits that may be required prior to completion of the litigation.

8. At the sole discretion of the permittee, the amount of an initial or supplemental deposit may exceed the minimum amounts defined herein.

9. The cost for collection and duplication of records and other related documents will be paid by the permittee in accordance with Los Angeles County Code Section 2.170.010.

10. This grant will expire unless used within two years from the date of approval. A one-year time extension may be requested in writing with the applicable fee six months before the expiration date.

11. If any provision of this grant is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.

12. Prior to the use of this grant, the property owner or permittee shall record the terms and conditions of the grant in the office of the County Recorder. In addition, upon any transfer or lease of the property during the term of this grant, the property owner or permittee shall promptly provide a copy of the grant and its conditions to the transferee or lessee of the subject property.

13. **This grant will terminate on August 15, 2027**. Entitlement to use the property thereafter shall be subject to the regulations then in effect. At least six (6) months prior to the expiration of this permit and in the event that the permittee intends to continue operations

after such date, a Director's Review application shall be filed with the Department of Regional Planning. The application shall be a request for continuance of the use permitted under this grant, whether including or not including any modification to the use at that time. **This grant may, at the discretion of the Director, be approved to continue for an additional ten (10) year period, with a Director's Review.**

14. Entitlement to the use of the property thereafter shall be subject to the regulations then in effect. At least six (6) months prior to the expiration of this permit and in the event that the Permittee intends to continue operations after such date, a new Conditional Use Permit and Coastal Development Permit application shall be filed with the Department of Regional Planning. The application shall be a request for a continuance of the use permitted under this grant, whether including or not including modification to the use at that time.

15. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions. The permittee shall deposit with the County of Los Angeles the sum of **$3,000.00**. These monies shall be placed in a performance fund which shall be used exclusively to compensate the Department of Regional Planning for all expenses incurred while inspecting the premises to determine the permittee's compliance with the conditions of approval. The fund provides for **twenty (20) annual inspections**. Inspections shall be unannounced.

16. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions.

17. If additional inspections are required to ensure compliance with the conditions of this grant, or if any inspection discloses that the subject property is being used in violation of any condition of this grant, the permittee shall be financially responsible and shall reimburse the Department of Regional Planning for all additional inspections and for any enforcement efforts reasonably necessary to bring the subject property into compliance. Inspections shall be made to ensure compliance with the conditions of this grant as well as adherence to development in accordance with the site plan on file. The amount charged for additional inspections shall be $150.00 per inspection, or the current recovery cost, whichever is greater.

18. Notice is hereby given that any person violating a provision of this grant is guilty of a misdemeanor. Notice is further given that the Regional Planning Commission or a hearing officer may, after conducting a public hearing and giving notice thereof to permittee, revoke or modify this grant, if the Commission or hearing officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance.

19. Within fifteen (15) days of the approval date of this grant, the permittee shall remit a **$50.00** processing fee payable to the County of Los Angeles in connection with the filing and posting of a Notice of Determination in compliance with Section 21152 of the Public

Resources Code.

20. Within 30 days of the approval date of this grant, the permittee shall deposit the sum of **$3,000.00** with the Department of Regional Planning to defray the cost of reviewing the required mitigation monitoring reports and verifying compliance with the Mitigation Monitoring Program.

21. Within fifteen (15) calendar days of the approval date of this grant, the permittee shall remit a **$50** processing fee payable to the County of Los Angeles in connection with the filing and posting of a Notice of Determination in compliance with Section 21152 of the Public Resources Code. In the event a finding of "no effect" on fish and wildlife resources is not determined by the State Department of Fish and Game, an **$1,800** Fish and Game fee is required pursuant to Section 711.4 of the Fish and Game Code, to defray the costs of fish and wildlife protection and management incurred by the California Department of Fish and Game.

22. The conditions and/or changes in the project, set forth in the Mitigated Negative Declaration as necessary in order to assure that the proposed project will not have a significant effect on the environment, are incorporated herein by this reference and made conditions of approval of this grant. The permittee shall comply with all such conditions/changes in accordance with the attached Mitigation Monitoring Program. As a means of ensuring the effectiveness of such conditions and/or changes to the project, the permittee shall submit mitigation monitoring reports to the Department of Regional Planning for review and approval as frequently as may be required by the department. The reports shall describe the status of the permittee's compliance with the required project conditions/changes.

23. Upon approval of this grant, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Forester and Fire Warden to determine what facilities may be necessary to protect the property from fire hazard. Any necessary facilities shall be provided as may be required by said Department.

24. All requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless specifically modified by this grant, as set forth in these conditions or shown on the approved plans.

25. All structures shall comply with the requirements of the Division of Building and Safety of the Department of Public Works.

26. All structures, walls, and fences open to public view shall remain free of extraneous markings, drawings, or signage. These shall include any of the above that do not provide pertinent information about said premises.

27. In the event such extraneous markings occur, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces. The only exceptions shall be seasonal decorations. Inspections shall be made as provided in Condition No. 10 to ensure compliance with this condition, including any additional inspections as may be necessary to ensure such compliance.

28. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of revised plans, similar to Exhibit "A" as presented at the public hearing that clearly depicts all required project changes. The property shall be developed and maintained in substantial conformance with the approved revised Exhibit "A". All revised plot plans must be accompanied by the written authorization of the property owner.

29. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of a landscape plan, which may be incorporated into the Revised Exhibit "A" described in Condition No. 28. The landscape plan shall show the size, type, and location of all plants, trees, and watering facilities. The permittee shall maintain all landscaping in a neat, clean and healthful condition, including proper pruning, weeding, removal of litter, fertilizing and replacement of plants when necessary for the life of this grant.

30. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director of Planning and Director of Beaches and Harbors for review and approval three copies of a signage plan, including elevations, proposed lettering, colors, and locations of signage on the subject property, which may be incorporated into the Revised Exhibit "A" described in Condition No. 28. All renderings of said signage shall be drawn to scale and shall be in conformity with those approved by the Design Control Board.

31. The permittee shall, to the satisfaction of the Director of Regional Planning, participate in, and contribute a fair share to, funding the mitigation measures described in the Coastal Improvement Fund as specified in Section 22.46.1950 (Coastal Improvement Fund) of Los Angeles County Code.

32. The permittee shall prepare a Fire Safety Plan in accordance with Section 22.46.1180 (15) of the zoning code and obtain approval of the Fire Department prior to issuance of any building permits.

33. Upon receipt of this letter, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Fire Department to determine what facilities may be necessary to protect property the property from fire hazard. The permittee shall provide fire flow, hydrants, gated access width, emergency access, and any other facilities as may be required by said Department.

34. The applicant shall provide fire sprinklers in all structures in accordance with Los Angeles County Building Code, Chapter 38, Sections 3802(b) 5 and 3802 (h) to the satisfaction of the Fire Department.

35. The following conditions shall apply to project construction activities:

    a. Construction activity shall be restricted between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and between the hours of 8:00 a.m. to 5:00 p.m. on Saturday. No construction shall occur on Sundays and legal holidays;

    b. Pile driving shall be restricted to the hours between 8:00 a.m. to 5:00 p.m.,

Monday through Friday. No pile driving activity shall be conducted on Saturdays or Sundays;

c. All material graded shall be sufficiently watered to prevent excessive amounts of dust during the construction phase. Watering shall occur at least twice daily with complete coverage, preferably in the late morning and after work is done for the day. All clearing, grading, earth moving or excavation activities shall cease during periods of high winds (i.e. greater than 20 mph averaged over one hour) to prevent excessive amounts of dust. Any materials transported off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust;

d. All fixed and mobile construction equipment shall be in proper operating condition and be fitted with standard silencing devices; engineering noise controls shall be implemented on fixed equipment to minimize adverse effect on nearby properties. Generators and pneumatic compressors shall be noise protected in a manner that will minimize noise inconvenience to adjacent properties. All construction equipment, fixed or mobile, that is utilized on the site for more than two working days shall be in proper operating condition and fitted with standard factory silencing features. To ensure that mobile and stationary equipment is properly maintained and meets all federal, state, and local standards, the permittee shall maintain an equipment log. Said log shall document the condition of equipment relative to factory specifications and identify the measures taken to ensure that all construction equipment is in proper tune and fitted with an adequate muffling device. Said log shall be submitted to the Director and the Department of Public Works for review and approval on a quarterly basis. In areas where construction equipment (such as generators and air compressors) is left stationary and operating for more than one day within 100-feet of residential land uses, temporary portable noise structures shall be built. These barriers shall be located between the piece of equipment and sensitive land uses;

e. Parking of construction worker vehicles shall be on-site or at an adjacent off-site location approved by the Director and agreed to by the owner of said adjacent property and restricted to areas buffered from residences located in the vicinity of the subject property, as approved by the Director. If the permittee chooses to provide parking for construction workers off-site, the permittee shall submit to the Director for review and approval plans for temporary construction worker parking and shall demonstrate that the use of the off-site parking spaces shall not interfere with parking spaces required for operation of any use or uses on the property to be used for temporary parking;

f. The permittee shall provide adjacent property owners with a pile driving schedule 10 days in advance of such activities, and a three-day notice of any re-tapping activities that may occur. The permittee shall submit a copy of the schedule and mailing list to the Director and the County Department of Public Works prior to the initiation of construction activities. In addition, the permittee shall conspicuously post a construction schedule along portions of the property fronting Admiralty Way, Palawan Way, and Via Marina ten days in advance of

any construction activities. The schedule shall also include information where individuals may register questions, concerns or complaints regarding noise issues. The permittee shall take appropriate action to minimize any reported noise problems;

g. All project-related truck hauling shall be restricted to a route approved by the Director of Public Works, a map of which shall be provided to the Director upon approval. The permittee shall post a notice at the construction site and along the proposed truck haul route. The notice shall contain information on the type of project, anticipated duration of construction activity, and provide a phone number where people can register questions and complaints. The permittee shall keep record of all complaints and take appropriate action to minimize noise generated by the offending activity where feasible. A monthly log of noise complaints shall be maintained by the permittee and submitted to the County of Los Angeles Department of Health Services;

h. The permittee shall develop and implement a construction management plan, as approved by the Director of Planning and the Director of Public Works, which includes all of the following measures as recommended by the South Coast Air Quality Management District (SCAQMD), or other measures of equivalent effectiveness approved by the SCAQMD:

i. Configure construction parking to minimize traffic interference;

j. Provide temporary traffic controls during all phases of construction activities to maintain traffic flow (e.g., flag person) as needed;

k. Schedule construction activities that affect traffic flow on the arterial system to off-peak hours to the degree practicable as determined by the Director of Public Works;

l. Consolidate truck deliveries when possible;

m. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site;

n. Suspend use of all construction equipment operations during second stage smog alerts. Contact the SCAQMD for daily forecasts;

o. Use electricity from power poles rather than temporary diesel- or gasoline-powered generators, except as approved by the Director;

p. Use methanol- or natural gas-powered mobile equipment and pile drivers instead of diesel if readily available at competitive prices; and

q. Use propane- or butane-powered on-site mobile equipment instead of gasoline if readily available at competitive prices.

r. The permittee shall develop and implement a dust control plan, as approved by

the Director of Planning and the Director of Public Works and the LEA, which includes the following measures recommended by the SCAQMD, or other measures of equivalent effectiveness approved by the SCAQMD:

s. Apply approved non-toxic chemical soil stabilizers according to the manufacturer's specification to all inactive construction areas (previously graded areas inactive for four days or more);

t. Replace ground cover in disturbed areas as quickly as possible;

u. Enclose, cover, water twice daily, or apply approved soil binders to exposed piles (i.e., gravel, sand, dirt) according to manufacturers' specifications;

v. Provide temporary wind fencing consisting of three- to five-foot barriers with 50 percent or less porosity along the perimeter of sites that have been cleared or are being graded;

w. Sweep streets at the end of the day if visible soil material is carried over to adjacent roads (recommend water sweepers using reclaimed water if readily available);

x. Install wheel washers where vehicles enter and exit unpaved areas onto paved roads, or wash off trucks and any equipment leaving the site each trip; and

y. Apply water as needed or chemical soil stabilizers according to manufacturers' specifications to all unpaved parking or staging areas or unpaved road surfaces.

z. All construction and development on the subject property shall comply with the applicable provisions of the Uniform Building Code and the various related mechanical, electrical, plumbing, fire, grading and excavation codes as currently adopted by the County of Los Angeles; and

aa. The permittee shall demonstrate that all construction and demolition debris, to the maximum extent feasible as determined by the Director, will be salvaged and recycled in a practical, available, and accessible manner during the construction phase. Documentation of this recycling program shall be provided to the Director and the County of Los Angeles Department of Public Works, prior to building permit issuance.

36. The permittee shall be in compliance with the attached Mitigation Monitoring Program.

37. This grant shall not be effective until the permittee submits a plan for parking management and on-site circulation to the satisfaction of the Director of Planning and Public Works.

38. ADA compliant sidewalks and driveways shall be constructed to the satisfaction of the Director of Public Works.

39. The permittee shall monitor landscaping on a monthly basis and replace landscaping and/or irrigation as needed to maintain a neat, clean and healthful condition.

40. All conditions shall be binding on all lessees and sub-lessees of Parcel 27.

Attachment: Mitigation Monitoring Program

RJF:PE
8-8-07

EXHIBIT E

PERMITTED CAPITAL EXPENDITURES

The purpose of the Capital Improvement Fund is be to provide funds for the cost of additions, replacements, renovations or upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. The Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation (as defined in Section 5.11 of the Lease). Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee.

Subject to the foregoing, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

1. Painting of the building exterior*
2. Walkways and driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal)
3. Windows replacement*
4. Roof replacement* (may be on a building by building basis)
5. Elevators (replacement or addition)
6. HVAC replacement
7. Light fixtures replacement* (interior and exterior)
8. Irrigation system* (replacement or major addition)

* To qualify, these expenditures need to incorporate replacement or renovation of at least 70% of the items or facilities in question.

EXHIBIT F

DEDICATION AREA

THAT PORTION OF PARCEL 391 AND PARCELS 397 THRU 401, INCLUSIVE, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON LOS ANGELES COUNTY ASSESSOR'S MAP NO. 88, RECORDED IN BOOK 1, PAGES 53 TO 70, INCLUSIVE, OF ASSESSOR'S MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL 401, THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINES OF SAID PARCELS 401, 400, 399 AND 398 TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, SAID CURVE BEING THE MOST NORTHERLY LINE OF SAID PARCEL 398 AND SHOWN ON SAID LOS ANGELES COUNTY ASSESSOR'S MAP NO. 88 AS HAVING A RADIUS OF 15 FEET AND A LENGTH OF 22.77 FEET; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE TO IT'S ENDING AS SHOWN ON SAID MAP; THENCE CONTINUING SOUTHEASTERLY ALONG THE NORTHEASTERLY LINES OF SAID PARCELS 398, 397 AND 391 TO A POINT ON A TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE A", CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 20 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 39° 27' 11" EAST; SAID "CURVE A" BEING TANGENT TO THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 30 FEET OF SAID PARCEL 391; THENCE LEAVING SAID NORTHEASTERLY LINE OF PARCEL 391, AND CONTINUING SOUTHEASTERLY ALONG SAID "CURVE A" AN ARC DISTANCE OF 9.38 FEET THROUGH A CENTRAL ANGLE OF 26° 52' 34" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE B", CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1029.20 FEET AND BEING CONCENTRIC WITH AND DISTANT 2.20 FEET SOUTHWESTERLY FROM SAID NORTHEASTERLY LINES OF SAID PARCELS 391, 397 AND 398, A RADIAL LINE TO SAID POINT BEARS SOUTH 38° 56' 59" WEST; THENCE NORTHWESTERLY ALONG SAID "CURVE B" AN ARC DISTANCE OF 179.29 FEET THROUGH A CENTRAL ANGLE OF 09° 58' 52" TO A POINT ON A NON-TANGENT LINE, HEREINAFTER KNOWN SAID "LINE A", HAVING A BEARING OF NORTH 84° 59' 04" WEST; THENCE ALONG SAID "LINE A", NORTH 84° 59' 04" WEST, 38.88 FEET TO A POINT ON A LINE, HEREINAFTER KNOWN AS "LINE B", HAVING A BEARING OF SOUTH 52° 42' 36" WEST; THENCE ALONG SAID "LINE B", SOUTH 52° 42' 36" WEST, 149.27 FEET TO A POINT ON A LINE,

HEREINAFTER KNOWN AS "LINE C", HAVING A BEARING OF SOUTH 07° 58' 01" WEST; THENCE ALONG SAID "LINE C", SOUTH 07° 58' 01" WEST, 3.35 FEET TO A POINT ON A LINE, HEREINAFTER KNOWN AS "LINE D", HAVING A BEARING OF SOUTH 52° 33' 47" WEST; THENCE ALONG SAID "LINE D", SOUTH 52° 33' 47" WEST, 35.35 FEET TO A POINT ON A LINE, HEREINAFTER KNOWN AS "LINE E", HAVING A BEARING OF NORTH 82° 37' 22" WEST; THENCE ALONG SAID "LINE E", NORTH 82° 37' 22" WEST, 2.85 FEET TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE C", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1151.02 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 38° 53' 29" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE C" AN ARC DISTANCE OF 86.08 FEET THROUGH A CENTRAL ANGLE OF 04° 17' 06" TO A POINT ON A TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE D", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 312.12 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 43° 10' 35" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE D" AN ARC DISTANCE OF 57.14 FEET THROUGH A CENTRAL ANGLE OF 10° 29' 24" TO A POINT ON A TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE E", CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1353.91 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 53° 39' 59" EAST; THENCE SOUTHWESTERLY ALONG SAID "CURVE E" AN ARC DISTANCE OF 63.25 FEET THROUGH A CENTRAL ANGLE OF 02° 40' 36" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE F", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 927.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 50° 59' 22" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE F" AN ARC DISTANCE OF 63.47 FEET THROUGH A CENTRAL ANGLE OF 03° 55' 23" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE G", CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 921.50 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 80° 04' 25" WEST; THENCE SOUTHEASTERLY ALONG SAID "CURVE G" AN ARC DISTANCE OF 6.43 FEET THROUGH A CENTRAL ANGLE OF 00° 23' 59" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE H", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 922.50 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 55° 11' 12" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE H" AN ARC DISTANCE OF 34.77 FEET THROUGH A CENTRAL ANGLE OF 02°

09' 34" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE I", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 921.50 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 12° 12' 25" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE I" AN ARC DISTANCE OF 6.42 FEET THROUGH A CENTRAL ANGLE OF 00° 23' 57" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE J", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 927.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 57° 38' 04" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE J" AN ARC DISTANCE OF 21.50 FEET THROUGH A CENTRAL ANGLE OF 01° 19' 43" TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL 401, SAID POINT BEING DISTANT SOUTH 55° 08' 23" EAST, 12.00 FEET FROM THE MOST NORTHERLY CORNER OF SAID PARCEL 401 MEASURED ALONG SAID SOUTHWESTERLY LINE; SAID MOST NORTHERLY CORNER BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 55° 08' 23" WEST, 12.00 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECT SUPERVISION.

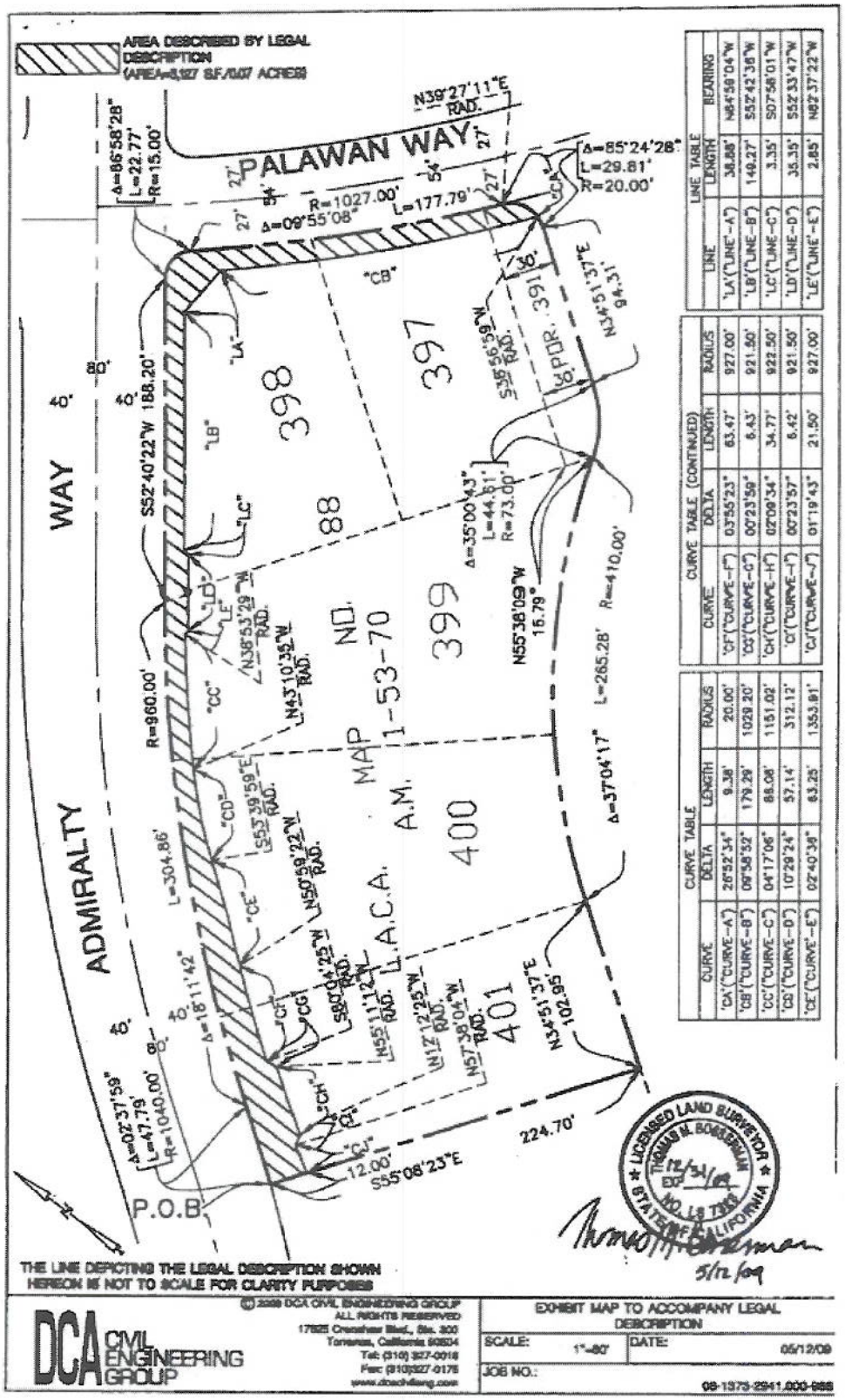
Thomas M. Bosserman 5/12/09

THOMAS M. BOSSERMAN DATE

P.L.S. 7328 EXP. 12/31/09

1095048.8

#39 of JUN 16, 2009



CURVE TABLE			
CURVE	DELTA	LENGTH	RADIUS
"CA"("CURVE-A")	26°52'34"	9.38'	20.00'
"CB"("CURVE-B")	09°58'52"	179.29'	1029.20'
"CC"("CURVE-C")	04°17'06"	88.08'	1151.02'
"CD"("CURVE-D")	10°29'24"	57.14'	312.12'
"CE"("CURVE-E")	02°40'39"	63.25'	1353.81'

CURVE TABLE (CONTINUED)			
CURVE	DELTA	LENGTH	RADIUS
"CF"("CURVE-F")	03°55'23"	63.47'	927.00'
"CG"("CURVE-G")	00°23'59"	6.43'	921.50'
"CH"("CURVE-H")	02°09'34"	34.77'	922.50'
"CI"("CURVE-I")	00°23'57"	6.42'	921.50'
"CJ"("CURVE-J")	01°19'43"	21.50'	927.00'

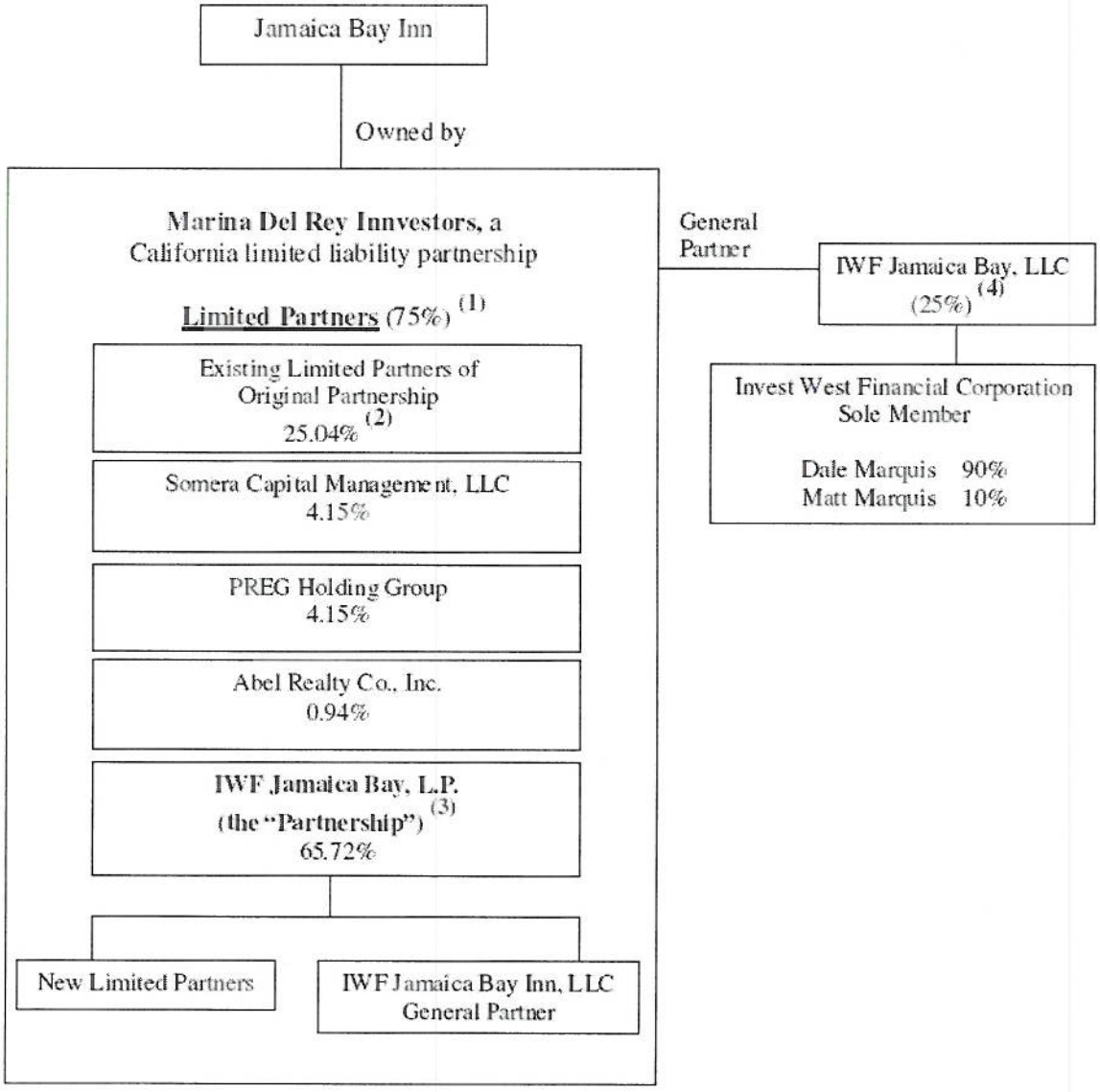
LINE TABLE		
LINE	LENGTH	BEARING
"LA"("LINE-A")	36.88'	N84°59'04"W
"LB"("LINE-B")	140.27'	S52°42'36"W
"LC"("LINE-C")	3.35'	S07°58'01"W
"LD"("LINE-D")	35.35'	S52°33'47"W
"LE"("LINE-E")	2.85'	N82°37'22"W

1095048.8

#39 of JUN 16, 2009

EXHIBIT G

LESSEE'S OWNERSHIP STRUCTURE



(1) The percentages listed below are the individual percentage interests of the total limited partners' percentage interest of 75%

(2) Listed on Schedule 1

(3) The only partner of IWF Jamaica Bay, L.P. that owns a greater than 5% beneficial interest in Lessee is Shupe Revocable Trust (17.51% of the total limited partner interest)

(4) The General Partner's 25% interest is subordinated to the return to the Limited Partner of 100% of their capital contributions. Until that occurs, the Limited Partner's percentage interest is 100% and the General Partner's interest is 0%.

SCHEDULE 1 TO EXHIBIT G

EXISTING LIMITED PARTNERS OF MARINA DEL REY INNVESTORS

PARTNER	ADDRESS	PERCENTAGE INTEREST
Allen Royce Investments	Ron Dodge PO Box 1036 Hood River, OR 97031	0.3407%
Almon Muehlhausen II	c/o Somera Real Estate Group 115 W. Canon Perdido Street Santa Barbara, CA 93101	0.8517%
Anthony and Margaret Whitehouse	59 Lakefront Irvine, CA 92604	0.3407%
Bernd and Keiko Huber	10681 Sapphire Vista Avenue Las Vegas, NV 89144	0.1703%
Brian and Lorinda Nielsen	68 Tapadero Lane Las Vegas, NV 89135	0.3407%
California Federal Bank FBO Edward Hawkes	Polycomp Administrative Services 6400 Canoga Avenue, #250 Woodland Hills, CA 91367	0.5111%
Charles Nelson	3024 Prospect Avenue Santa Monica, CA 90405	0.1703%
Deley Family Irrevocable Trust B	Paula Deley, Trustee 564 Calle Anzuelo Santa Barbara, CA 93111	0.3407%
Edwin and Marcia Lenvik Revocable Trust	736 Rockwood Drive Santa Barbara, CA 93103	0.1703%
Francine Browner Trust	c/o Somera Real Estate Group 115 W. Canon Perdido Street Santa Barbara, CA 93101	0.8517%
George Perry	16 Columbia Avenue East Rockaway, NY 11518	0.1703%

Gerald Bruver Trust	8160 Gould Avenue Los Angeles, CA 90046	0.1703%
Gladys Lyons Revocable Trust	5614 Grey Feather Court Westlake Village, CA 91362	0.3407%
Goldfarb and Fleece, FBO Steven Shore	345 Park Avenue New York, NY 10154	0.1703%
Helene Sullivan Revocable Trust	PO Box 3164 Santa Barbara, CA 93130	0.1703%
Howard and Erlinda Marquis	PO Box 1041 Hood River, OR 97031	0.1703%
Hughes Family Trust Milton and Joyce Hughes, Trustees	10574 Millerton Road Clovis, CA 93619	0.3407%
Invest West Financial Corporation	1933 Cliff Drive, Suite 1 Santa Barbara, CA 93109	0.1703%
Invest West Redondo	1933 Cliff Drive, Suite 1 Santa Barbara, CA 93109	0.8517%
Iris Gelfand	4702 Park Encino Lane, #226 Encino, CA 91436	0.4259%
Jaffe Living Trust Michael and Jann Jaffe, Trustees	12301 Wilshire Blvd., Suite 110 Los Angeles, CA 90025	0.5111%
JBI Partners	c/o Somera Real Estate Group 115 W. Canon Perdido Street Santa Barbara, CA 93101	7.6654%
John Hawkes	412 Calle Alamo Santa Barbara, CA 93105	0.1703%
John Mangan	2712 Verde Vista Drive Santa Barbara, CA 93105	0.3407%
Kima Investments	Kirt Kimball 978 Waterford Drive Provo, UT 84604	0.1703%
King Harbor, Inc.	c/o Mindy Anderson 23901 Calabasas Road, #1010 Calabasas, CA 91302	2.5551%
Lavery Exemption Trust Mary Jane Lavery, Trustee	3492 Wild Lilac Road, #110 Thousand Oaks, CA 91360	0.5111%
Lavery Non-Exempt Marital Trust Mary Jane Lavery, Trustee	3492 Wild Lilac Road, #110 Thousand Oaks, CA 91360	0.5111%
Lloyd Cox Testamentary Trust	Steve Edson, Executor 122 S. Patterson, Suite C-133 Santa Barbara, CA 93111	0.3407%

Louise B. Davis Trust	c/o Cheryl Hilliard 910 Dutch View Court Midway, UT 84049	0.1703%
Marvin Gelfand	11141 Cashmere Street Los Angeles, CA 90049	0.4259%
Neil Afromsky Revocable Trust	c/o Somera Real Estate Group 115 W. Canon Perdido Street Santa Barbara, CA 93101	0.8517%
PREG Partners-Marina del Rey	1933 Cliff Drive, Suite 1 Santa Barbara, CA 93109	0.3407%
Richard Banks Revocable Trust	PO Box 5146 Santa Barbara, CA 93150-5146	0.3407%
Richard Nerod Revocable Trust	16141 W. Troon Circle Miami Lakes, FL 33014	0.3407%
Robert Albrecht, Trustee Declaration of Trust for Thomas English	c/o Ed Wright 1215 Plumas Street, #1500 Yuba City, CA 95991	0.1703%
Santa Barbara Bank and Trust FBO James McKillip IRA	PO Box 2340 Santa Barbara, CA 93120	0.8517%
Shelley Family Limited Liability Partnership	Theora Shelley 10624 E. Terra Drive Scottsdale, AZ 85258	0.8517%
Stephen and Eileen Edson	122 S. Patterson, Suite C-133 Santa Barbara, CA 93111	0.1703%
Susan Irvine	1600 Garden Street, #21 Santa Barbara, CA 93101	0.1703%
Unger and Haynes Partners Charles Unger	PO Box 5937 Snowmass, CO 81615	0.1703%
Union Bank, FBO Charles Bargiel	PO Box 45194-CHB Unit San Francisco, CA 94145	0.1703%
Victoria Erteszek Foote	411 Alma Real Drive Pacific Palisades, CA 90272	0.1703%
GRAND TOTAL		**25.0400%**

Recording Requested by:

COUNTY OF LOS ANGELES

When Recorded Return to:

COUNTY OF LOS ANGELES
Office of County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Attn: Thomas Faughnan, Esq.

Space above this line for recording use. *Free Recording -- Government Code Section 6103*

MEMORANDUM OF AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 27R — MARINA DEL REY

This Memorandum of Amended and Restated Lease Agreement ("**Memorandum**") dated as of **June 26 th**, 2009 (the "**Effective Date**"), is entered by and between the COUNTY OF LOS ANGELES ("**County**"), as lessor, and MARINA DEL REY INNVESTORS, a California limited partnership (together with its permitted successors and assigns, "**Lessee**"), as lessee.

W I T N E S S E T H

WHEREAS, County and Spencer Investment Company, a California corporation, and Michael Sims, an individual (collectively, the "**Original Lessee**"), entered into Lease No. 6573 dated February 11, 1963 (as amended prior hereto, the "**Existing Lease**") whereby prior to the Effective Date Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 27R and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**"), the term of which commenced on January 1, 1963 and currently extends through December 31, 2022 (the "**Existing Expiration Date**"); and

WHEREAS, Lessee has succeeded to the Original Lessee's right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee entered into an Amended and Restated Lease Agreement dated of even date herewith (the "**Restated Lease**") that amends and restates the Existing Lease in its entirety, upon the terms and conditions more specifically provided therein, including, without limitation, (a) an extension of the term of the Existing Lease through December 31, 2061, and (b) the redevelopment of the Premises in accordance with the terms and provisions thereof; and

WHEREAS, County and Lessee desire to execute and record this Memorandum to provide notice of the Restated Lease.

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 Lessee agree as follows:

1. Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of the Restated Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as lessee, the Premises for the Term (as hereinafter defined), subject to and in accordance with all terms, provisions and conditions set forth in the Restated Lease.

2. Term. Unless terminated sooner in accordance with the provisions of the Restated Lease, the term of the Restated Lease (the "**Term**") shall continue until and expire on 11:59 p.m. on December 31, 2061.

3. Reservations. Lessee expressly agrees that the Restated Lease and all rights hereunder or thereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the date of the Existing Lease, or (b) otherwise referenced in the Restated Lease in, to, over or affecting the Premises for any purpose whatsover, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that the Restated Lease and all rights hereunder and thereunder shall be subject to all prior matters of record and the right of County and the City of Los Angeles ("**City**") existing as of the Effective Date or otherwise disclosed to or known to Lessee, as its interest 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 City to convey such easements and transfer such rights to others.

Lessee rights under the Lease and this Memorandum are also subject to the right-of-way dedication and street access provisions set forth in Section 3.9 of the Lease.

4. Incorporation and Conflicts. The purpose of this Memorandum is to provide notice of the Restated Lease. All of the terms and conditions of the Restated Lease are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and the terms of the Restated Lease, the terms of the Restated Lease shall prevail. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Restated Lease. A true copy of the Restated Lease is on file in the offices of the County at Department of Beaches & Harbors, 13837 Fiji Way, Marina del Rey, California 90292.

5. Successors. Subject to the provisions of the Restated Lease governing assignment, the rights and obligations created in the Restated Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees, and assigns of County and Lessee.

6. Counterparts. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one fully-executed document.

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

THE COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

MARINA DEL REY INNVESTORS, a California limited partnership

By: IWF Jamaica Bay, LLC, a California limited liability company, its general partner

By: Invest West Financial Corporation, a California corporation, its sole member

By: _____
Name: Dale J. Marquis
Its: Chairman and Chief Financial Officer

ATTEST:

SACHI A. HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Santa Barbara }

On June 23, 2009 (Date) before me, Daune - Dowell - Notary Public, (Here Insert Name and Title of the Officer)

personally appeared Dale J. Marquis (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Signature of Notary Public)

DAUNE DOWELL
Commission # 1666303
Notary Public - California
Santa Barbara County
My Comm. Expires Jun 10, 2010

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Amended Lease Agreement - JBI

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

THE COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

MARINA DEL REY INNVESTORS, a California limited partnership

By: IWF Jamaica Bay, LLC, a California limited liability company, its general partner

By: Invest West Financial Corporation, a California corporation, its sole member

By: _____
Name: _____
Its: _____

ATTEST:

SACHI A. HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#89 JUN 16 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code which authorized the use of facsimile signatures of the Chairperson of the Board on all papers, documents, or instruments requiring said signature.

The undersigned hereby certifies that on this 24th day of JUNE, 2009, the facsimile signature of DON KNABE, Chair of the Board of Supervisors of the County of Los Angeles was affixed hereto as the official execution of this document. The undersigned further certifies that on this date, a copy of the document was delivered to the Chairperson of the Board of Supervisors of the County of Los Angeles.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.

SACHI A. HAMAI, Executive Officer
Board of Supervisors, County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By _____
Deputy

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 397 to 401 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county, and that portion of Parcel 391, in said county, as shown on said map, within the following described boundaries:

Beginning at the northerly corner of said Parcel 391; thence southeasterly along the northeasterly boundary of said last mentioned parcel to the beginning of a curve concave to the west, having a radius of 20 feet, tangent to said northeasterly boundary and tangent to the southeasterly line of the northwesterly 30 feet of said last mentioned parcel; thence southerly along said curve to said southeasterly line; thence southwesterly along said southeasterly line to the beginning of a curve concave to the northwest, tangent to said southeasterly line and having a radius of 73 feet, said last mentioned curve also passes through a point in the southwesterly line of said last mentioned parcel distant southeasterly thereon 16.79 feet from the westerly corner of said last mentioned parcel; thence southwesterly along said last mentioned curve to said southwesterly line; thence northwesterly along said southwesterly line 16.79 feet to said westerly corner; thence northeasterly along the northwesterly line of said last mentioned parcel a distance of 157.28 feet to the point of beginning.

Excepting therefrom that portion thereof within the following described boundaries:

Commencing at the southeasterly terminus of a curve concave to the south, having a radius of 25 feet, tangent to a line parallel with and 6.5 feet northwesterly, measured at right angles, from the straight line in the northwesterly boundary of said Parcel 398 and reverse at said southeasterly terminus to a curve concentric with and 0.5 foot northeasterly, measured radially, from that certain 1027 foot radius curve in the northeasterly boundary of said last mentioned parcel; thence southwesterly along a radial of said 25 foot radius curve 0.5 foot to a point in said northeasterly boundary, said point being the true point of beginning; thence

southeasterly along said northeasterly boundary to a line parallel with and 2 feet southeasterly, measured at right angles, from said radial; thence southwesterly along said last mentioned parallel line 4.00 feet; thence northwesterly at right angles to said last mentioned parallel line to the northerly boundary of said last mentioned parcel; thence easterly and southeasterly along said northerly and northeasterly boundaries to said true point of beginning.

Reserving and excepting therefrom unto the County of Los Angeles a right of way for sanitary sewer and harbor utility purposes over that portion thereof designated on said map as an easement to be reserved by said county for such purposes.

DESCRIPTION APPROVED
February 8, 1967
JOHN A. LAMBIE
County Engineer
By _____ Deputy

Subject to all reservations set forth in the Restated Lease, including the terms and provisions of Sections 3.8 and 3.9 of the Restated Lease, and the public easement reserved by County in Section 15.20 of the Restated Lease.