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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

October 06, 2015

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

24 October 6, 2015


PATRICK OGAWA
ACTING EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF OPTION TO LEASE TO FACILITATE REDEVELOPMENT--
(Parcel 9U-Woodfin Hotel) MARINA DEL REY
(4th DISTRICT-- 4 VOTES)**

SUBJECT

Request for approval of an option agreement to enter into a lease for a proposed 60-year term with proposed lessee MDR Hotels, LLC (MDR Hotels), successor-in-interest to Woodfin Hotel Suites, Inc. (Woodfin), to enable the development of two hotels in a single building, with a maximum of 288 rooms for both hotels, on the northern portion of Parcel 9U, and appurtenant facilities and amenities; and consideration of a previously certified Final Environmental Impact Report (FEIR), along with an Addendum thereto (Addendum), and adoption of the Addendum. MDR Hotels' exercise of the proposed option is contingent upon MDR Hotels' receipt of entitlements and fulfillment of other conditions required therein.

IT IS RECOMMENDED THAT THE BOARD:

1. Pursuant to the California Environmental Quality Act (CEQA), consider the certified FEIR and Addendum for the Parcel 9 hotel project; find that the certified FEIR and Addendum reflect the independent judgment and analysis of the Board; find that the Mitigation Monitoring and Reporting Program is adequately designed to ensure compliance with the mitigation measures during project implementation; find based on substantial evidence and in light of the whole record that none of the circumstances set forth in section 15162 of the CEQA Guidelines (Cal. Code of Regs, tit. 14, section 151662) calling for the preparation of a subsequent environmental impact report exist; and adopt the Addendum and Mitigation Monitoring and Reporting Program and the associated CEQA Findings of Fact regarding the Addendum.

2. Approve and authorize the Mayor of the Board to sign the Option to Lease Agreement (Option) in substantially the form attached as Attachment A, granting to MDR Hotels, upon fulfillment of stated conditions, an option for a lease with a 60-year term.
3. Approve and authorize the Mayor of the Board (or Chair, as applicable) to sign: a) the Lease Agreement in substantially similar form to Exhibit B attached to the Option, upon confirmation by the Director of the Department of Beaches and Harbors that MDR Hotels has fulfilled the Option conditions, and b) a Memorandum of Lease as referenced in the new Lease Agreement in form approved by County Counsel and County's outside counsel.
4. Authorize the Director of the Department of Beaches and Harbors (Director) to execute and deliver such other ancillary documentation (including, without limitation, a lender estoppel certificate) for Parcel 9U as is required in connection with the execution of the Lease and the development of the parcel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Background:

The proposed project results from a response to a Request for Proposals and your Board's subsequent authorization to enter into exclusive negotiations with Neptune Marina Joint Venture (consisting of Legacy Partners, Inc. (Legacy), Woodfin, and Neptune Marina) to (a) develop, construct and operate apartment and new anchorage facilities on Parcels 10R and FF, (b) develop, construct and operate a 19-story, 288 room, 225 foot high hotel on a portion of Parcel 9U, and (c) construct a public park on the remainder of Parcel 9U.

Subsequent to your Board's authorization for exclusive negotiations, Legacy acquired Neptune Marina's leasehold interest in Parcel 10R. As the result of this purchase, Neptune Marina no longer has any interest in the joint venture. During the period that the development of Parcels 10R, FF and 9U were linked, several changes were made to the development plan for Parcel 9U. The first change was the inclusion of a timeshare component to address development cost increases and financial feasibility of the hotel project. The second change occurred when it was determined that a portion of Parcel 9U, where the hotel was to be built, qualified as a wetland. This determination required the Parcel 9U development plan to be completely redesigned to relocate the hotel from the south end of the parcel to the north end, and for the proposed public park to be changed to an enhanced wetland park. Continued negotiations with Legacy and Woodfin also resulted in the separation of Legacy's development of Parcels 10R and FF from Woodfin's development of Parcel 9U. (Legacy negotiated and was granted a separate option for the development of Parcels 10R and FF.) Although Woodfin was allowed to continue to renegotiate the development of a hotel on Parcel 9U under the aforementioned terms, the discovery of wetlands required revisions to the economic terms and develop plans to resituate the hotel and restore the wetlands on Parcel 9U.

Woodfin's first revision of the project included construction of a 225 foot high hotel on the northern portion of Parcel 9U and an enhanced wetland park comprising not less than 1.47 acres along the southern portion of Parcel 9U. Legacy agreed to provide one-half (½) of the required funds for the park. In this iteration, the hotel contained a maximum of 288 total units, 136 of which would have been timeshare units and up to 152 (but not less than 144) of which would have been hotel rooms. The required 332 parking spaces were to have been provided in a five-level, above-ground parking structure with an additional level below ground. The proposal included the enhancement and

protection of the wetland area as a wetland park to be owned and operated by the County. The Parcel 9U leased premises did not include any water area. The County would have had the right to construct or have constructed new public transient docks in the water area abutting Parcel 9U. Woodfin would have had the first right of refusal to rent at market rates and on a month-to-month basis up to three side-tie berths for public serving boating uses such as charter boat service and other visitor/public maritime boating activities available to the public and not limited solely to hotel guests. Total development costs were projected to be in excess of \$141 million.

Although the proposed size and height of the project were consistent with existing land use entitlements and the Marina del Rey Local Coastal Plan (LCP), there were issues raised during the public hearings, including objections to the building height and inclusion of the timeshare element in the project. At the April 14, 2011 Board meeting, your Board did not approve the project. In response, Woodfin (now MDR Hotels) modified the design to address the issues raised during the public hearings. At its January 2014 meeting, the Design Control Board approved the redesigned project which is being submitted for your consideration today.

Current Project Proposal:

The project will be constructed on the northern portion of Parcel 9U with a reconfigured footprint that includes two wings connected by a ground floor podium that will accommodate two separate brand-name hotels that must each meet at least a AAA three-diamond hotel standard. The height of the building has been reduced from 225 feet to a maximum height of 7 stories (approximately 72 feet), and the timeshare component has been eliminated. The first between MDR Hotels and Legacy to exercise its option will construct the wetland park on the southern portion of Parcel 9U in satisfaction of the requirements of the Marina del Rey Specific Plan. The non-constructing party will pay for one-half of the cost of construction of the wetland park.

MDR Hotels has also agreed that: i) the portion of Parcel 9U on which the wetland park is located will be included in MDR Hotels' leasehold but will be owned and operated by the County; and ii) the premises leased to MDR Hotels will not include any water area.

Summary of the Lease Terms:

1. Location: Parcel 9U, fronting on Via Marina between Neptune Marina (Parcel 10) and Marina Harbor (Parcels 111/112), consists of approximately 3.66 acres of land with no water parcel and is currently unimproved.
2. Development: Two hotels with a combined maximum of 288 units that will be housed in one structure and will satisfy at least a AAA three-diamond accommodation standard.
3. Option Fee: \$100,000. MDR Hotels to satisfy all conditions to exercise of the option within 24 months after the date of the Option Agreement, subject to one 6-month extension in the Director's discretion. The option conditions include obtaining all necessary discretionary entitlements, obtaining project financing, and Director's approval of the project drawings required for entitlement processing.
4. Cost of Development: Hard costs of not less than \$46.7 million in January 2015 dollars, inclusive of MDR Hotels' share of the cost to construct the wetland park, and inclusive of costs for initial hotel furniture, fixtures, equipment and operating supplies.
5. Term of Lease: 60 years

6. Rent:

6.1. Minimum Rent

6.1.1 Construction Period: \$107,500 payable annually until the earlier of 30 months after Lease execution or receipt of Certificate of Occupancy, after which Lease Year 1 commences.

6.1.2 Guaranteed Minimum Annual Rent: The following rent during the first 11 Lease Years after the construction period:

Lease Year 1: \$361,440
Lease Year 2: \$397,734
Lease Year 3: \$435,675
Lease Year 4: \$447,853
Lease Year 5: \$459,130
Lease Year 6: \$477,787
Lease Year 7: \$489,642
Lease Year 8: \$501,797
Lease Year 9: \$514,259
Lease Year 10: \$527,036
Lease Year 11: \$540,137

Starting with Lease Year 12 and every 3 years thereafter, Minimum Annual Rent will be adjusted to the greater of the immediately preceding Minimum Annual Rent or 75% of the average total annual rent for the preceding 3 years.

6.2 Percentage Rent:

6.2.1 During the first 11 Lease Years: 2.5% for all categories.

6.2.2 During the 12th through the 21st Lease Years: 7.5% for hotel and meeting rooms, and standard Marina del Rey leasing percentages for all other categories.

6.3 Renegotiation of Minimum and Percentage Rents: For the 21st Lease Year and for every 10th Lease Year thereafter, rents will be renegotiated with a floor so that neither minimum nor percentage rents can be reduced below the amounts for the Lease Year prior to the previous period.

7. Sinking Funds: MDR Hotels is required to maintain a 2% capital improvement fund and a 3% furniture, fixtures, and equipment fund commencing 4 years after the date of the lease. MDR Hotels is required to make periodic upgrades to the hotels to meet competitive standards for each hotel based on a survey to be commissioned every 10 years and with a minimum expenditure requirement of 2% of gross receipts.

8. Participation in Sale/Refinancing Proceeds:

8.1 Sale: Greater of: (a) 20% of net sales proceeds or (b) the lesser of (i) 5% of gross sales proceeds or (ii) 100% of net sales proceeds.

8.2 Refinancing: 20% of net loan proceeds not invested in leasehold.

9. Parking: All required parking will be provided on site. MDR Hotels is required to provide an additional 21 parking spaces on site for visitors to the wetland park.

Prior Litigation Concerning the Wetland Park Project:

On May 15, 2012, your Board approved a Coastal Development Permit (CDP), applied for by the Department of Beaches & Harbors, for the development of a wetland and upland park on the southern portion of Parcel 9U, adjacent to the proposed Woodfin hotel project. Your Board's approval of the wetland park project was appealed to the California Coastal Commission by project opponents. Following a de novo hearing, the Coastal Commission approved a CDP for the wetland park project. On February 11, 2013, petitioner Ballona Wetlands Land Trust, an environmental organization, filed a lawsuit in State Superior Court against the Coastal Commission and the County to set aside the CDP. The case was settled without trial, and dismissed in June 2014. Pursuant to the settlement, and among other terms, the County agreed to increase the size of the wetland area within the wetland park. The development and construction of the wetland park by MDR Hotels and/or Legacy will be consistent with all settlement terms.

The Department has obtained an appraisal that confirms the returns to the County from the new lease for Parcel 9U are equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

The recommended actions will continue implementation of the County policies that facilitated proactive redevelopment of the parcel, which assists the County to achieve fiscal sustainability (Strategic Plan Goal No. 1, Strategy No.1).

FISCAL IMPACT/FINANCING

The new Lease Agreement for the redevelopment of Parcel 9U will produce the following fiscal benefits to the County:

1. Option Fee: MDR Hotels will pay a non-refundable fee of \$100,000 for the Option (except in the case of a default by County), due upon execution of the Option Agreement.
2. Revenue Due to Project: Parcel 9U is currently an undeveloped parcel that is not producing revenue. Upon completion of construction and stabilization of occupancy, the County will begin to receive revenues commencing at not less than \$361,440 in Lease Year 1.

The revenue increase described here reflects only revenues associated with the ground lease. According to the County's economic consultant, this hotel will also generate more than \$1.6 million per year in transient occupancy (hotel) tax to the County, most of which will be a net increase for the County as the Marina is underserved with hotels. These will be the first new hotels opened in the Marina since 1990 when the Ritz Carlton opened.

Operating Budget Impact

Upon your Board's approval of the Option Agreement, the Department's operating budget will receive a one-time \$100,000 option fee as stated above. This revenue will be accounted for as Fiscal Year 2015-16 one-time over-realized revenues.

Costs of consultants and for the Department's Deputy Director and Asset Management Division Chief involved in the negotiation and development of the Option Agreement and the Lease Agreement are being reimbursed by MDR Hotels.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcel 9U has frontage on Via Marina between Neptune Marina (Parcel 10) and Marina Harbor (Parcels 111/112) and is currently undeveloped. The planned development includes two hotels with a combined maximum of 288 units that will be housed in one structure and will satisfy at least a AAA three-diamond accommodation standard and an enhanced wetland park on the southern 1.36 acres of the parcel. The parcel does not include a waterside component.

Approval of the Option Agreement is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of November 12, 2014, the Small Craft Harbor Commission endorsed the recommendations to approve the Option and the new Lease for Parcel 9U in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

On April 26, 2011, your Board certified the FEIR, State Clearinghouse Number 2007031114, which analyzed five separate project components located on three different parcels. These components included, generally: (1) a 400-unit residential apartment building on Parcel 10R and adjacent waterside improvements, applied for by Neptune Marina; (2) a 126-unit residential apartment building on Parcel FF, applied for by Neptune Marina; (3) a 288-room hotel and timeshare resort, applied for by Woodfin; (4) a restored public wetland and upland park project on the southerly portion of Parcel 9U, applied for by the Department of Beaches and Harbors; and (5) a public-serving boat anchorage proximal to Parcel 9U within Basin B, applied for by the Department of Beaches and Harbors.

Following a public hearing on April 26, 2011, and after certifying the FEIR, your Board indicated its intent to approve all of the projects analyzed in the FEIR, with the exception of Woodfin's hotel project (Component 3, above).

Subsequent to your Board's certification of the FEIR, Woodfin proposed changes to its hotel project which reduced the overall scale of the project (Reduced Scale Project). The Reduced Scale Project includes significant reductions in the height, size, and massing of the hotel building. The overall height has been reduced from 225 feet plus rooftop appurtenances to a maximum height of approximately 72 feet. The project would still provide 288 hotel rooms but in two lower-rise building "wings" oriented to the north (Parcel 10R-facing) and south (wetland park-facing), instead of a single 19-story tower. In addition, the applicant has eliminated the timeshare component, has proposed to provide parking on a single level rather than in a 6-level structure, and has eliminated some facilities,

such as ballroom and spa facilities.

Staff concluded that the Reduced Scale Project would not trigger the need for a subsequent environmental impact report pursuant to section 15162 of the CEQA Guidelines, and the Addendum was prepared for the Reduced Scale Project in accordance with State and County CEQA Guidelines. Minor revisions were made to the Mitigation Monitoring and Reporting Program adopted by your Board on April 26, 2011. These minor revisions are the result of clerical corrections to existing mitigation measures, such as revising fee payments due under the mitigation measures to reflect today's fee amounts, and no new mitigation measures were added. The substantial evidence contained in the Addendum, as analyzed in the CEQA Findings of Fact associated with the Addendum, demonstrates that an addendum is the appropriate CEQA document for the Reduced Scale Project.

The FEIR, Addendum, Mitigation Monitoring and Reporting Program, and the associated CEQA Findings of Fact regarding the Addendum are all attached hereto as Exhibit B.

CONTRACTING PROCESS

The proposed project results from a response to a Request for Proposals and your Board's subsequent authorization to enter into exclusive negotiations with Neptune Marina Joint Venture (Legacy, Woodfin and Neptune Marina) to develop, construct and operate apartment and new anchorage facilities on Parcels 10R and FF, to develop, construct and operate a hotel development on a portion of Parcel 9U, and to construct a public park on the remainder of Parcel 9U. (Subsequently, Legacy acquired the interest of Neptune Marina, and MDR Hotels became the successor-in-interest to Woodfin.) MDR Hotels more recently revised its plans for development of the parcel by reconfiguring the footprint of the hotel to have two separate wings connected by a ground floor podium that will accommodate two separate brand-name hotels that each meet at least a AAA three-diamond hotel standard, reduce the height of the building from 225 feet to a maximum height of 7 stories, and eliminate the timeshare component. The new Lease Agreement for Parcel 9U will be available to MDR Hotels upon the proper exercise of the Option. Upon MDR Hotels' demonstration that it has satisfied the conditions for exercise of the Option, including the receipt of all discretionary planning and zoning land use entitlements and approvals required to be obtained from governmental authorities for construction of the development project associated with the Option, we will present to the Executive Officer the final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and will request at that time execution of the new Lease Agreement for Parcel 9U in substantially similar form to Exhibit A attached to the Option.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

It is requested that the Executive Officer, Board of Supervisors send two copies of the executed Option Agreement and an adopted Board letter to the Department of Beaches and Harbors. Should you have any questions please contact Don Geisinger at (310) 305-9506 or dgeisinger@bh.lacounty.gov.

The Honorable Board of Supervisors

10/6/2015

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Jones', with a stylized, cursive script.

GARY JONES

Director

GJ:BL:dlg

Enclosures

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

OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT (“**Agreement**”) is made and entered into as of the 6th day of October, 2015, by and between the COUNTY OF LOS ANGELES (“**County**”) and MDR HOTELS, LLC, a Delaware limited liability company (“**Optionee**”).

R E C I T A L S

A. County is the fee title owner of certain real property located in the Marina del Rey Small Craft Harbor commonly known as Parcel 9U, and more specifically described on Exhibit A-1 attached to this Agreement and incorporated herein by reference (the “**Premises**”).

B. County and Optionee desire to enter into this Agreement for the grant to Optionee of an option to lease the Premises for a term of sixty (60) years in accordance with the terms and provisions set forth in this Agreement (the “**Option**”).

C. If Optionee exercises the Option, a portion of the Premises constituting approximately 2.2 acres and depicted in the approximate location shown on Exhibit A-2 attached to this Agreement (the “**Hotel Related Premises**”) will be developed by Optionee with two hotels that contain approximately (but not more than) 288 hotel rooms (the “**Hotels**”), a promenade along the waterfront from the boundary with Parcel 10R to the boundary with Parcel 8T, parking facilities, hardscape, landscape and other related improvements (collectively, the “**Hotel Development**”).

D. The remaining portion of the Premises constituting approximately 1.46 acres depicted in the approximate location shown on Exhibit A-2 attached to this Agreement (the “**Wetland Park Premises**”) will be developed with wetland public park, buffer and related improvements (collectively, the “**Wetland Park Development**”) and County will reserve an exclusive easement for public use in, on, under and over the Wetland Park Premises for the use, occupancy, operation, maintenance, repair, alteration, reconstruction and replacement of the Wetland Park Development.

E. County has entered into a separate Lease Option Agreement dated August 19, 2008 with Legacy Partners Neptune Marina, L.P. (with its permitted successors and assignees, the “**Parcel FF Optionee**”), as renewed by Renewal of Lease Option Agreement dated August 16, 2011, pursuant to which County has granted to the Parcel FF Optionee an option to lease and develop certain other real property commonly known as Parcel FF pursuant to a lease agreement to be entered into between Parcel FF Optionee and County (“**Parcel FF Lease**”). If the Parcel FF Lease is in effect as of the date of the execution and delivery of the Lease (as defined in Section 1 below) under this Agreement, then the Wetland Park Development will be performed by the Parcel FF Optionee and, conditioned upon Optionee’s exercise of the Option set forth herein, Optionee shall be responsible for the reimbursement to the Parcel FF Optionee of fifty percent (50%) of the development costs pertaining to the Wetland Park Development pursuant to the Wetland Park Agreement (as defined in Section 5 below) to be entered into between Optionee, Parcel FF Optionee and County as a condition to the exercise of the Option set forth in this Agreement.

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F. If the Parcel FF Lease is not in effect as of the date of the execution and delivery of the Lease under this Agreement, then upon execution and delivery of the Lease under this Agreement, Optionee shall undertake the obligation to perform the Wetland Park Development, subject to certain cost reimbursement provisions set forth in the Lease.

A G R E E M E N T

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

1. Grant of Option. County hereby grants to Optionee the Option to enter into a lease with County (the “**Lease**”) upon the terms and conditions more specifically provided herein. The Lease shall be in the form of the Lease Agreement for Parcel 9U attached to this Agreement as Exhibit B.

2. Option Term. The term of the Option (the “**Option Term**”) shall commence on the date of this Agreement and expire on that date (the “**Option Expiration Date**”) which is the earlier of (i) sixty (60) days following the Conditions Satisfaction Date (as defined below), or (ii) the date that is two (2) years following the date of this Agreement (the “**Outside Expiration Date**”). For purposes hereof, the “**Conditions Satisfaction Date**” shall mean the first date upon which all of the conditions precedent to Optionee’s exercise of the Option set forth in Section 4 below (the “**Option Conditions**”) have been satisfied.

If by the Outside Expiration Date set forth above in this Section 2 the Conditions Satisfaction Date has not occurred, and in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County (the “**Director**”) Optionee has been unable, despite Optionee’s diligent efforts, to satisfy all of the Option Conditions due to causes beyond the reasonable control of Optionee (including, without limitation, Unreasonable County Activity), then upon Optionee’s request Director shall have the discretion to extend the Outside Expiration Date for up to six (6) months to permit Optionee additional time to satisfy the Option Conditions. The Optionee’s extension request shall include a description of Optionee’s efforts to satisfy the Option Conditions and the status and Optionee’s good faith estimate of the projected date for satisfaction of the Option Conditions. There shall be no extension of the Outside Expiration Date if as of the original Outside Expiration Date there is an outstanding uncured Optionee Default (as defined in Section 11.13 below).

Notwithstanding the limitation of the extension of the Outside Expiration Date to the 6-month extension period set forth in the immediately preceding paragraph, in the case of the non-satisfaction of the Entitlements Condition (as defined in Section 4.1 below), if Optionee’s inability to satisfy the Entitlements Condition is caused by (I) a moratorium which prohibits the issuance of the Entitlements and similar entitlement approvals for all other similar projects in Marina del Rey on land leased from the County, (II) a temporary restraining order, injunction or other court order obtained by a third party unaffiliated with Optionee that prohibits the issuance of the Entitlements, or (III) after the issuance of the Entitlements, the continued pendency of an appeal, proceeding or litigation (including all appeals of such litigation) brought by a third party unaffiliated with Optionee that contests the issuance of the Entitlements, then as long as there is not a Optionee Default under this Agreement, the Outside Expiration Date shall be extended

until sixty (60) days following the cessation of such moratorium, temporary restraining order, injunction or other court order, or the denial, dismissal or other resolution in favor of the issuance of the Entitlements, of such appeal, proceeding or litigation that contested the issuance of the Entitlements, as applicable; provided, however, that the Outside Expiration Date shall in no event be extended beyond the fourth (4th) anniversary of the date of this Agreement.

3. Development Work. If Optionee exercises the Option, the Premises shall be leased to Optionee for the purpose of the development by Optionee of the Hotel Development. In addition, if the Parcel FF Lease is not in effect as of the date of the execution and delivery of the Lease under this Agreement, then Optionee also shall be responsible for performing the Wetland Park Development. For purposes of this Agreement, the term “**Development Work**” means the Hotel Development and, if Optionee is responsible for the performance of the Wetland Park Development in accordance with the immediately preceding sentence, the Wetland Park Development. In all cases, the Development Work shall be as more fully described in, and shall be in accordance with, the terms and provisions of the Lease. If the Wetland Park Development is included in the Development Work as set forth above, then “ALTERNATIVE A” in Subsection 5.1.1 of the Lease shall be applicable. If the Wetland Park Development is not included in the Development Work (i.e., because at the time of the execution and delivery of the Lease under this Agreement the Parcel FF Lease is in effect), then “ALTERNATIVE B” in Subsection 5.1.1 of the Lease shall be applicable.

4. Option Conditions. In addition to any other conditions set forth in this Agreement, the exercise by Optionee of the Option shall be subject to the satisfaction of the following conditions (the “**Option Conditions**”):

4.1 Optionee shall have received all discretionary planning and zoning land use entitlements and approvals required to be obtained from governmental authorities (including the County and the California Coastal Commission) for the construction of the Development Work (the “**Entitlements**”), and both (a) the Entitlements shall not be subject to further appeal, and (b) there shall be no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Development Work (not including any proceeding or litigation brought by or on behalf of Optionee or any direct or indirect partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Optionee), or if such a proceeding or litigation has been pending, then a dismissal, decision or judgment shall have been issued in favor of the validity of the Entitlements, which dismissal, decision or judgment shall not be subject to further appeal (collectively, the “**Entitlements Condition**”); for purposes of clarification, if the Development Work includes the Wetland Park Development pursuant to Section 3 above, then the Entitlements shall also include all of the above entitlements and approvals required for the Wetland Park Development, including without limitation, any wetlands enhancements required by the California Coastal Commission; and

4.2 Optionee shall have obtained Project Financing (as defined below) for the Development Work (the “**Project Financing Condition**”). For purposes of this Agreement, “**Project Financing**” means a construction loan from (i) an institutional lender or lenders, or (ii) a venture created pursuant to the EB 5 Immigrant Investor Program that is reasonably acceptable to County, which construction loan shall be at an interest rate or rates and on other terms that are

commercially reasonable, in amounts that when combined with Optionee's equity is reasonably expected to provide sufficient funds to complete the Development Work, all as approved by Director in accordance with the terms and provisions of Section 12.1 of the form of Lease, which approval shall not be unreasonably withheld, conditioned or delayed. If Optionee desires to fund the cost of the Development Work entirely from Optionee equity, then upon demonstration by Optionee to the reasonable satisfaction of Director of the availability of adequate equity funds, Optionee shall be considered to have satisfied the Project Financing Condition.

5. Exercise of Option. The Option shall be exercisable by Optionee only by Optionee's strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Optionee shall notify County in writing of its exercise of the Option (the "**Option Exercise Notice**"); (ii) Optionee shall accompany the Option Exercise Notice with Optionee's execution and delivery to County of the Lease with any additional terms provided in this Agreement and any blank or bracketed terms set forth in Exhibit B hereto completed in accordance with the terms and provisions of this Agreement; (iii) concurrent with the delivery of the Option Exercise Notice, Optionee shall deliver to County the Security Deposit described in Article 7 of the Lease; (iv) the Conditions Satisfaction Date shall have occurred and there shall be no action or proceeding pending to contest the Entitlements or to enjoin or restrain the performance of the Development Work; (v) Director shall have approved the Final Plans and Specifications for the Development Work pursuant to Sections 6.3.3 of this Agreement; (vi) as of the date of Optionee's delivery of the Option Exercise Notice there shall not be an Optionee Default under this Agreement; and (vii) Optionee shall have agreed to the form of an agreement on terms satisfactory to County in its sole discretion regarding the performance by Parcel FF Optionee of the Wetland Park Development and the sharing and funding by Parcel FF Optionee and Optionee of the cost of the design and construction of the Wetland Park Development on an equal basis (the "**Wetland Park Agreement**") if the Parcel FF Lease is in effect as of the date of the execution and delivery of the Lease under this Agreement. Optionee's obligations under the Wetland Park Agreement shall be conditioned upon Optionee's exercise of the Option and the execution and delivery of the Lease by County and Optionee. If as of the date that County and Parcel FF Optionee execute and deliver the Parcel FF Lease, Optionee has not agreed upon the form of the Wetland Park Agreement, then County shall have the right to execute the Wetland Park Agreement with Parcel FF Optionee in such form as acceptable to County. Optionee's rights under this Agreement and the Lease, and its leasehold interest in the Premises, shall be subject to the Wetland Park Agreement, and upon the execution and delivery of the Lease under this Agreement Optionee shall assume and be bound by all obligations under the Wetland Park Agreement applicable to the owner or ground lessee of the Premises. If as of the execution and delivery of the Lease under this Agreement no Wetland Park Agreement is executed because the Parcel FF Lease is not then in effect, then the terms and provisions of the performance of the Wetland Park Development and the sharing of the costs for same shall be as set forth in the Lease.

Upon Optionee's proper and timely exercise of the Option, County shall execute and deliver the Lease as soon as reasonably possible thereafter, but, in any event not later than forty-five (45) days following the date of Optionee's exercise of the Option. The Effective Date of the Lease (as defined in the Lease) shall be the date the Lease is executed and delivered by County, which date shall be inserted into page 1 of the Lease concurrent with County's execution and delivery thereof. If Optionee's Project Financing is in a position to close within the above forty-

five (45) day period, County agrees to cooperate with Optionee to effectuate a concurrent closing of the Project Financing and County's delivery of the Lease such that the Effective Date of the Lease is the same as the date of the close of the Project Financing; provided, however, in no event shall such agreement to cooperate be interpreted to require County to delay the execution and delivery of the Lease beyond such forty-five (45) day period; and provided, further, that County shall not be required to execute and deliver the Lease unless within such forty-five (45) day period Optionee continues to satisfy the Option Conditions and the Project Financing is in a position to close on or before the execution and delivery by County of the Lease. Notwithstanding the foregoing, Director shall have the authority in the exercise of Director's good faith judgment, but not the obligation, to extend the forty-five (45) day period in which Optionee is required to close the Project Financing for up to an additional thirty (30) days.

The failure of the Project Financing to close or Optionee's continuing satisfaction of the conditions to County's required execution and delivery of the Lease during the above forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) shall not in and of itself cause a termination of the Option, and, as long as the Option Term has not expired, Optionee shall have the continuing right to subsequently re-exercise the Option during the remainder of the Option Term if Optionee once again satisfies all conditions to such exercise, subject to Optionee causing the closing of the Project Financing and the continued satisfaction of the conditions to County's execution and delivery of the Lease during the forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) following such subsequent re-exercise of the Option, in accordance with the terms and provisions of this Section 5.

6. Entitlements and Plan Preparation During Option Term.

6.1 Obtaining Entitlements. During the Option Term, Optionee shall use its diligent efforts to satisfy the Option Conditions as soon as possible. Such efforts shall include Optionee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes. Optionee shall cooperate with the Parcel FF Optionee in obtaining all Entitlements for the Wetland Park Development.

6.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "**Department**") shall cooperate with and assist Optionee, to the extent reasonably requested by Optionee, in Optionee's efforts to obtain the Entitlements (including the Entitlements for the Wetland Park Development if the Development Work includes the Wetland Park Development). Such cooperative efforts may include the Department's joinder in any application for the Entitlements, where joinder therein by the Department is required or helpful; provided, however, that Optionee shall reimburse County for the Actual Costs (as defined in the Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Optionee and County acknowledge that the approvals given by County under this Agreement and/or the Lease shall be approvals pursuant to its authority under Section 25536 or 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Lease in no way release Optionee from obtaining, at Optionee's expense, all permits, licenses

and other approvals required by law for the construction of the Development Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the 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 Agreement and/or the Lease.

For the purposes of this Agreement, "**Unreasonable County Activity**" means any of the following actions (or inactions) that occur after the date of this Agreement and prior to the expiration of the Option Term: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Optionee's submittal to the applicable governmental agency of the Final Plans and Specifications (as defined in Section 5.3 of the form of Lease) for the Development Work that are approved by the Department; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Optionee and which are necessary for Optionee to proceed with the permitting and approval process, or the taking by the Department of actions in its proprietary capacity, without Optionee's consent, which are in conflict with Optionee's rights and obligations under this Agreement and actually delay the receipt of the Entitlements; or (iii) the Department's failure to comply with the time periods imposed upon the Department under Section 6.3 below, except in the case (if any) where a failure of the Department to notify Optionee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Nothing contained in this Section 6.2 or the other provisions of this Agreement shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

(a) Within a reasonable time under the circumstances, Optionee 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 Optionee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Optionee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this Section 6.2, in no event shall Optionee be entitled to any extension of the Option Term for any period of the delay under this Section 6.2 that occurred prior to the date of Optionee'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 Optionee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 6.2 for the Unreasonable County Activity shall equal the actual amount of delay in the receipt of the Entitlements directly

caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Optionee), then Optionee and Director shall establish the length of the delay in the receipt of the Entitlements likely to be caused by the Unreasonable County Activity.

(c) If, within fourteen (14) days following receipt of Optionee's notice alleging Unreasonable County Activity, Director and Optionee have not agreed in writing as to whether delay in the receipt of the Entitlements due to Unreasonable County Activity has occurred or the length of such delay, then the matter shall be referred to the Board of Supervisors of the County for such determination.

6.3 Plans and Specifications for Development Work. The Development Work shall be constructed by Optionee in accordance with and subject to the terms and provisions of Article 5 of the form of Lease. The requirements of Article 5 of the form of Lease include, without limitation, the obligation of Optionee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Development Work (which shall not be unreasonably conditioned, withheld or delayed), as set forth in more detail in Section 5.3 of the form of Lease. The procedure for the preparation, submittal and approval of the plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the form of the Lease, except that during the period commencing on the date of this Agreement and expiring on the earlier of Optionee's exercise of the Option or the Option Expiration Date, Optionee shall prepare and submit to Director for Director's approval, the plans, specifications, cost estimates and other materials described in Section 5.3 such that prior to the exercise of the Option Director shall have received and approved all of the plans, specifications, cost estimates and related materials to be received and approved by Director pursuant to Section 5.3 of the Lease, including without limitation, the Final Plans and Specifications (as defined in Section 5.3.3 of the Lease). The time periods for Director's review and approval of the materials submitted by Optionee pursuant to this Section 6.3 shall be in accordance with the terms and provisions of Section 5.3 of the form of Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Optionee in accordance with a schedule which shall facilitate Optionee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. Notwithstanding any contrary term or provision of this Agreement or the Lease, Director shall have the right to approve or disapprove the plans and specifications for the Development Work in Director's sole, but good faith judgment, including without limitation, confirmation in Director's good faith judgment that the Development Work is commensurate in scope and quality with the improvement, appearance and amenity components of the Required Hotel Standard (as defined in the Lease) and otherwise in compliance with the requirements of Article 5 of the Lease.

7. Option Fee. In consideration of County's grant of the Option to Optionee, Optionee shall pay to County concurrent with Optionee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "**Option Fee**"). The Option Fee shall be non-refundable.

8. Right of Inspection. During the period from the date of this Agreement until the earlier of the termination of this Agreement or Optionee's exercise of the Option, County shall permit Optionee and its authorized agents and representatives to enter upon the Premises at reasonable times during normal business hours to inspect and conduct tests and studies of the Premises that Optionee desires to conduct, subject to County's right to approve any invasive inspections, tests or studies, which approval shall not be unreasonably withheld. Optionee shall notify County in writing of its intention, or the intention of its agents or representatives, to enter the Premises at least forty-eight (48) hours prior to such intended entry and shall obtain County's prior written consent to any invasive inspections, tests and studies to be conducted. As a condition to any entry onto the Premises, Optionee shall first execute a right of entry agreement in form satisfactory to County. County shall have the right to be present for any inspection, test or study. Optionee shall bear the cost of all inspections, tests and studies conducted by Optionee pursuant to this Section 8. Prior to Optionee's exercise of the Option, Optionee shall fully satisfy itself with respect to the condition of the Premises, including without limitation, the environmental condition of the Premises. Optionee agrees and confirms that if Optionee exercises the Option the Premises shall be leased to Optionee in its "AS-IS WITH ALL FAULTS" condition in accordance with and subject to the terms and provisions of the Lease.

9. Condition of Title. Prior to the exercise by Optionee of the Option, Optionee shall review and confirm that title to the Premises is in such condition as is acceptable to Optionee for its lease of the Premises and the development and use of the Premises in accordance with the terms and provisions of the Lease. Upon execution and delivery of the Lease, Optionee's leasehold title to the Premises shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the date of this Agreement or otherwise referenced in the Lease; (b) that would be disclosed by an inspection or survey of the Premises; (c) pertaining to the construction, maintenance, service or operation of 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 of Los Angeles to convey or transfer easements or other rights pertaining to such matters to others; or (d) arising in connection with Optionee's proposed development of the Premises or otherwise consented to by Optionee. Notwithstanding the foregoing, County agrees to cooperate with Optionee, at Optionee's cost, in Optionee's efforts to address title matters, if any, which would prevent Optionee from proceeding with the development of the Premises in accordance with the Development Work, as long as such efforts do not materially adversely affect County (e.g., cooperating with Optionee in the relocation at Optionee's cost of any easements or reservations which interfere with the Development Work, to the extent such relocation is reasonably acceptable to County). This Section 9 is intended to address only title matters that arise in connection with the voluntary exercise by County of its proprietary rights as owner of the Premises, and this Section 9 shall not pertain to zoning, entitlement, land use or other matters involuntarily imposed against the Premises or imposed against the Premises by County in its governmental or regulatory capacity. In this regard, it is understood that Optionee's proposed current design of the project would require that County either modify an existing unused reservation for utilities or permit an encroachment of approximately 2.5 feet into such reservation for hotel improvements and a comparable or potentially greater encroachment for subterranean stone columns. County agrees to cooperate with Optionee and consider in good faith the development of a mutually satisfactory arrangement to permit the described improvements, subject to County's obligations to any other third party.

10. County Costs. Regardless of whether Optionee exercises the Option, Optionee shall promptly reimburse County for the Actual Costs (as defined in the form of Lease) incurred by County in the review, negotiation, preparation, documentation and administration of this Agreement, the Lease and the term sheets and memoranda that precede or preceded any of the foregoing. Optionee shall pay all of such Actual Costs that were incurred prior to or as of the date of this Agreement concurrent with Optionee's execution and delivery of this Agreement. Optionee shall pay any such Actual Costs incurred by County subsequent to the date of this Agreement within thirty (30) days following receipt by Optionee of an invoice from the County for such Actual Costs.

11. Miscellaneous.

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

11.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

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

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

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

11.6 No Assignment. Optionee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion. Any transfer of an aggregate of fifty percent (50%) or more of the direct or indirect beneficial ownership interest in Optionee shall constitute an assignment or transfer that requires the written consent of County pursuant to this Section 11.6. Notwithstanding the foregoing provisions of this Section 11.6, County shall not unreasonably withhold its consent to an assignment or transfer of its rights and obligations under this Agreement to an entity in which a majority of the beneficial ownership interest is owned by the same persons that own a majority

of the beneficial ownership interest in Optionee as of the date of this Agreement and as to which there is no Change in Control (as defined in the Lease) of the Optionee. Any assignee of the Optionee's rights under this Agreement shall assume all of the Optionee's obligations and liabilities under this Agreement in form acceptable to County. No assignment or transfer of Optionee's rights or obligations under this Agreement shall release the assignor from any of Optionee's obligations and liabilities under this Agreement.

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

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

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

11.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

11.11 Successors and Assigns. Subject to Section 11.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

11.12 Exhibits. Exhibit A-1, Exhibit A-2 and Exhibit B attached to this Agreement are hereby expressly incorporated herein by reference.

11.13 Optionee Default. For purposes of this Agreement, an "**Optionee Breach**" under this Agreement means a failure of Optionee to perform or comply with any material obligation or covenant of Optionee under this Agreement. For purposes of this Agreement, an "**Optionee Default**" under this Agreement means Optionee's failure to cure a Optionee Breach under this Agreement within (a) ten (10) days after Optionee's receipt of written notice from County in the case of the payment of money, or (b) thirty (30) days after Optionee's receipt of written notice from County in the case of any other obligation or covenant of Optionee under this Agreement; provided, however, that if the nature of the Optionee Breach under this clause (b) is such that it cannot with reasonable diligence be cured within thirty (30) days, then the cure period set forth in this clause (b) shall be extended for such additional period as reasonably required for the cure of the Optionee Breach as long as Optionee commences cure of the Optionee Breach within thirty (30) days after Optionee's receipt of written notice from County and diligently prosecutes such cure to completion.

11.14 Indemnification. Optionee agrees to indemnify, defend and hold County, its agents, officers and employees, harmless from and against any claim, cause of action or proceeding brought against County, its agents, officers or employees, and all liabilities and costs (including, without limitation, attorneys' fees) incurred in connection therewith, regarding any contest, opposition or challenge relating to the Entitlements for the Development Work,

including without limitation, any contest, opposition or challenge to the issuance of any particular permit(s) or approval(s) for the Development Work or as to whether the Development Work requires the issuance of any particular permit(s) or approval(s). Optionee shall have the right to assume the defense of any such action or proceeding with counsel reasonably satisfactory to County.

11.15 Reasonableness Standard. Except where a different standard or an express response period is specifically provided herein, whenever the consent or approval of County or Director is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and whenever this Agreement grants County or Director the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Director shall act reasonably and in good faith. The terms and provisions of this section pertain to County in its proprietary capacity as fee owner of the Premises and do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Optionee have entered into this Agreement as of the date first written above.

APPROVED AS TO FORM:

MARY C. WICKMAN,
Interim County Counsel

By: [Signature]
Deputy

THE COUNTY OF LOS ANGELES

By: [Signature: Mike Antonovich]
Mayor, Board of Supervisors

MDR HOTELS, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

ATTEST:

PATRICK OGAWA,
Acting Executive Officer – Clerk of the Board of Supervisors

By: [Signature]
Deputy



78426

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: [Signature]

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

PATRICK OGAWA
Acting Executive Officer
Clerk of the Board of Supervisors

By: [Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

24 OCT 6 2015

[Signature: Patrick Ogawa]
PATRICK OGAWA
ACTING EXECUTIVE OFFICER

IN WITNESS WHEREOF, County and Optionee have entered into this Agreement as of the date first written above.

APPROVED AS TO FORM:

MARY C. WICKMAN,
Interim County Counsel

By: _____
Deputy

THE COUNTY OF LOS ANGELES

By: Mike Antonovich
Mayor, Board of Supervisors

MDR HOTELS, LLC, a Delaware limited liability company

By: _____
Name: Sandra A. Larrage
Its: Hayman

ATTEST:

PATRICK OGAWA,
Acting Executive Officer – Clerk of the Board of Supervisors

By: L. J. G. G.
Deputy



APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

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

PATRICK OGAWA
Acting Executive Officer
Clerk of the Board of Supervisors

By: L. J. G. G.
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

OCT 6 2015

Patrick Ogawa
PATRICK OGAWA
ACTING EXECUTIVE OFFICER

EXHIBIT A-1

LEGAL DESCRIPTION FOR PARCEL 9U

Parcels 93 to 101 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said County, and the westerly 75.19 feet of Parcel 92, in said County, as shown on said map.

Excepting therefrom that portion thereof within the following described boundaries:

Beginning at the northwesterly terminus of a curve concave to the northeast, having a radius of 25 feet, tangent to the straight line in the southwesterly boundary of said Parcel 95 and tangent to a line parallel with and 2 feet northerly, measured at right angles, from the straight line in the southerly boundary of said last mentioned parcel; thence southeasterly along said curve 25.24 feet to said parallel line; thence East along said parallel line 1.26 feet; thence South 2.00 feet to said southerly boundary; thence westerly and northwesterly along said southerly and southwesterly boundaries to the point of beginning.

Reserving and excepting unto the County of Los Angeles a right of way for access purposes to be used in common with others, over that portion of above described parcel of land, which lies within the northerly 10 feet of the easterly 32 feet of the westerly 75.19 feet of said Parcel 92.

Also reserving and excepting unto the County of Los Angeles rights of way for sanitary sewer, fire access and harbor utility purposes in and across those portions thereof designated on said map as easements to be reserved by said County for such purposes.

DESCRIPTION APPROVED

JUL 14 1972

HARVEY T. BRANDT

County Engineer

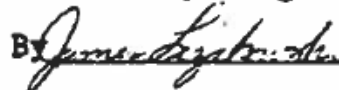
By  Deputy

EXHIBIT A-2

DEPICTION OF HOTEL RELATED PREMISES AND WETLAND PARK PREMISES



EXHIBIT B
FORM OF LEASE AGREEMENT

**LEASE AGREEMENT
PARCEL 9U — MARINA DEL REY**

THIS LEASE AGREEMENT (“**Lease**”) is made and entered into as of _____, _____ (“**Effective Date**”), by and between the COUNTY OF LOS ANGELES (“**County**”), as lessor, and MDR HOTELS, LLC, a Delaware limited liability company (together with its permitted successors and assigns, “**Lessee**”), as lessee.

W I T N E S S E T H

WHEREAS, County and Lessee entered into that certain Option to Lease Agreement dated October ___, 2015 (the “**Option Agreement**”), pursuant to which County granted Lessee an option (the “**Option**”) to enter into a lease agreement with County for the lease to Lessee of the real property in the Marina del Rey Small Craft Harbor now referred to as Parcel 9U and more specifically described on Exhibit A-1 attached to this Lease (the “**Premises**”); and

WHEREAS, a portion of the Premises constituting of approximately 2.3 acres, as legally described on Exhibit A-1 and depicted on Exhibit A-2 attached to this Agreement (the “**Hotel Related Premises**”) shall be developed by Optionee with two hotels that contain approximately (but not more than) 288 hotel rooms (the “**Hotels**”), a promenade along the waterfront from the boundary with Parcel 10R to the boundary with Parcel 8T, parking facilities, hardscape, landscape and other related improvements (collectively, the “**Hotel Development**”); and

WHEREAS, the remaining portion of the Premises constituting approximately 1.36 acres, as legally described on Exhibit A-1 and depicted on Exhibit A-2 (the “**Wetland Park Premises**”) will be developed with wetland public park, buffer and related improvements (collectively, the “**Wetland Park Development**”) and Lessee’s leasehold interest in the Wetland Park Premises shall be subject to County’s reservation of an exclusive public use easement in, on, under and over the Wetland Park Premises for the use, occupancy, operation, maintenance, repair, alteration, reconstruction and replacement of the Wetland Park Development; 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 of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree 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.

1.1.2 “ACTUAL COST” shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure,

including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (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 DISPUTES" shall have the meaning set forth in Section 16(a).
- 1.1.5 "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.
- 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 "ANNUAL RENT" shall have the meaning set forth in Section 4.2.
- 1.1.11 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.5.
- 1.1.12 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.
- 1.1.13 "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, 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.

1.1.14 “APPROVED GOVERNMENTAL CHANGES” shall mean any changes to the Development 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 Development Work (or other Alterations, as applicable), except for any change that is a Material Modification.

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

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

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

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

1.1.19 “BENEFICIAL INTEREST” shall have the meaning set forth in Subsection 4.6.4.

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

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

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

1.1.23 “CAPITAL IMPROVEMENT FUND” shall have the meaning set forth in Section 5.12.

1.1.24 “CHANGE OF OWNERSHIP” shall have the meaning set forth in Subsection 4.6.1.

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

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

1.1.27 “CO DATE” shall mean the date of the issuance of a certificate of occupancy (whether temporary or permanent) or other applicable governmental approval for legal use and occupancy of either of the Hotels to be constructed as part of the Hotel Development.

- 1.1.28 “COMPARABLE HOTEL” shall have the meaning set forth in
Section 5.11.
- 1.1.29 “COMPARABLE HOTELS LIST” shall have the meaning set forth in
Section 5.11.
- 1.1.30 “CONDEMNATION” shall have the meaning set forth in Subsection
6.1.1.
- 1.1.31 “CONDEMNOR” shall have the meaning set forth in Subsection
6.1.4.
- 1.1.32 “CONSTRUCTION COMPLETION DATE” means the date of the
substantial completion of the Development Work, including the receipt of a certificate of
occupancy (whether temporary or permanent) or other applicable governmental
certificate or approval, for legal use and occupancy of both of the Hotels.
- 1.1.33 “CONSUMER PRICE INDEX” shall mean the Consumer Price
Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published
from time to time by the United States Department of Labor or, in the event such index is
no longer published or otherwise available, such replacement index as may be reasonably
agreed upon by County and Lessee.
- 1.1.34 “COST” shall have the meaning set forth in Subsection 4.2.2.3(6).
- 1.1.35 “COUNTY” shall have the meaning set forth in the first paragraph of
this Lease.
- 1.1.36 “COUNTY OPTION” shall have the meaning set forth in Subsection
11.2.4.
- 1.1.37 “COUNTY OPTION PRICE” shall have the meaning set forth in
Subsection 11.2.4.
- 1.1.38 “COUNTY POOL RATE” shall have the meaning set forth in
Subsection 4.4.5 of this Lease.
- 1.1.39 “COUNTY REMOVAL NOTICE” shall have the meaning set forth in
Subsection 2.3.2.
- 1.1.40 “CVB PAYMENT” shall have the meaning set forth in Subsection
4.2.2.9.
- 1.1.41 “DATE OF TAKING” shall have the meaning set forth in Subsection
6.1.2.
- 1.1.42 “DEMOLITION AND REMOVAL REPORT” shall have the
meaning set forth in Subsection 2.3.2.

1.1.43 “DEMOLITION SECURITY” shall have the meaning set forth in Subsection 2.3.2

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

1.1.45 “DEVELOPMENT PLAN” shall have the meaning set forth in Section 5.1.

1.1.46 “DEVELOPMENT WORK” shall mean the construction of the Hotel Development **[IF ALTERNATIVE A IN SECTION 5.5.1:** and the Wetland Park Development].

1.1.47 “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.

1.1.48 “DISQUALIFICATION JUDGMENT” shall have the meaning set forth in Subsection 16.14.1.

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

1.1.50 “EFFECTIVE DATE” shall mean the date set forth in the first preamble paragraph of this Lease.

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

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

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

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

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

1.1.56 “ESTIMATED COSTS” shall have the meaning set forth in Subsection 2.3.2.

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

1.1.58 “EXCESS PERCENTAGE RENT PAYMENT” shall have the meaning set forth in Subsection 4.2.2.4.

1.1.59 “EXCLUDED CONDITIONS” shall have the meaning set forth in Subsection 1.2.3.

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

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

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

1.1.63 “FAIR MARKET RENTAL VALUE” shall have the meaning set forth in Subsection 4.4.1.

1.1.64 “FF&E FUND” shall have the meaning set forth in Section 5.13.

1.1.65 “FINAL PLANS AND SPECIFICATIONS” shall have the meaning set forth in Subsection 5.3.3.

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

1.1.67 “FIRST ADJUSTMENT DATE” shall have the meaning set forth in Subsection 4.2.1.

1.1.68 “FORCE MAJEURE” shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo, governmental order or other unforeseeable event beyond the reasonable control of the party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Development Work or a Future Renovation, a delay in such construction caused by a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work, not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Development Work or a Future Renovation, Force Majeure shall also include (a) Unreasonable County Activity, as defined in and subject to the terms and conditions of Section 5.6 of this Lease; and (b) an injunction or restraining order against the performance of the Development Work or Future Renovation 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; provided, however, regardless of whether Lessee is a named party in the action,

as a condition to this clause (b) Lessee shall 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.

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

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

1.1.71 “FUTURE RENOVATION” shall have the meaning set forth in Section 5.11.

1.1.72 “GUARANTEED MINIMUM RENT PERIOD” shall have the meaning set forth in Subsection 4.2.1 .

1.1.73 “GROSS ERROR” shall have the meaning set forth in Subsection 16.15.4.

1.1.74 “GROSS RECEIPTS” shall have the meaning set forth in Subsection 4.2.2.2.

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

1.1.76 “HAZARDOUS SUBSTANCES” shall mean the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

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

1.1.77 “HOTELS” shall have the meaning set forth in the Recitals to this Lease.

1.1.78 “HOTEL DEVELOPMENT” shall have the meaning set forth in the Recitals to this Lease.

1.1.79 “HOTEL RELATED PREMISES” shall have the meaning set forth in the Recitals to this Lease.

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

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

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

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

1.1.84 “INITIATING PARTY” shall have the meaning set forth in Section 16(a).

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

1.1.86 “INSURANCE RENEGOTIATION DATE” shall have the meaning set forth in Section 9.6.

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

1.1.88 “LEASE” shall mean this Lease Agreement.

1.1.89 “LEASE YEAR” shall have the meaning set forth in Section 2.1.

1.1.90 “LESSEE” shall have the meaning set forth in the first paragraph of this Lease.

1.1.91 “LESSEE SALE PRICE” shall have the meaning set forth in Subsection 11.2.4.

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

1.1.93 “MAJOR SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.94 “MAJOR SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

1.1.95 “MATERIAL MODIFICATION” shall mean a modification to the Development Work (or other Alterations, as applicable) with respect 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 Development 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 materially affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under this Lease; or (5) the modification (a) changes the total number of hotel rooms, (b) reduces the number of parking spaces, except for a corresponding reduction in the number of parking spaces required for the Improvements (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the square footage or number of hotel rooms, or (c) pertains to the Promenade or the Wetland Park Development.

1.1.96 “MINIMUM REQUIRED COST AMOUNT” shall have the meaning set forth in Section 5.1.2.

1.1.97 “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.

1.1.98 “MONTHLY MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.99 “NET AWARDS AND PAYMENTS” shall have the meaning set forth in Section 6.7.

1.1.100 “NET PROCEEDS SHARE” shall have the meaning set forth in Section 4.6.

1.1.101 “NET REFINANCING PROCEEDS” shall have the meaning set forth in Subsection 4.8.5.

1.1.102 “NET TRANSFER PROCEEDS” shall have the applicable meaning set forth in Subsection 4.8.1 or 4.8.2.

1.1.103 “NOTICE OF COMPLETION” shall have the meaning set forth in Subsection 5.7.7.

1.1.104 “OPTION” shall have the meaning set forth in the Recitals to this Lease.

1.1.105 “OPTION AGREEMENT” shall have the meaning set forth in the Recitals to this Lease.

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

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

1.1.108 “PARCEL FF” means the real property located in the Marina del Rey Small Craft Harbor and commonly referred to as Parcel FF.

1.1.109 **[IF ALTERNATIVE B IN SECTION 5.1.1: “PARCEL FF LESSEE” shall have the meaning set forth in Subsection 5.1.1.]**

1.1.110 **[IF ALTERNATIVE A IN SECTION 5.1.1: “PARCEL FF OPTION” shall have the meaning set forth in the Option Agreement.]**

1.1.111 **[IF ALTERNATIVE A IN SECTION 5.1.1: “PARCEL FF OPTIONEE” shall have the meaning set forth in the Option Agreement.]**

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

1.1.113 “PAYMENT BOND” shall have the meaning set forth in Subsection 5.4.3.2.

1.1.114 “PERCENTAGE RENT” shall have the meaning set forth in Subsection 4.2.2.

1.1.115 “PERFORMANCE BOND” shall have the meaning set forth in Subsection 5.4.3.1.

1.1.116 “PERMITTED CAPITAL EXPENDITURES” shall have the meaning set forth in Section 5.12.

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

1.1.118 “PORTION SUBJECT TO DEMOLITION” shall have the meaning set forth in Subsection 2.3.2.

1.1.119 “POST TERM REMOVAL PERIOD” shall have the meaning set forth in Subsection 2.3.2.

1.1.120 “PREMISES” shall mean the real property described on Exhibit A attached to this Lease.

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

1.1.122 “PROMENADE” shall have the meaning set forth in Section 15.20.

1.1.123 “PROPOSED TRANSFER” shall have the meaning set forth in Subsection 11.2.4.

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

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

1.1.126 “QUALIFIED HARD COSTS” shall have the meaning set forth in Subsection 5.1.2.

1.1.127 “RENEGOTIATION DATES” shall have the meaning set forth in Section 4.4.

1.1.128 “RENOVATION PLAN” shall have the meaning set forth in Section 5.11

1.1.129 “REPLY” shall have the meaning set forth in Section 16.5.

1.1.130 “REQUEST FOR ARBITRATION” shall have the meaning set forth in Section 16(a).

1.1.131 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” shall have the meaning set forth in Subsection 5.1.3.

1.1.132 “REQUIRED CONSTRUCTION COMPLETION DATE” shall have the meaning set forth in Subsection 5.1.3.

1.1.133 “REQUIRED HOTEL STANDARD” shall have the meaning set forth in Section 3.1.

1.1.134 “RESPONSE” shall have the meaning set forth in Section 16(a).

1.1.135 “RESPONDING PARTY” shall have the meaning set forth in Section 16(a).

1.1.136 “REVPAR” shall have the meaning set forth in Section 5.11.

1.1.137 “SEAWALL” shall have the meaning set forth in Section 10.7.

1.1.138 “SECTION” shall mean a section of this Lease.

1.1.139 “SECURITY DEPOSIT” shall have the meaning set forth in Section 7.1.

1.1.140 “SEPARATE DISPUTE” shall have the meaning set forth in Subsection 16.10.1

1.1.141 “SHALL” and “WILL” are mandatory and the word “MAY” is permissive.

1.1.142 “STATE” shall mean the State of California.

1.1.143 “STATEMENT OF POSITION” shall have the meaning set forth in Subsection 16.5(2)(a).

1.1.144 “SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.145 “SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

1.1.146 “SUBSECTION” shall mean a subsection of a Section of this Lease.

1.1.147 “substantial completion” means the completion of the Development Work, Future Renovation or other work of improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.148 “TERM” shall have the meaning set forth in Section 2.1.

1.1.149 “TIME OF THE ESSENCE” shall have the meaning set forth in Section 15.2.

1.1.150 “UMBRELLA COVERAGE” shall have the meaning set forth in Subsection 9.1.1

1.1.151 “UNINSURED LOSS” shall have the meaning set forth in Section 10.5.

1.1.152 “UNREASONABLE COUNTY ACT” shall have the meaning set forth in Section 5.6.

1.1.153 “WETLAND PARK DEVELOPMENT” shall have the meaning set forth in the Recitals to this Lease.

1.1.154 **[IF ALTERNATIVE B IN SECTION 5.1.1: “WETLAND PARK AGREEMENT” shall have the meaning set forth in Subsection 5.1.1.]**

1.1.155 **[IF ALTERNATIVE A IN SECTION 5.1.1: “WETLAND PARK DEVELOPMENT COSTS” shall have the meaning set forth in Subsection 5.1.1.]**

1.1.156 **[IF ALTERNATIVE A IN SECTION 5.1.1: “WETLAND PARK DEVELOPMENT COSTS REPORT” shall have the meaning set forth in Subsection 5.1.1.]**

1.1.157 “WETLAND PARK PREMISES” shall have the meaning set forth in the Recitals to this Lease.

1.1.158 “WRITTEN APPRAISAL EVIDENCE” shall have the meaning set forth in Section 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.

1.2.1 As-Is. 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 as of the Effective Date, and Lessee hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Premises or Improvements. 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 or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and the Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Premises or any Improvements located thereon for any particular purpose, (v) the zoning, entitlements or other legal status of the Premises or Improvements, and any public or private restrictions affecting use or occupancy of the Premises or Improvements, (vi) the compliance of the Premises or Improvements with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the County, State, United States of America, California Coastal Commission or any other local, state or federal governmental or quasi-governmental entity (“**Applicable Laws**”), including, without limitation, relevant provisions of the Americans with Disabilities Act (“**ADA**”), (vii) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Premises, Improvements, the adjoining or neighboring property, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements.

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 and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that 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; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of this Lease (“**Term**”) shall commence on the Effective Date and expire on 11:59 p.m. on the day preceding the sixtieth (60th) anniversary of the Effective Date. For purposes of this Lease, “**Lease Year**” shall mean each full (or partial) calendar year (January 1 through December 31) 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 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 hereafter constructed by Lessee upon the Hotel Related Premises, and all alterations, additions or modifications made to the Hotel Related Premises by Lessee. Notwithstanding any contrary term or provision of this Lease, including without limitation, Section 2.3 below, all Improvements located on or made to the Wetland Park Premises shall be owned by County during the Term of this Lease and Lessee shall have no right, title or interest therein, nor shall Lessee have the right to alter, demolish or remove such Improvements.

2.3 Reversion of Improvements Located on Hotel Related Premises. The terms and provisions of this Section 2.3 shall pertain to the Improvements located on the Hotel Related Premises and shall not pertain to the Improvements located on the Wetland Park Premises. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.3.1 County’s Election to Receive Improvements. Unless Lessee is expressly directed by County in writing in accordance with this Section 2.3 to demolish and remove

Improvements on the Hotel Related Premises upon the expiration or earlier termination of the Term, all Improvements located on, in, or under the Hotel Related Premises (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in County without any compensation to 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 (a) receive any and all proceeds which are attributable to the Condemnation of Improvements on the Hotel Related Premises belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, or (b) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Hotel Related Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Hotel Related Premises and 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 Hotel Related Premises for the Permitted Uses.

2.3.2 Duty to Remove. No earlier than eight (8) years, and no later than seven (7) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert reasonably approved by County that details and estimates the cost and required time period for the removal of all Improvements on the Hotel Related Premises at the expiration of the Term (the “**Demolition and Removal Report**”).

County may elect to require Lessee at the end of the Term or any earlier termination of this Lease to remove, at the sole cost and expense of Lessee, all or any portion of the Improvements located on, in or under the Hotel Related Premises, whether placed or maintained thereon by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, such portion (“**Portion Subject to Demolition**”) of the Improvements designated by County for demolition must be able to be demolished separately from other portions of the then-existing Improvements which County has designated to remain. Lessee shall complete the required demolition and removal and shall restore and surrender to County possession of the Premises in the following condition: (a) as to any portion of the Hotel Related Premises on which the Improvements are required to be demolished, such portion of the Premises shall be surrendered to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps; and (b) as to any portion of the Hotel Related Premises on which the Improvements are not required to be demolished, the Hotel Related Premises and such Improvements shall be surrendered to County in the condition in which the Premises and Improvements are required to be maintained and repaired under this Lease.

In the case of the termination of the Lease at the scheduled expiration date of the Term, any election by County to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition located on the Hotel Related Premises must be made by County in writing to Lessee (“**County Removal Notice**”) by the later of (a) one (1) year following delivery by Lessee to County of the Demolition and Removal Report, or (b) four (4) years prior to the then-scheduled expiration date of the Term. If County elects to require Lessee to demolish and remove all of the Improvements or a Portion Subject to Demolition located on the Hotel Related Premises, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the expiration of the Term of

the Lease. In the case of the termination of the Lease at the scheduled expiration date of the Term, Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this Subsection 2.3.2 and/or the Lessee's removal obligations under Subsection 2.3.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Removal Period**"); provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Hotel Related Premises or to maintain and repair those Improvements required to be demolished) shall be applicable during the Post Term Removal Period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Removal Period shall be paid by Lessee in advance prior to the commencement of the Post Term Removal Period.

In the case of a termination of the Lease prior to the scheduled expiration date of the Term, any election by County to require Lessee to remove the Improvements or a Portion Subject to Demolition located on the Hotel Related Premises must be made by County's delivery of the County Removal Notice not later than sixty (60) days after the effective date of such termination, and if County elects to require Lessee to demolish and remove all or a portion of the Improvements located on the Hotel Related Premises on a termination of the Lease prior to the scheduled expiration of the Term, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the later of (a) ninety (90) days after the date on which this Lease terminated, or (b) if Lessee has submitted a Demolition and Removal Report to County, that period after the date on which this Lease terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon receipt of a County Removal Notice, Lessee shall within ninety (90) days after 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, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County ("**Demolition Security**"), and (ii) a schedule satisfactory to County for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "**Estimated Costs**"), adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Lessee delivers the Demolition Security. Thereafter, Lessee shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Lessee's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. Lessee shall have the right to use surplus funds in the

Capital Improvement Fund and/or FF&E Fund towards satisfaction of the Demolition Security requirements under this Subsection 2.3.2 to the extent permitted under the last paragraph of Section 5.12 or the last paragraph of Section 5.13 (as applicable). Any uncured failure by Lessee to deliver the Demolition Security described in this Subsection 2.3.2 shall constitute an Event of Default. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Lease by written notice to Lessee of such revocation at any time not later than one hundred eighty (180) days prior to the scheduled expiration date of the Lease. If County revokes its prior County Removal Notice, then any Demolition Security previously delivered by Lessee to County pursuant to this paragraph shall be returned to Lessee within thirty (30) days following the date of such revocation. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 2.3.3 or 2.3.4 below) shall be returned to Lessee.

If County fails to elect to require Lessee to remove all of the Improvements on the Hotel Related Premises in accordance with the terms of this Section 2.3 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall surrender possession to County of the Hotel Related Premises and those Improvements not required to be removed by Lessee, in the condition in which such Improvements are required to be repaired and maintained under this Lease.

2.3.3 County's Right to Remove Improvements. If County elects to have Lessee demolish and remove Improvements located on the Hotel Related Premises and Lessee fails to do so in accordance with this Lease, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements required to have been demolished and removed by Lessee, Lessee shall reimburse County for any Actual Costs incurred by County in connection with such demolition and removal in excess of any funds used by County from the Demolition Security for such purpose and any consideration received by County as a result of any sale of the demolished Improvements; provided, however, that County shall be under no obligation to Lessee to effectuate any such sale or, in the case of a sale, to obtain any required level of compensation therefor.

2.3.4 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Removal Period described in Subsection 2.3.2 above), Lessee shall in all events remove, at its cost and expense, all furniture, equipment and other personal property from the Hotel Related Premises that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Hotel Related Premises or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof.

2.3.5 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 the foregoing sentence, such utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Lease) constructed as part of the Hotel Development 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 Hotel Related Premises and the Improvements located thereon shall be used by Lessee for the operation and management of two (2) hotels of approximately (but not more than) 288 hotel rooms, along with such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as the “**Permitted Uses**”). Except as specifically provided herein, the Hotel Related Premises and Improvements shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

Each of the Hotels shall be operated in accordance with a standard of operation at least commensurate with the Required Hotel Standard. The “**Required Hotel Standard**” means a standard of operation that meets all criterion (including without limitation, operational, amenities, services, improvements, furniture, fixtures and equipment, and appearance) for a “three-diamond” hotel rating under the AAA Diamond Rating Guidelines hotel rating system of the American Automobile Association (or its successor) (“**AAA**”), or if the AAA Diamond Rating Guidelines change, then the criterion for a standard equivalent to the AAA three-diamond hotel standard as of the Effective Date; provided, however, that if the AAA ceases to publish hotel rating guidelines, then the “**Required Hotel Standard**” shall mean a standard of operation that meets all criteria for the most substantially equivalent standard to a AAA three-diamond hotel standard under such other rating system that is then generally recognized by the hotel industry. If in connection with any change in, or choice of a replacement, rating system County and Lessee are unable to agree upon such changed or replacement rating system, then the dispute shall be resolved in accordance with the procedures set forth in Article 16 of this Lease. Attached as Exhibit F are the AAA Diamond Rating Guidelines in effect as of the date of the Option Agreement.

In connection with any change in, or choice of a replacement rating system, if County and Lessee are unable to agree upon such changed or replacement rating system, then the dispute shall be submitted to arbitration pursuant to Article 16 of this Lease.

The Hotels are initially intended to be operated under the trade names of “Courtyard by Marriott” and “Residence Inn”; provided, however, that Lessee shall have the right to operate under a hotel trade name with an operation standard comparable to or higher than the operation standard of Courtyard by Marriott or Residence Inn (as applicable), or such other trade name

reasonably acceptable to Director. Lessee shall have no right to change the trade name of the Hotels without the prior written consent of Director, which consent shall not be unreasonably withheld. Throughout the Term of the Lease each the Hotels shall be operated by an experienced hotel operator with a nationwide reservation system in which the Hotels participate. Hardage Hospitality is approved as the initial hotel operator. Lessee shall have no right to change the operator of either of the Hotels without County's prior written consent, which consent shall be granted or denied in accordance with the reasonable judgment of County. Notwithstanding any contrary provision of this Lease, any change to the trade name or the operator of a Hotel shall be consistent with the operation of the Hotel in accordance with an operation standard at least commensurate with the Required Hotel Standard.

The Wetland Park Premises shall be used exclusively by County for public park purposes in accordance with the terms and provisions of Section 15.21 of this Lease. [IF **ALTERNATIVE A IN SECTION 5.1.1:** Subject to Lessee's obligation to perform the Wetland Park Development and its rights of access to and use of the Wetland Park Premises to complete the Wetland Park Development in accordance with Article 5 of this Lease,] Lessee's leasehold interest in the Wetland Park Premises shall be subject to the terms and provisions of Section 15.21 of this Lease.

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 or the Improvements, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Premises or Improvements be permitted to be operated or maintained in a manner that renders the Premises or Improvements a fire hazard. Notwithstanding any contrary term or provision of this Section 3.2.1, the covenants of Lessee set forth in this paragraph relating to the Wetland Park Premises shall be applicable only to the actions (not omissions) of Lessee or its Sublessees or concessionaires, or any of its or their employees, agents, licensees or permittees.

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

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

3.2.2.2 The Hotel Related Premises and Improvements located thereon 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 Hotel Related 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; provided, however, that this Subsection 3.2.2.2 shall not be interpreted to regulate in violation of Applicable Law the private, non-business activity of an individual that is confined to such individual's hotel room;

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

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

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, “**antennae**”) shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Hotel Related Premises or the Improvements located thereon, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director’s approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law.

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

This Subsection 3.2.2.7 shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under,

through or around any portion of the Premises or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Hotel Related Premises or Improvements located thereon, and (II) with respect to Hazardous Substances that did not originate at or from the Hotel Related Premises or Improvements located thereon, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

3.3 Active Public Use. The parties acknowledge that County's objective in entering into this Lease for the Hotel Related Premises 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, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Hotel Related Premises and Improvements located thereon 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 Promenade (as defined in Section 15.20) shall be open every day of the year, except for any closure approved by Director required to perform (a) any Alteration permitted under this Lease, or (b) maintenance, repair, replacement or restoration work permitted or required under this Lease. Any changes in the days or hours of operation of the Promenade shall be subject to the written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed. The other Improvements on the Hotel Related 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 Hotel Related Premises or Improvements located thereon shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Law, the Design Control Board), in writing, whether pursuant to Article 5 of this Lease or otherwise, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Director shall not unreasonably withhold its approval of the matters described in this Section 3.5. Any dispute as to whether Director has unreasonably withheld its approval of a matter described in this Section 3.5 shall be submitted to 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 required licenses and permits related to or affecting the

use, operation, maintenance, repair or improvement of the Hotel Related Premises or Improvements located thereon. Without limitation of the foregoing, Lessee shall comply with 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 commercially reasonable rules and regulations governing the use and occupancy of the Hotel Related Premises and Improvements located thereon as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other hotel and related 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 and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the Effective Date or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, and also subject to any other encumbrances, reservations, licenses, easements and rights of way consented to by Lessee in writing.

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 development of the Premises in accordance with the Development 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 Development Work, to the extent such relocation is reasonably acceptable to County).

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 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 Hotel Related Premises and Improvements located thereon, including without limitation the parking areas included within the Hotel Related 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 the Hotel Related Premises and Improvements located thereon.

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 or the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. 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.

Lessee shall have the right to seek an exemption from the applicable real property taxing authority from the payment of possessory interest taxes with respect to the Wetland Park Premises. The Department, in its proprietary capacity, agrees to cooperate with Lessee's efforts to obtain such exemption, including providing such information and documentation regarding the rights, obligations and interests of each party in the Wetland Park Premises as reasonably requested; provided, however, that Lessee shall reimburse County for the Actual Costs incurred by the Department in connection with such cooperative efforts; and provided, further, that neither the County nor the Department shall have any liability to Lessee under this paragraph and this paragraph does not in any manner alter or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions as owner of the Premises.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Hotel Related Premises granted herein, Lessee shall pay County (a) the Annual Minimum Rent described in Subsection 4.2.1 below, and (b) the Percentage Rent described in Subsection 4.2.2 below, as such amounts are adjusted pursuant to Sections 4.3 and 4.4 of this Lease. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and 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 and 4.4 below) during each Lease Year during 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 period during which the Annual Minimum Rent is

calculated is shorter or longer than a calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from the Effective Date through the day preceding the earlier of the CO Date or the Required Construction Completion Date (the “**Construction Period**”), the Annual Minimum Rent shall be equal to One Hundred Seven Thousand Five Hundred Dollars (\$107,500.00) per year. Lessee shall provide written notice to County of the CO Date promptly upon the occurrence thereof.

During the period commencing on the day following the Construction Period and continuing through the December 31 next following the eleventh (11th) anniversary of the last day of the Construction Period (or through the December 31 immediately preceding the eleventh (11th) anniversary of the last day of the Construction Period if the last day of the Construction Period is January 1) (the “**Guaranteed Minimum Rent Period**”), the Annual Minimum Rent shall be equal to the following amounts for each respective year during the Guaranteed Minimum Rent Period:

<u>Year During Guaranteed Minimum Rent Period</u>	<u>Annual Minimum Rent</u>
1	\$361,440.00
2	\$397,734.00
3	\$435,675.00
4	\$447,853.00
5	\$459,130.00
6	\$477,787.00
7	\$489,642.00
8	\$501,797.00
9	\$514,259.00
10	\$527,036.00
11	\$540,137.00

For purposes of this Subsection 4.2.1 the first (1st) year of the Guaranteed Minimum Rent Period shall commence on the first day of the Guaranteed Minimum Rent Period and expire on the last day of the calendar month during which the first anniversary of the first day of the Guaranteed Minimum Rent Period occurs; provided, however, that if the first day of the Guaranteed Minimum Rent Period is the first day of a calendar month, then the first year of the Guaranteed Minimum Rent Period shall expire on the day preceding the first anniversary of the first day of the Guaranteed Minimum Rent Period. The second (2nd) through tenth (10th) years of the Guaranteed Minimum Rent Period shall be each successive one year period after the first year of the Guaranteed Minimum Rent Period. The eleventh (11th) year of the Guaranteed Minimum Rent Period shall commence on the day following the last day of the tenth (10th) year of the Guaranteed Minimum Rent Period and expire on the first December 31 that is at least one (1) year after the first day of the eleventh (11th) year of the Guaranteed Minimum Rent Period;

provided, however, if the first day of the Guaranteed Minimum Rent Period occurs on January 1, then the last day of the eleventh (11th) year of the Guaranteed Minimum Rent Period shall be the date preceding the eleventh (11th) anniversary of the first day of the Guaranteed Minimum Rent Period.

As of the date immediately following the Guaranteed Minimum Rent Period (the “**First Adjustment Date**”) and thereafter during the remainder of the Term, the Annual Minimum Rent shall be adjusted in accordance with the terms and provisions of Sections 4.3 and 4.4 below.

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, less the Annual Minimum Rent for such month or year. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee (or any Sublessee) on, from or within the Hotel Related Premises or Improvements located thereon shall be reported under one or more of the percentage categories set forth below, as applicable. 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, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages of Gross Receipts for such previous month, less the amount of the installment of Monthly Minimum Rent paid for such previous month.

(a) Intentionally omitted;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside storage space, lockers or other similar facilities;

(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) hotel and/or motel accommodations, and (2) meeting rooms; and TEN PERCENT (10%) of Gross Receipts from filming or other television and/or motion picture activities;

(c1) ELEVEN PERCENT (11%) of Gross Receipts or other fees charged for the rental, use or occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities (other than Lessee’s management office), 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 category (c1) if the Gross Receipts from the operation of

such businesses (as opposed to the rentals paid for the rental, use or occupancy of the space) are required to be reported under another Percentage Rent category;

(d) Intentionally omitted;

(e) With respect to services such as boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning, and other similar activities where earnings are normally on a commission basis, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if Lessee (or an affiliate of Lessee or a subtenant) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(f) With respect to service enterprises, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if Lessee (or an affiliate of Lessee or such subtenant) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(g) SIX PERCENT (6%) of the Gross Receipts received by Lessee (or a subtenant) if Lessee (or a subtenant) is the operator of the enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) if a third party provider is the operator of the enterprise, from the rental of boats or from other commercial boating activities including, but not limited to, charter boats, bareboat charters and sport fishing, or from the rental of bicycles, cycles carriages, scooters or other similar equipment;

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

(j) THREE AND ONE-HALF PERCENT (3½%) of Gross Receipts from the operation of a restaurant, restaurant/cocktail lounge combination, coffee shop, beach or theater food facility, except that Gross Receipts from facilities established and operated

as a take-out food operation shall be reported under category “(s)” below; 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) Intentionally omitted;

(l) Intentionally omitted;

(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 Director;

(n) Intentionally omitted;

(o) Intentionally omitted;

(p) Intentionally omitted;

(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 category (s) below;

(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 International Hotel (or Hilton Garden Inn or other trade name) located on Parcel 145; (IV) Hotel MdR Marina del Rey- a DoubleTree by Hilton located at 13480 Maxella Avenue; (V) Marina Del Rey Hotel (or other trade name) located on Parcel 42; and (VI) 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) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail; and

(t) If with the prior approval of County or Director Lessee hereafter engages in a use that is not currently permitted under this Lease and as to which there is no specific percentage set forth above applicable to such additional or related use, then concurrent with the approval by County or Director of such specific additional use, Director and 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 of Gross Receipts 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, and (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 paragraph shall remain in effect until the next Renegotiation Date.

Notwithstanding any contrary term or provision of this Subsection 4.2.2, all of the percentages set forth in categories (a) through (t) above shall be two and one-half percent (2.5%) of Gross Receipts during the Guaranteed Minimum Rent Period.

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 Payment of Percentage Rent/Accounting Records and Procedures. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file with County a report of Gross Receipts by category for such previous month, and the amount of Percentage Rent resulting therefrom. Lessee shall include with such report a payment to County of the amount by which the Percentage Rent for such previous month exceeds the Monthly Minimum Rent paid by Lessee for such previous month. Lessee agrees to and shall comply with, and shall cause all of Sublessees 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 all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense reimbursements, fees and commissions made or earned by Lessee and/or all Sublessees, from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Hotel Related Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, calculated in accordance with the accounting method described in 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, 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 shall not include security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee’s obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.

(4) Gross Receipts must include the usual charges for any services, goods, rentals or facilities provided by Lessee or Sublessees. Bona fide bad debts actually accrued for amounts owed by Sublessees, concessionaires, customers or patrons may be deducted from Gross Receipts to the extent that such amounts have

been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

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

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to 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 Hotel Related 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 Hotel Related 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 Hotel Related 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.

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

4.2.2.4 Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, 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 Subsection 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 after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent. Any disputes relating to Gross Receipts

and calculation of rental payments may be submitted to arbitration as set forth in Article 16 of this Lease.

4.2.2.5 Effect of Sublessee 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 except for a business conducted under Item (1) of category (c1) of Subsection 4.2.2, for purposes of determining Percentage Rent Lessee shall report whichever of the following results in the greater Percentage Rent: (i) the Gross Receipts received by each Sublessee under one or more of categories (a) through (s1) of Subsection 4.2.2; or (ii) the Gross Receipts received by Lessee from such Sublessee under category (c) or (c1) of Subsection 4.2.2.

4.2.2.6 Interest, Service Fees or Late Charges. Interest, service fees 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 Hotel Related 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 intends to fund 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 the 7½% percent (or during the Guaranteed Minimum Rent Period the 2½%) subcategory of 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 Adjustments to Annual Minimum Rent. As of the First Adjustment Date and every three (3) years thereafter until the first Renegotiation Date, and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversary of each Renegotiation Date (each an “**Adjustment Date**” and collectively the “**Adjustment Dates**”), the Annual Minimum Rent shall be adjusted as provided in this Section 4.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the total Annual Rent payable by Lessee to County each year under Section 4.2 of this Lease during the three (3) year period immediately preceding the Adjustment Date; provided, however, that the Annual Minimum Rent shall be never be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective as of the first January 1 following the tenth (10th) anniversary of the end of the Guaranteed Minimum Rent Period, and the January 1 following each subsequent tenth (10th) anniversary 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 Hotel Related Premises.

4.4.1 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 and percentage rent, with the percentage rent expressed as the respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2, which the Hotel Related 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 Hotel Related 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.

Notwithstanding any contrary provision of this Lease, in connection with the readjustment of Annual Minimum Rent and Percentage Rent pursuant to this Section 4.4, (a) in no event shall the Annual Minimum Rent ever be reduced to an amount less than the Annual Minimum Rent in effect immediately prior to the Renegotiation Date, and (b) in no event shall any individual Percentage Rent category (i.e., each of categories (a) through (s1) in Subsection 4.2.2 above) ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2 above (without regard to the percentage applicable during the Guaranteed Minimum Rent Period), and the requirement set forth in this sentence that no individual Percentage Rent category percentage shall be reduced below that set forth in Subsection 4.2.2 shall have no effect on the determination of the Fair Market Rental Value for any other Percentage Rent category in which the Fair Market Rental Value percentage might be greater than that set forth in Subsection 4.2.2.

4.4.2 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 Hotel Related Premises for (a) the Annual Minimum Rent, and (b) a Gross Receipts percentage for each of the Percentage Rent categories set forth in Subsection 4.2.2. 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 Hotel Related 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 Hotel Related 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, and 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.

4.4.3 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 4.4.2, 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 Hotel Related 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 that documents the new Annual Minimum Rent and Percentage Rent 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.

4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in Subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Hotel Related 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 Hotel Related Premises, the arbitrator shall take into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.4.1. 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.

4.4.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the new Annual Minimum Rent and Percentage 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 pay or, at its election, credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Hotel Related 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:

(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 Prime Rate in effect as of the date that is six (6) months after the Renegotiation Date, and such interest shall accrue for the period from the date that is six (6) months after the Renegotiation Date until the date of payment.

No Late Fee shall be payable under Section 4.5 with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.4.5 as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.4.5.

4.5 Payment and Late Fees. 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 (15th) 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 4.2.2.4. 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. In the event any payment under this Lease 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 no Late Fee shall be assessed in the case of the first late payment by Lessee during any Lease Year as long as such late payment is cured within one (1) business day after Lessee receives written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the 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); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 12 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Premises shall be limited to a maximum of three (3) years.

4.6 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 are subject to County approval as provided in Article 11 of this Lease. Financing Events are not Changes of Ownership, but are subject to County approval as provided in Article 12 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%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in Subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial 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 interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than 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 immediately following a previous Change of Ownership 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 or immediately following such previous Change of Ownership, 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, shareholder or member of Lessee who is an individual;

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

4.6.2.3 a transfer of ownership interests in 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 (or securities) is (are) traded publicly on a national stock exchange or

traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

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

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 interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution of a Major Sublease in the case of an Aggregate Transfer involving a Major Sublessee, 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 transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 Beneficial Interest. As used in this Lease, "**beneficial 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 applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

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

4.6.5 Financing Events Regarding Multiple Assets. For purposes of determining the Net Proceeds Share and Net Refinancing Proceeds from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or beneficial interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or beneficial interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the relative fair market values of the respective assets that secure the financing.

4.7 Calculation and Payment. A deposit of Fifteen Thousand Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (other than 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 (other than an Excluded Transfer) 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. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Net Proceeds Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation of the transaction), Lessee shall present (or cause to be presented) 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. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by 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 or a Major Sublessee, 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 date of 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) with respect to this Lease, a Major Sublease or a Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer, or (c) the date which is twelve (12) months prior to the transfer which constitutes the 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 obligation of Lessee, and in the case in which the identity of the Lessee changes with the transfer, shall be the joint and several obligation of both the Lessee entity prior to the transfer and the Lessee entity after the transfer. 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, forbear 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 forbear 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 forbear 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. The Net Proceeds Share shall be equal to the greater of (a) the lesser of (i) the Net Transfer Proceeds from such transfer, or (ii) five percent (5%) of the Gross Proceeds from such transfer, or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer.

"Gross Transfer Proceeds" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the real estate or beneficial interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred; if Lessee and County are unable to agree upon such fair value, then the matter shall be determined pursuant to Article 16).

In the case of a Financing Event, 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 Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Initial Lessee Under this Lease. In the case of a transfer by Lessee (but not a transfer by a successor or assignee of Lessee) constituting a Change of Ownership for which a Net Proceeds Share is payable, “**Net Transfer Proceeds**” shall mean the Gross Transfer Proceeds from the transfer, less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1 The sum of (a) the Option Fee; plus (b) the 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 (including any term sheet); plus (c) the Actual Costs reimbursed by Lessee to County in connection with the negotiation and consummation of the Option Agreement and this Lease (including any term sheet) (the sum of the amounts in (a), (b) and (c) are referred to as the “**Base Value**”); plus (d) the final actual out-of-pocket design, engineering, permitting, entitlement and construction costs paid by Lessee in connection with (I) the Development Work, excluding the Wetland Park Development, or (II) other physical capital Improvements or Alterations made to the Hotel Related Premises by Lessee after the Effective Date in compliance with Article 5 of this Lease, in each case to the extent that such costs have been submitted to County within ninety (90) days after the completion of such Improvements, together with a written certification from Lessee and Lessee’s construction lender (to the extent that such construction lender exists and the construction lender has funded such costs) that such costs are accurate; plus (e) the portion of the final actual out-of-pocket design, engineering, permitting, entitlement and construction costs for the Wetland Park Development paid by Lessee (either directly or by reimbursement), less any portion of such costs for which Lessee is entitled to receive reimbursement (the amounts described in clause (d) above and this clause (e) are collectively referred to as “**Improvement Costs**”). Notwithstanding the foregoing, with respect to Improvements or Alterations to the Hotel Related Premises which are not part of the Development Work, Lessee shall submit the cost of such Improvements 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 Development 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. Without limitation of the definition of Improvement Costs above, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid by Lessee to unaffiliated third parties in connection with the Development Work or Alterations (except that Lessee shall be entitled to include, to the extent actually incurred, construction management and/or development fees paid to an affiliate in connection with the Development Work or Alterations as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee’s construction loan from an unaffiliated third party lender.

4.8.1.2 Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs), and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share, including the Administrative Charge paid to County for such transaction (but without double counting) (collectively, "**Documented Transaction Costs**").

4.8.1.3 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 Transfer Proceeds received by that successor, minus the following costs 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 to the extent that such successor acquired its interest herein pursuant to an exchange of property or other non-monetary interests, then the fair market value of the property or other interests transferred by such successor as the consideration for such successor's acquisition of the interest hereunder acquired by such successor); 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 lender (if any) and Lessee certification, as provided in Subsection 4.8.1.1; and

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 (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee a percentage of which 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 a beneficial interest in Lessee or a Major Sublessee), Subsections 4.8.1, 4.8.2 and 4.8.3 shall apply to such Change of Ownership (as applicable), as adjusted pursuant to the immediately following sentence. For purposes of the application of Sections 4.8.1 and 4.8.2 to a Change of Ownership under this Section 4.8.4, in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the Base Value and Improvement Costs (or with respect to a transfer of a beneficial interest in a Lessee that is not the original Lessee Entity that executed this Lease, such cost shall in no event be deemed to be less than the pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the sum of Subsections 4.8.2.1 and 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool)) shall be deducted. Furthermore, in the event that any such 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 or a Major Sublessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as applicable.

4.8.5 Net Refinancing Proceeds. “**Net Refinancing Proceeds**” shall mean the gross principal amount of any Financing Event after the Effective Date (plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing), minus (a) the greatest of (i) the Base Value plus the Improvement Costs incurred prior to the date of the current Financing Event as to which the amount of Net Refinancing Proceeds is then being calculated, (ii) the Prior Financing Event Principal Balance (as defined below), or (iii) in the case of a successor Lessee, the purchase price such successor paid to Lessee or such successor’s seller for the interest acquired, (b) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs to be incurred after the date of the Financing Event, (c) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event (but without duplication to the extent included in the amount determined under clause (a) above), and (d) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no double counting of Improvement Costs in clauses (a), (b) and (c) above. In addition, notwithstanding any contrary provision of Section 4.6 above pursuant to which a Net Proceeds Share would be due upon a Financing Event, if the purpose of a Financing Event is to fund the acquisition cost (or a portion of the acquisition cost) of a Change of Ownership that is not an Excluded Transfer, then to the extent that the gross principal amount of the Financing does not exceed the gross sale or transfer price of such Change of Ownership, and if the Financing Event is consummated concurrently with the consummation of the Change of Ownership, there shall not be any separate Net Proceeds Share payable in connection with such Financing Event.

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

4.8.6 Transfers 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 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 at the Applicable Rate from the date due until paid; provided, however, that in the case of a dispute as to the correct amount of the 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) to secure payment thereof. 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 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. As part of the submission for approval of a Change of Ownership or Financing Event, 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 and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee

under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, 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 commercially reasonable efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its commercially reasonable 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. DEVELOPMENT WORK; ALTERATIONS.

5.1 Development Work. Promptly following the Effective Date, Lessee shall proceed to construct the Hotel Development on the Hotel Related Premises in accordance with the Development Plan attached to this Lease as Exhibit B (the “**Development Plan**”) and the Final Plans and Specifications for such work. The Hotels shall contain approximately (but not more than) 288 hotel rooms and the scope, design, site coverage, layout, open space, view corridors, building height, construction materials, landscaping, and other specifications for the Development Work shall be in accordance with the Development Plan and the Final Plans and Specifications approved by County. 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 required to perform the Development Work.

5.1.1 Wetland Park Development. [***DRAFTING NOTE ALTERNATIVE A: THE FOLLOWING LANGUAGE SHALL BE UTILIZED IF THE PARCEL FF LEASE IS NOT IN EFFECT AS OF THE DATE OF THE EXECUTION AND DELIVERY OF THIS LEASE***]: [The Development Work shall also include the construction by Lessee of the Wetland Park Development on the Wetland Park Premises. The Wetland Park Development shall be constructed by Lessee pursuant to the Final Plans and Specifications for the Wetland Park Development approved by County.

Lessee shall have a right of access to the Wetland Park Premises for the purposes of the performance of the construction of the Wetland Park Development pursuant to this Article 5. Lessee shall have no right of access to or use of the Wetland Park Premises for staging or other purposes in connection with the construction of the Development Work on the Hotel Related Premises except as permitted by Applicable Laws and any third party agreements pertaining to the Wetland Park Premises, and as approved by Director, which approval may be withheld in Director’s sole and absolute discretion. Notwithstanding any contrary term or provision of this Lease (including Section 15.21), Lessee’s right of access to and use of the Wetland Park Premises under this Subsection 5.1.1, and the construction by Lessee of the Wetland Park Development on the Wetland Park Premises, shall, until completion of the Wetland Park Development, be subject to and in accordance with the same obligations,

restrictions, covenants, indemnities, requirements and liabilities of Lessee under this Lease as are applicable to the Hotel Related Premises, and all such obligations, restrictions, covenants, indemnities, requirements and liabilities of Lessee under this Lease shall be applicable to Lessee's access to, and work or activities in, the Wetland Park Premises pursuant to this Article 5. County shall have the right to terminate or suspend the construction of the Wetland Park Development at any time that Lessee is in material default of its obligations under this Lease. If by the Required Construction Completion Date Lessee has not completed the Wetland Park Development, then County shall have the right, but not the obligation, to complete the Wetland Park Development on Lessee's behalf, at Lessee's sole cost and expense. In such event Lessee shall reimburse County for the Actual Costs incurred by County to complete the Wetland Park Development. Lessee shall be fully responsible for the lien free completion of the Wetland Park Development in accordance with the Final Plans and Specifications for the Wetland Park Development. Lessee shall be responsible for the cure of any failure of Lessee to complete the Wetland Park Development in accordance with the requirements of this Section 5.1. If Lessee fails to cure such failure after written notice from County and the expiration of the cure period set forth in Subsection 13.1.3 of this Lease, then in addition to any other rights or remedies that County may have, County shall have the right, but not the obligation, to remedy such failure by Lessee, and Lessee shall be responsible to reimburse County for its Actual Costs incurred in connection therewith. All Improvements in the Wetland Park Premises shall be the sole property of County, and Lessee shall have no right, title or interest therein. If requested by either party, Lessee shall execute and deliver a quitclaim deed or other documentation reasonably acceptable to the parties to confirm County's ownership of the Improvements located on the Wetland Park Premises; provided, however, that any failure to execute and deliver such quitclaim deed or other documentation shall have no effect upon County's ownership of the Improvements located on the Wetland Park Premises as provided above.

Lessee shall be required to substantially complete the Wetland Park Development by the Required Construction Completion Date. Without limitation of any other provisions of this Article 5 that are applicable to the construction of the Wetland Park Development as part of the Development Work, the Wetland Park Development shall be constructed in a good and workmanlike manner and in compliance with all Applicable Laws, and the terms of Sections 5.3 through 5.10, 9.1.5 and 9.3 shall be applicable to the Wetland Park Development and Wetland Park Premises. Lessee shall cure any failure of the Wetland Park Development work to be performed and completed in accordance with the requirements of this Lease. Upon completion of the Wetland Park Development, Lessee shall assign all construction warranties to County with respect to the Wetland Park Development work, subject to Lessee's retention of those rights with respect to construction warranties that pertain to Lessee's cure of defective work as provided above.

If (i) the Parcel FF Optionee does not exercise the Parcel FF Option and County grants an option to lease all or a portion of Parcel FF for private development to another third party optionee and such optionee at any time within eleven and one-half (11.5) years after the Effective Date of this Lease exercises such option, or (ii) within ten (10) years after the Effective Date of this Lease County or any other public entity commences to use all or a portion of Parcel FF for other than a park, parking lot or open space area and such use requires the replacement of the loss of Parcel FF as open space, then as a requirement for leasing or utilizing all or a portion of Parcel FF as provided above, County shall require that such third party, County or other public

entity, within sixty (60) days following either the exercise of the future Parcel FF option by such third party as provided in clause (i) above or the commencement of use by County or any other public entity of Parcel FF as provided in clause (ii) above, reimburse Lessee for one-half (1/2) of the Wetland Park Development Costs (as defined below) incurred by Lessee for the Wetland Park Development, adjusted for any increase (but not decrease) in the Consumer Price Index from the month in which the date of the completion of the Wetland Park Development occurs through the month prior to the month in which Lessee receives such reimbursement. Notwithstanding the foregoing, in no event shall Lessee be entitled to reimbursement for one-half (1/2) of the Wetland Park Development Costs until sixty (60) days following delivery by Lessee to Director of the final Wetland Park Development Costs Report described in the next paragraph that sets the amount of Wetland Park Development Costs required to be reimbursed hereunder.

Not later than thirty (30) days following completion of the Wetland Park Development, Lessee shall provide to Director a final **“Wetland Park Development Costs Report”** reasonably satisfactory to Director in format and detail that sets forth all hard and soft costs for the construction of the Wetland Park Development (the **“Wetland Park Development Costs”**). Concurrent with the delivery of the Wetland Park Development Costs Report, Lessee shall also deliver to Director a copy of all contracts, invoices, evidences of payment and all other background materials reasonably requested by Director. The Wetland Park Development Costs shall include only out-of-pocket costs paid by Lessee to unaffiliated third parties and that are approved in advance by the Director; provided, however, that Lessee may include in the Wetland Park Development Costs, to the extent actually incurred, construction management and/or development fees paid to an affiliate in connection with the Wetland Park Development as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs for the Wetland Park Development, and actual construction period interest on Lessee’s construction loan from an unaffiliated third party lender. Except for the foregoing developer or construction management fee, there shall be no other administrative, supervision, development, management or overhead fees or charges. No penalty charges or any charges incurred by Lessee as a result of its mismanagement or negligence in the construction of the Wetland Park Development shall be included in the Wetland Park Development Costs. If by the date by which the Wetland Park Development Costs Report is due the final amount of the Wetland Park Development 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 Wetland Park Development 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 Wetland Park Development Costs to reflect the resolution of such dispute.]

[DRAFTING NOTE ALTERNATIVE B: THE FOLLOWING LANGUAGE SHALL BE UTILIZED IF THE PARCEL FF LEASE IS IN EFFECT AS OF THE EFFECTIVE DATE OF THIS LEASE]: [Lessee, County and [_____ (insert name of lessee of Parcel FF)] (**“Parcel FF Lessee”**) have entered into an agreement (**“Wetland Park Agreement”**) for the development by the Parcel FF Lessee of the Wetland Park Development on the Wetland Park Premises. County hereby reserves a right of access on and over the Wetland Park Premises for the construction of the

Wetland Park Development in accordance with the Wetland Park Agreement. A default by Lessee under the Wetland Park Agreement shall constitute a default under this Lease subject to the cure periods provided in subsections 13.1.1 and 13.1.3 below.]

Prior to the completion of the Wetland Park Development, any construction staging or other construction related use of portions of the Hotel Related Premises that are located immediately adjacent to the Wetland Park Premises and that were included in the wetlands area of the Premises prior to the date of this Lease shall be subject to compliance with Applicable Laws and any third party agreements pertaining to the wetlands restoration. Following the completion of the Wetland Park Development, the use and operation of the Wetland Park Premises shall be in accordance with the terms and provisions of Section 15.21 of this Lease.

5.1.2 Minimum Required Cost Amount. Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Development Work (including all design, engineering, entitlement and construction activities). Lessee shall expend Qualified Hard Costs on the Development Work (including Lessee's share of Qualified Hard Costs for the Wetland Park Development, but excluding Qualified Hard Costs for the Wetland Park Development for which Lessee is entitled to be reimbursed) in an amount not less than the Minimum Required Cost Amount (as defined below). The "**Minimum Required Cost Amount**" for the Development Work means \$46,765,000, as adjusted in accordance with the terms and provisions of this paragraph. The Minimum Required Cost Amount set forth above shall be increased (but not decreased) by the same percentage increase (if any) in the ENR Index during the period from January, 2015 to the month during which the construction contract for the Development Work is executed (or if the ENR Index is not published on a monthly basis, then the reporting dates for the ENR Index closest in time to January, 2015 and the month during which the construction contract for the Development Work is executed shall be used).

"**Qualified Hard Costs**" means (i) the out-of-pocket hard construction costs (including general conditions and contractor profit) paid to third party contractors for the construction of the Development Work; (ii) costs for initial furniture, fixtures and equipment for the Hotels not to exceed \$5,240,000 (as increased by the same percentage increase to the Minimum Required Cost Amount pursuant to the last sentence of the immediately preceding paragraph, if and as applicable); and (iii) costs for initial operating supplies and equipment for the Hotels not to exceed \$510,000 (as increased by the same percentage increase to the Minimum Required Cost Amount pursuant to the last sentence of the immediately preceding paragraph, if and as applicable). Without limitation of any other requirements for Qualified Hard Costs, Qualified Hard Costs shall not include the following (I) the value or cost of land area, (II) any costs incurred in connection with the preparation of the Development Plan or any plans, drawings or specifications for the Development Work or the Wetland Development Work, (II) any permit or development fees or finance charges, or (III) any other soft costs relating to the Development Work or the Wetland Development Work. If in-house construction labor is used to perform the Development Work construction, then in addition to out-of-pocket hard costs paid to third parties, Qualified Hard Costs shall also include actual hard costs incurred by Lessee for utilization of in-house construction labor for actual services rendered at market rates for comparable services provided by third-party laborers (but not greater than the hourly rate actually paid by Lessee to such in-house laborers), as such costs are confirmed to and reasonably

approved by Director. Qualified Hard Costs shall not include any costs incurred prior to the Effective Date. Director shall have the right to confirm all Qualified Hard Costs.

5.1.3 Schedule for Construction of Development Work. Lessee shall comply with all time deadlines and schedules set forth in this Article 5 relating to the completion of the design and construction of the Development Work (subject to any extension set forth in Section 5.6 for Force Majeure delay). 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. Except to the extent Lessee is prevented from so doing by Force Majeure delay as provided in Section 5.6, Lessee shall (a) commence the construction of the Development Work within sixty (60) days after the Effective Date (the "**Required Construction Commencement Date**"); (b) following commencement of construction of the Development Work diligently continue performance of the Development Work through completion of the Development Work in accordance with the construction schedule submitted to and approved by Director pursuant to Subsection 5.4.6 below; and (c) substantially complete the Development Work not later than thirty (30) months after the Effective Date (the "**Required Construction Completion Date**"). Notwithstanding any contrary provision of this Article 5 in no event shall the Required Construction Commencement Date or Required Construction Completion Date be extended for more than one (1) year for any Force Majeure delay.

5.2 Application of Article 5 to Development Work. The remaining sections of this Article 5 after this Section 5.2 pertain to the construction of the Development 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, a Future 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. The Development Work and all Future Renovations 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 after this Section 5.2 that are applicable to Alterations shall also be applicable to the Development Work and Future Renovations. Notwithstanding any contrary term or provision of this Lease, after the completion of the Wetland Park Development, (a) Lessee shall have no right to make any Alterations to the Wetland Park Premises, and no term or provision of this Article 5 shall be construed to the contrary; and (b) the terms and provisions of this Article 5 shall not be applicable to any subsequent improvements or alterations to the Wetland Park Premises made by County; provided, however, that following the completion of the Wetland Park Development, County shall not make any subsequent improvements or alterations to the Wetland Park Premises that cause the Hotel Related Premises to violate Applicable Law.

5.3 Plans and Specifications for Alterations. Lessee shall make no Alterations without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior and as a condition precedent to the construction of any Alterations, 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 the Development 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 Director two hard copies and one electronic copy 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 Hotel Related Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. After receipt of such plans, Director shall have sixty (60) days within which to approve or disapprove such submission in writing. 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 plans or Final Plans and Specifications) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency with jurisdiction thereover, 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. As soon as reasonably practicable after Director's approval of the materials submitted pursuant to Subsection 5.3.1, Lessee shall submit to Director two hard copies and one electronic copy 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. The preliminary plans shall be of a detail and scope that is typically associated with design development drawings. Director shall have twenty-one (21) days from receipt within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans only on the grounds that (i) they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. 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 LEASE AGREEMENT,
IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES

FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), 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. As soon as reasonably practicable after Director’s approval of the preliminary plans, outline specifications and construction cost estimates, Lessee shall submit for approval by Director two hard copies and one electronic copy of final plans, detailed specifications and a construction cost estimate 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 after receipt 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 final plans and related 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 specifications and construction cost estimate contain substantial changes from the approved preliminary plans and specifications (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 specifications and construction cost estimate, 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 LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), 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, conditioned or delayed; 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, conditioned or delayed.

5.4 Conditions Precedent to the Commencement of Construction. No Development Work, Future Renovation or other 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 Alterations.

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 Alterations.

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 (or with the substitute security set forth below) not less than ten (10) days prior to the commencement of construction, which bonds (or other security) 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 Alteration. 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 (and which may include an Encumbrance Holder as an additional 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 (and which may include an Encumbrance Holder as an additional 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.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may provide any of the following alternative security: (i) a completion guaranty, in form and substance reasonably acceptable to Director, made by an individual or entity with a sufficient net worth and liquidity, in the sole, but good faith, 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 clause (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. In addition, Director also shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called “Subguard” insurance in such amount, on such terms and issued by such carrier as approved by Director, in combination with such other security, such as a completion guaranty, as acceptable to Director. 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 law 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 reasonably satisfactory to County of its having sufficient financial resources, as reasonably determined by Director, to complete the Development Work or other 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, as applicable, evidence of equity, 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.

5.4.6 Work Schedule. With respect to the Development Work, unless the construction schedule for the Development Work is submitted to and approved by Director prior to the Effective Date, Lessee shall submit to Director no later than thirty (30) days after the Effective Date a construction schedule for the performance of the Development Work. Director shall have the right to reasonably approve such construction schedule as being consistent and compatible with the Required Construction Commencement Date and Required Construction Completion Date set forth in Section 5.1 above; provided, however, that Director shall have no liability in connection with the approval of such construction schedule, nor shall Director's approval of such construction schedule in any manner relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Development Work on or before the respective required dates for such commencement and completion set forth in Section 5.1 above.

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 Development Work and Future Renovations, 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 (including governmental acknowledgment of completion for occupancy and/or use) of the Improvements to be constructed by Lessee on the Premises, and for the operation and other use of the Improvements on the Hotel Related 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 Delays in Commencement and Completion of Development Work. Upon commencement of construction of the Development Work, Lessee shall thereafter diligently pursue the completion of such construction by the Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in the commencement of construction or completion of the Development Work due to Force Majeure, then the Required Construction Commencement Date and the Required Construction Completion Date, if and to the extent that the event actually causes a delay in the commencement and completion of construction (as applicable) shall be extended by the period of the delay caused by such Force Majeure. Notwithstanding the foregoing, (a) any extension due to Force Majeure shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Director in writing of the commencement of such delay within ten (10) business days after Lessee's discovery of the delay; (b) in no event

shall the Required Construction Commencement Date be extended for more than an aggregate of one year due to Force Majeure; and (c) in no event shall the Required Construction Completion Date be extended beyond forty-two (42) months after the Effective Date. Lessee and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.6. If they are unable to agree within thirty (30) days after written notice from Lessee of the event or occurrence giving rise to Lessee's claim to an entitlement to a delay under this Section 5.6, the matter shall be arbitrated as set forth in Article 16.

In the case of the Development Work and Future Renovations, the definition of Force Majeure shall also include delays in the commencement and completion of the Development Work or Future Renovation (as applicable) due to Unreasonable County Activity. For the purposes of this Lease, "**Unreasonable County Activity**" means any of the following that occurs after the Effective Date: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Development Work or Future Renovation (as applicable) that are approved by the Department; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Development Work or Future Renovation (as applicable), or the taking by the Department of actions in its proprietary capacity, without Lessee's consent, which are in conflict with Lessee's rights and obligations under this Lease and actually delay the receipt of any remaining permits or approvals for the Development Work or Future Renovation (as applicable); or (iii) the Department's failure to comply with the time periods imposed upon the Department under Section 5.3 above, except in the case (if any) where a failure of the Department 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 Section 5.5 above, this Section 5.6 or any other provisions of this Lease shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

5.6.1 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 Section 5.6, in no event shall Lessee be entitled to any extension for any period of the delay under this Section 5.6 that occurred prior to the date of Lessee's notice described in this Subsection 5.6.1.

5.6.2 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 duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 5.6 for the Unreasonable County Activity shall equal the actual amount of delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of the delay likely to be caused by the Unreasonable County Activity.

5.6.3 If, within fourteen (14) days following receipt of Lessee's notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether delay due to Unreasonable County Activity has occurred or the length of such delay, then the matter shall be referred to the Board of Supervisors of the County for such determination.

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 commercially reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. 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, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse effects associated with construction projects in well-populated and developed areas of Southern California.

5.7.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Hotel Related 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 does not interfere with the provision of such services to other properties or 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 constructed by or on behalf of Lessee or any Sublessee on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all Applicable Laws. 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 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 in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to “five (5) business days” in this Subsection 5.7.5 shall be changed to “thirty (30) days.”

5.7.6 Rights of Access. Representatives of the Department shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Hotel Related Premises and the Improvements thereon (or, in the case of the construction by Lessee of the Wetland Park Development (if applicable), the Wetland Park Premises) 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 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 Hotel Related Premises (or, in the case of the construction by Lessee of the Wetland Park Development (if applicable), the Wetland Park Premises) immediately and without notice to or accompaniment by Lessee.

5.7.7 Notice of Completion; As-Built Drawings. Upon completion of the Development 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 Conoflex or Mylar final as-built plans and specifications of the Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)).

5.7.8 Final Completion Certificate. Promptly after completion of the Development Work or a Future Renovation, 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 Alterations 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 for such Alterations, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of 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 on the Hotel Related Premises 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 materially affect or are visible from the exterior of the Hotel Related Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Hotel Related 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 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, the Premises and the Improvements thereon 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, 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 (subject to reasonable dispute) 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 twenty (20) 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.

[DRAFTING NOTE ALTERNATIVE B: THE FOLLOWING LANGUAGE SHALL BE UTILIZED IF THE PARCEL FF LEASE IS IN EFFECT AS OF THE EFFECTIVE DATE OF THIS LEASE]: Notwithstanding any contrary provision of this Section 5.10.3, Lessee shall have no obligations or liabilities under this Section 5.10 with respect to any liens that are recorded against the Wetland Park Premises in connection with the performance of the Wetland Park Development by the Parcel FF Lessee and the parties shall enforce their respective rights against the Parcel FF Lessee under the Wetland Park Agreement with respect to such liens.]

Notwithstanding any contrary provision of this Section 5.10.3, Lessee shall have no obligations or liabilities under this Section 5.10 with respect to any liens that are recorded against the Premises in connection with alterations or improvements made to the Wetland Park Premises by County during the Term of this Lease after the completion of the Wetland Park Development. In the event that any lien is recorded against the Premises in connection with alterations or improvements made to the Wetland Park Premises by County during the Term of this Lease after the completion of the Wetland Park Development, County shall indemnify, defend and hold Lessee harmless from and against any claims, liabilities, costs and expenses

(including reasonable attorneys' fees) incurred by Lessee as a result of such lien, and, upon written request by Lessee, County shall cause such lien to be removed of record prior to any material impairment of, or material adverse impact on, Lessee's leasehold estate under this Lease.

5.11 Future Renovations. In addition to the Development Work to be performed by Lessee pursuant to Section 5.1, Lessee shall be required to complete periodic renovations of the Improvements located on the Hotel Related Premises during the Term of the Lease in accordance with the terms and provisions of this Section 5.11 (a "**Future Renovation**"). Lessee shall be required to make periodic upgrades to each Hotel to maintain a competitive standard. Beginning in the eleventh (11th) year after the CO Date, and every ten (10) years thereafter, County shall commission at Lessee's expense a survey of a separate set of comparable hotels outside of the Premises for each of the Hotels (each, a "**Comparable Hotels List**" and each hotel on such list, a "**Comparable Hotel**"). The initial Comparable Hotels List for each Hotel is set forth on Exhibit G attached to this Lease. Prior to the commission of each survey, each Comparable Hotels List attached as Exhibit G to this Lease shall be updated to reflect then-existing hotels on the west side of Los Angeles that are comparable to the relevant Hotel and that satisfy the Required Hotel Standard, including the deletion of discontinued hotels or hotels that no longer satisfy the Required Hotel Standard and the addition of other recently constructed hotels that satisfy the Required Hotel Standard. In each survey the daily revenue per available room ("**REVPAR**") shall be estimated for each Hotel and each Comparable Hotel in the updated Comparable Hotels List for that Hotel. The REVPAR estimates shall be ranked and the parties shall determine the quartile position of each Hotel in the REVPAR ranking for the updated Comparable Hotels List for that Hotel (e.g., whether the Hotel is in the highest quartile, second highest quartile, etc). If a Hotel ranks lower than the second highest quartile, then within ninety (90) days after the completion of the survey Lessee shall be required to submit to Director for Director's reasonable approval in accordance with the immediately following paragraph a plan for the renovation of the Hotel to a quality standard commensurate with the quality standard of the Comparable Hotels in the applicable updated Comparable Hotels List with REVPAR in the top two quartiles (a "**Renovation Plan**"). Each Renovation Plan shall at a minimum require renovations that cost at least two percent (2%) of the cumulative Gross Receipts from such Hotel since the later of the CO Date or the most recent mandated renovation for such Hotel that is performed pursuant to this Section 5.11, but such two percent (2%) requirement shall not constitute a limit on the cost of the renovations required to be made by Lessee with respect to such Hotel. Lessee shall be obligated to complete the approved Renovation Plan within eighteen (18) months after the completion of the survey. The Future Renovations under this Section 5.11 shall not be for the purposes for which the Capital Improvement Fund and FF&E Fund are to be used, and no portions of the Capital Improvement Fund or FF&E Fund shall be used for the Future Renovations under this Section 5.11; provided, however, that for efficiency purposes this sentence shall not prohibit Lessee from coordinating with the Renovation Plan separate capital improvements for which the Capital Improvement Fund is designated to be used, and to such extent the Capital Improvement Fund may be used for such non-Renovation Plan purposes. The Future Renovations shall consist of alterations to the Hotels or associated improvements and shall not include the performance of deferred maintenance under this Lease, which shall be a separate obligation of Lessee.

The Renovation Plan for each Future Renovation shall (a) describe the proposed renovation work in such detail as reasonably requested by Director, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. Director shall have sixty (60) days after receipt of the Renovation Plan within which to reasonably approve or disapprove the Renovation Plan, or to approve the Renovation Plan subject to conditions imposed by Director in Director's reasonable judgment. Failure of Director to notify Lessee in writing of Director's approval or disapproval of the Renovation Plan shall be deemed Director's disapproval of the Renovation Plan. Upon Director's approval of the Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Future Renovation and to commence and complete the Future Renovation in accordance with the Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Future 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 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 Renovation Plan (except to the extent due to Force Majeure delay as set forth in Section 5.6) shall, if not cured within the cure period set forth in Subsection 13.1.3, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the 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 a Renovation Plan and as a result thereof the schedule set forth in such Renovation Plan is delayed, then the schedule set forth in such Renovation Plan shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Renovation Plan, provided that the schedule shall not be extended beyond the dates reasonably required for the matters set forth in the Renovation Plan.

5.12 Capital Improvement Fund. Commencing with the month following the month during which the fourth (4th) anniversary of the Effective 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 5.12 for the cost of Permitted Capital Expenditures (as defined below) for the Hotel Related Premises. On or before the fifteenth (15th) day of each month during the period described in the immediately preceding sentence, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to the sum of two percent (2%) of total Gross Receipts for the previous month from the operation of the Hotel Related Premises and Improvements located thereon. All interest and earnings on the funds in 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 5.12.

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 Hotel Related 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 Development Work (“**Permitted Capital Expenditures**”). Notwithstanding any contrary provision of this Lease, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Development Work or Future Renovations (subject to the proviso in the next to last sentence of the first paragraph of Section 5.11 above). In addition, the Capital Improvement Fund shall not be used for building additions, new project amenities (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements or their major systems in a good, 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. Furthermore, 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 D attached to this Lease are examples of 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, conditioned or delayed.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee’s Encumbrance Holder) reasonably 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 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, and administered in accordance with, the requirements of this Section 5.12.

No disbursements shall be made from the Capital Improvement Fund until after the fifth (5th) anniversary of the Construction Completion Date. In addition, no disbursements shall be made from the Capital Improvement Fund after the fifth (5th) anniversary of the Construction Completion Date to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease during such five (5) year period. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Director which have been incurred after the fifth (5th) anniversary of the Construction Completion Date and that satisfy the requirements of this Section 5.12. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). 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 that 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, conditioned or delayed. 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 amounts then existing 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. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.12; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with Subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.12 towards Lessee's obligations to fund the security requirements in Subsection 2.3.2, 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 reasonable discretion.

5.13 FF&E Fund. Commencing with the month following the month during which the fourth (4th) 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 5.13 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 Hotels throughout the Term. On or before the fifteenth (15th) day of each month during the period described in the immediately preceding sentence, Lessee shall make a monthly deposit to the FF&E Fund in an amount equal to the sum of three percent (3%) of total Gross Receipts for the previous month from the operation of the Hotel Related Premises and Improvements located thereon. All interest and earnings on the funds in 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 5.13.

The FF&E Fund shall not be used for (a) maintenance or repair purposes, (b) the cost of the Development Work or the initial furniture, fixtures and equipment to be installed in the Hotels in connection with the Development Work, (c) the cost of Future Renovations, 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 5.13. 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 for the purposes described in this Section 5.13, provided that the Encumbrance Holder acknowledges that such

amounts are subject to the requirements and shall be made available only for the purposes of this Section 5.13.

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 5.13. 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 Hotel Related Premises applicable under this Lease. If County elects to require Lessee to remove the Improvements on the Hotel Related Premises 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 2.3.2 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 5.13, as determined by Director in Director's reasonable judgment. If County does not require the removal of the Improvements on the Hotel Related Premises, 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 5.13, 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 earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Premises; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any

Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

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

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

6.2 Parties’ Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation 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. Notwithstanding any contrary term or provision of this Article 6, no Condemnation of the Wetland Park Premises shall have any effect upon this Lease (including, without limitation, any termination of this Lease or any effect upon the rent payable under this Lease) and Lessee shall have no rights or interest in any Net Awards or Payments attributable to a Condemnation of the Wetland Park Premises.

6.3 Total Taking. If the Hotel Related 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 Hotel Related 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 the remaining portion of the Hotel Related Premises are rendered unsuitable (as defined herein) for Lessee’s continued use for the purposes contemplated by this Lease. The remaining portion of the Hotel Related Premises shall be deemed unsuitable for Lessee’s continued use if, following a reasonable amount of reconstruction, Lessee’s business on the Hotel Related Premises could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this 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 Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Hotel Related Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Hotel Related 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**”), then 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 Hotel Related Premises not so taken to the fair market value of the entire Hotel Related Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Subsection 4.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Hotel Related Premises which remains after the Partial Taking bears to the fair market value of the entire Hotel Related Premises immediately prior to the Partial 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 Condemnation with respect to the Hotel Related Premises or a portion thereof, less costs, fees and expenses incurred in the collection thereof (“**Net Awards and Payments**”), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation of the Hotel Related Premises, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be administered and allocated as provided in this Section 6.7.1. Net Awards and Payments received in connection with a Taking of the Hotel Related Premises shall be held by County and shall be paid out to Lessee or Lessee’s designee(s), in monthly installments equal to the sum set forth in Lessee’s written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Hotel Related Premises and any Improvements located thereon affected by the Taking. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County’s dispute. Thereafter, Director and Lessee shall promptly meet and negotiate in good faith to resolve any dispute; provided, however, that any dispute not resolved within thirty (30) days after Lessee has received notice from County of its dispute shall be submitted to arbitration pursuant to Article 16. The balance of any Net Awards and Payments received in connection with a Taking of the Hotel Related Premises (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 Hotel Related Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the Hotel Related Premises for 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 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest in the Hotel Related Premises, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a Condemnation described in this Subsection 6.7.1, 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 of the Hotel Related Premises 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 located on the Hotel Related Premises, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking of the Hotel Related Premises which results in the termination of this Lease shall be allocated in the order set forth below in this Section 6.7.3:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Hotel Related 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 Hotel Related 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 Hotel Related 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 Hotel Related 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 Hotel Related 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 Condemnation or a Partial Taking of the Hotel Related Premises that results in the termination of the Lease, then Lessee shall be entitled to the entire amount of any Net Awards and Payments pertaining to the Hotel Related Premises.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment of, as applicable, to Lessee all sums held by County or third parties as the Capital Improvement Fund, the FF&E Fund, the Security Deposit, and, upon completion by Lessee of its obligations under Section 2.3 of this Lease with respect to any portion of the Hotel Related Premises not taken in the Condemnation, the remaining Demolition Security.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Hotel Related 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 the following amount: (a) during the period from the Effective Date through the end of the fifth (5th) year of the Guaranteed Minimum Rent Period, the Security Deposit shall equal \$90,361.00; (b) during the period from the first day of the sixth (6th) year of the Guaranteed Minimum Rent Period until the end of the Guaranteed Minimum Rent Period, the Security Deposit shall equal \$119,447.00; and (c) as of the expiration of the Guaranteed Minimum Rent Period through remainder of the Term of this Lease, the Security Deposit shall equal twenty-five percent (25%) of the Annual Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Annual Minimum Rent during the remaining Term of this Lease).

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 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 reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by 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, 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, Wetland Park Premises and Seawall) by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, including any occurrence in or on the Hotel Related Premises or Improvements located thereon (excluding the Promenade), (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (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, or (d) the performance of the Development Work or any Alterations. 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, Lessee and County acknowledge and agree that following the completion by Lessee of the development of the Promenade and the commencement of use thereof by the public, the respective liability, if any, of Lessee and County arising out of the operation or use of the Promenade (excluding Lessee's obligations under Section 15.20 of this Lease with respect to the maintenance and repair of the Promenade) shall be governed by Applicable Laws; and (ii) following the completion of the Wetland Park Development, except as expressly set forth in the last paragraph of Section 15.21 of this Lease, the respective liability, if any, of Lessee and County arising out of the operation, use, maintenance or repair of the Wetland Park Development shall be governed by Applicable Laws.

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 Two Million Dollars (\$2,000,000) per occurrence, Two Million Dollars (\$2,000,000) 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 Subsection 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 Hotel Related Premises and the Improvements located thereon, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage with agreed upon sub-limits, written for the full replacement value of the Improvements, with a deductible no greater than \$250,000 or 5% of the property value, whichever 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 Hotel Related Premises and the Improvements located thereon. Notwithstanding the foregoing, during any period during which no Improvements exist on the Hotel Related Premises or all of the existing Improvements on the Hotel Related Premises are being demolished in connection with the construction of Development 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 on the Premises (excluding construction projects on the Wetland Park Premises performed by County [**IF ALTERNATIVE B OF SECTION 5.5.1:** or the Parcel FF Lessee], including the Development Work, any other Alterations or restoration of the Improvements, 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) or equivalent. 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 with agreed upon sub-limits 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, 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 Development Work or other Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Development Work, three (3) years after the date the Development Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Development 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 Development Work or other 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, which may be provided by the provider of professional services, 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 Development 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 Development 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 remediation, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order, if insurable. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor’s or subcontractor’s

Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Development Work or other Alterations.

9.1.6 If the use of the Hotel Related Premises or Improvements located thereon 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 Subsections 9.1.4 and 9.1.5.1 shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.6, 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, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee 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 10 hereof. Subject to Section 12.6, 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 Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Development Work or other 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 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 canceled 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 Subsections 9.1.1, 9.1.2 and 9.1.3 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"), consistent with the amounts of such liability insurance then being required by County under similar ground leases for comparable developments and uses in the Marina del Rey Small Craft Harbor, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Hotel Related Premises and such other developments. 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 Hotel Related 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 Hotel Related Premises, including paved or unpaved ground surfaces and Improvements thereon (including the Promenade, but excluding the Excluded Conditions and excluding the Seawall), in conformance with the Minimum Standards regarding the use and occupancy of commercial (including hotel) projects in Marina del Rey (such as the Hotel Related 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 Hotel Related 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 Hotel Related Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of

construction of the Development Work or other Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Premises under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Hotel Related Premises (other than the Excluded Conditions and the Seawall)) in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction 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 Hotel Related Premises and the building footprints on the Hotel Related Premises as reasonably satisfactory to Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Hotel Related Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Hotel Related 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 Hotel Related Premises. The exclusion of the Excluded Conditions and Seawall 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 and/or Seawall caused by Lessee, its agents, employees, Sublessees 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 Intentionally Omitted.

10.3 Tree Trimming. During the remaining Term of the Lease, Lessee shall cause all trees located on the Hotel Related Premises to be trimmed and otherwise maintained in compliance with the Marina Del Rey tree trimming policy referenced in Exhibit E, as such policy is updated from time to time by County.

10.4 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 Sections 10.1 through 10.3 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 written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.4), 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. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of 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 County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.4 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of 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 exercise Director's reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that Director accepts or denies Lessee's contest. If Director denies Lessee's contest, Lessee may request arbitration pursuant to Article 16. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.4 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 10.4 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.5 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Hotel Related Premises or any Improvements located thereon (other than the Excluded Conditions and the Seawall, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.5, 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 10.5, 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 Hotel Related Premises where all or substantially all of the Improvements on the Hotel Related Premises (other than the Excluded Conditions and the Seawall) 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:

10.5.1 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 10.5.1. 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.

10.5.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.5.1 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 Hotel Related Premises; secure the Hotel Related Premises against trespassers; and, at County's election, remove all remaining Improvements on the Hotel Related Premises.

10.5.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.5.1, 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.

10.5.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.5.1, County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of 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.

10.6 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 Hotel Related Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.7 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Hotel Related Premises; provided, however, that Director shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the existing seawall protecting the Hotel Related Premises (the "**Seawall**") if and to the extent such funds are made available to Director for such uses by County and its Board of Supervisors. Director shall undertake such maintenance, repair and replacement, if any, with due diligence consistent with the funding provided. In the event the Seawall is in imminent danger of collapse or has collapsed, Director shall promptly seek funding from the Board of Supervisors for repair or replacement as may be necessary to avoid or repair such collapse. If County is obligated to maintain or repair the Seawall under the terms of a lease between the County and any other lessee in Marina del Rey, or if County in fact maintains or repairs the Seawall for the benefit of any other lessee in Marina del Rey, County shall have the same obligation(s) with respect to the Seawall protecting the Hotel Related Premises. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Seawall.

10.8 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.

10.9 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 Hotel Related Premises pursuant to this Section 10.9, and any entry onto the Hotel Related Premises to perform work on the Seawall pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (i) prior to entry onto the Hotel Related 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 Hotel Related 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; (iii) County shall repair, or cause its contractors to repair, any damage to the Hotel Related Premises caused by the activities of County and/or its contractors on the Hotel Related Premises pursuant to this Section 10.9 or Section 10.7 above; and (iv) any entry onto the Hotel Related Premises by County or its contractors for the purpose of performing work pertaining to the Seawall shall be confined to the Promenade and the fire access lane over the Hotel Related Premises, except in extraordinary circumstances to the extent that due to the scope or nature of the work and/or due to safety concerns, the work cannot reasonably be confined to such area. In any such extraordinary situation County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.10 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Hotel Related Premises or the Improvements from any cause whatsoever.

10.11 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 Hotel Related Premises or the Improvements located thereon, or a right to use the Hotel Related 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 Hotel Related Premises or all or substantially all of a Hotel 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**”. Notwithstanding any contrary term or provision of this Lease, Lessee shall have no right to lease, sublease, license or otherwise grant any person or entity the right to occupy, possess or use the Wetland Park Premises, excluding the public easement reserved by County in this Lease [**IF ALTERNATIVE B IN SECTION 5.1.1**: and the rights granted to the Parcel FF Lessee in the Wetland Park Agreement to construct the Wetland Park Development].

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 assignment or amendment thereof), to Director for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. 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.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County’s approval of any commercial subleases of less than 1,000 square feet of the Improvements located on the Hotel Related Premises that are in commercially reasonable form (each an “**Approved Commercial Lease**”). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Commercial Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Commercial Leases and a copy of all of such Approved Commercial Leases.

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 Hotel Related 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 Hotel Related Premises, not less than forty-five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County’s review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 11, 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**”), and which shall be applied in a commercially reasonable manner, 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. There shall be no partial assignment of this Lease or Lessee’s rights or obligations

hereunder. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of County, to retain an affiliate of Lessee (or its direct or indirect partners or members) as the property manager for the Hotel Related Premises as long as such affiliate has adequate experience in the operation of hotels in accordance with a standard at least commensurate with the Required Hotel Standard and has a nationwide reservation system in which the Hotel Related Premises will participate. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County consent even if it is an Excluded Transfer; provided, however, that in the case of an assignment of the Lessee's interest in the Lease that constitutes an Excluded Transfer, Director shall have the authority to grant consent on behalf of County. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a 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 Lessee or in a direct or indirect general partner or managing member of Lessee. 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 under 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 Construction Completion Date, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the Construction Completion 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 Hotel Related Premises, has adequate experience in the operation of hotels in accordance with a standard at least commensurate with the Required Hotel Standard and has a nationwide reservation system in which the Hotel Related 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 interest therein 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 Lessee shall not enter into any assignment of this Lease without first complying with the terms and provisions of this Subsection 11.2.3. Any other transfer, sublease or other agreement requiring the approval of the County pursuant to Sections 11.1 or 11.2 shall provide that it is contingent upon County's approval. In connection with any assignment or other transfer, sublease or other agreement that requires County's approval, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably 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 discuss an assignment with any proposed assignee without providing Lessee the right to be present at any such discussion.

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

11.2.3.3 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 any 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 Hotel Related 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 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 Hotel Related Premises) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Hotel Related 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 Hotel Related 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 Hotel Related 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 Hotel Related Premises), including pro forma financial projections for the Hotel Related 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 Hotel Related 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 Hotel Related Premises and any proposed alterations or improvements to the Hotel Related Premises. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Hotel Related Premises, contracts in excess of \$25,000 affecting the Hotel Related Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Hotel Related 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 reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Hotel Related Premises or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect beneficial interest in Lessee. 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 market

the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 11.2.4. 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, Lessee shall deliver to County 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. During the term of the County Option, Lessee shall make the Hotel Related Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Hotel Related Premises or Lessee's books and records pursuant to this Subsection 11.2.4 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. 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 cause Lessee to issue 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) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Hotel Related Premises subject to the proposed Major Sublease and, in the event that County elects to acquire such portion of Lessee's interest in the Hotel Related 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 Hotel Related Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Hotel Related 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 (I) Financing Events, or (II) 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.

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 Development 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 Development 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. A venture created pursuant to the EB 5 Immigrant Investor Program and approved by County shall constitute an Institutional Lender pursuant to this Article 12. 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 Subsection 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of 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 Subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 12.3.3 shall also inure to the benefit of the 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 any 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 Subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction of the Development Work and Future Renovations described in Sections 5.1 or 5.11 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 Subsection 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 acquire Lessee's rights to possession of the Premises under this Lease (as applicable), 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 10.4), 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 10.4.

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 Hotel Related 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 Capital Improvement Fund or 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 Hotel Related 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.

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, deposits

to the Capital Improvement Fund 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, 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 ten (10) 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 Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may be extended pursuant to Sections 5.6, and subject to Section 12.12).

13.1.4 Non-Use of Hotel Related Premises. The abandonment, vacation, or discontinuance of use of the Hotel Related Premises, or any substantial portion thereof, for a period of thirty five (35) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, if any portion of the Hotel Related Premises used for the operation of a restaurant is subleased to a Sublessee and such Sublessee fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 13.1.4 if Lessee uses its best efforts to recover possession of the restaurant from the Sublessee and to re-sublease the restaurant to another Sublessee as soon as possible; provided, further, that except as provided below the restaurant must be re-opened for business to the public no later than one hundred eighty (180) days following the date that the restaurant was first closed for business. 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 restaurant 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 restaurant. 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 the restaurant Sublessee as long as (i) Lessee diligently attempts to re-open the restaurant as soon as reasonably possible and the restaurant 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 Hotel Related Premises is re-opened for business, Lessee pays County Percentage Rent for the restaurant based upon an imputed Gross Receipts for the restaurant equal to the actual Gross Receipts for the restaurant during the one year period prior to the closure of the restaurant.

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. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided 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 of 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 located on the Hotel Related Premises in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements located on the Hotel Related Premises 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 Hotel Related 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 (as applicable) as provided in this Lease, 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 having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this 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.

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 Hotel Related Premises separate and apart from those in connection with Lessee's (or a Sublessee's, as applicable) 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, (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 Hotel Related 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 Director in advance of installation for his approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's Sublessees (including licensees, permittees, concessionaires and any other occupants of any portion of the Hotel Related Premises) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent 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 showing Gross Receipts during the preceding

calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

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 Hotel Related 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 Hotel Related 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 Hotel Related 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) original records and books of account at the Hotel Related 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. Upon written notice from County, 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, Lessee shall deliver to County the following financial statements: (i) a balance sheet of Lessee as of the end of such Accounting Year, certified by Lessee's chief financial officer as accurately reflecting Lessee's assets and liabilities, which balance sheet shall not be required to be audited, provided that at County's request not more often than every two years, such balance sheet shall be audited by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County (a "**Qualified CPA**"); (ii) a profit and loss statement of Lessee for such Accounting Year, audited and certified by a Qualified CPA; and (iii) a Gross Receipts and Percentage Rent statement for

such Accounting Year, audited and certified by a Qualified CPA, which statement shall include a certification and unqualified opinion of such Qualified CPA (1) concerning Gross Receipts (including a breakdown by category), and (2) that the correct amount of Percentage Rent has been paid to the County in connection with such Gross Receipts. All financial statements prepared by or on behalf of 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 Hotel Related Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Hotel Related Premises.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Hotel Related Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts. County shall provide written notice to Lessee of the failure of any Sublessee or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 14.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

14.10 Inadequacy of Records. In the event that Lessee or its Sublessees (including licensees or concessionaires) fail 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 Hotel Related 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 (subject to the public easement over the Wetland Park Premises and Promenade as set forth in this Lease) 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.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". 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, including without limitation, any existence of Hazardous Materials in, on or under the Premises or any other environmental condition affecting the Premises, 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.

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.

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, except as expressly provided in Subsection 2.3.2 with respect to any Post Term Removal Period.

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 ground lessee (or subtenant) 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 Hotel Related 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 Hotel Related Premises in the case of an Event of Default, or in case of abandonment or vacation of the Hotel Related Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Hotel Related Premises and remove any and all persons and property whatsoever situated upon the Hotel Related 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 Hotel Related 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 date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

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: MDR HOTELS, LLC

 Attn: _____
 Phone: _____
 Fax: _____

With a Copy to: Cox, Castle & Nicholson LLP
 2029 Century Park East
 Suite 2100

Los Angeles, California 90067
Attn: Ira J. Waldman, Esq.
Phone: 310/284-2200
Fax: 310/284-2100

And:

Attn: _____
Phone: _____
Fax: _____

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. Subject to Section 16.13, no amendment shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this 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 Encumbrance Holders 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 Hotel Related 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. The Development Work includes the development by Lessee of a continuous pedestrian walkway with landscaping, lighting, seating, fencing and other

improvements (the “**Promenade**”) as described in the Development Plan and in accordance with the Final Plans and Specifications for such work described in Article 5. 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 similar activities) as may be established by County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by County regulating such public use. Such public easement shall also include the public use of any restrooms that are designated on the Development Plan or Final Plans and Specifications as public restrooms. 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 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 Subsection 5.7.7 of this Lease. At the request of either party, such legal description shall be recorded in the Official Records of Los Angeles County as a supplement to this Lease.

15.21 Wetland Park Premises. This Section 15.21 sets forth express provisions which, in addition to the remaining terms and provisions of this Lease, specifically pertain to the use, occupancy, possession, operation, maintenance and repair of the Wetland Park Premises and the Improvements located thereon. Except for the provisions of Section 5.1.1 of this Lease in the case in which Lessee is responsible for the performance of the Wetland Park Development (and the remaining terms of Article 5 which are applicable to Lessee’s performance of such Wetland Park Development), to the extent of any inconsistency or conflict between the terms and provisions of this Section 15.21 and the terms and provisions of the remaining portions of this Lease, the terms and provisions of this Section 15.21 shall control with respect to the Wetland Park Premises and the Improvements located thereon.

The Wetland Park Premises shall be used solely for public wetland park purposes, and County hereby reserves an exclusive easement on, over and under the Wetland Park Premises for the public use and operation of the Wetland Park Premises by County for such purposes. County also reserves an easement on, over and under the Wetland Park Premises and the Promenade for purposes of water drainage to the harbor adjacent to the Promenade, including without limitation, the installation, use, maintenance, repair and replacement of pipeline improvements; provided, however, that any pipeline improvements in the Promenade shall be subsurface. County agrees to restore any damage to the Promenade incurred in connection with the County’s installation, use, maintenance, repair or replacement of any water drainage pipeline improvements installed by or for County under the Promenade. Lessee shall not be permitted to use the Wetland Park Premises for any purpose. Without limitation of the foregoing, (a) Lessee shall have no right of access to or use of the Wetland Park Premises for construction staging or other purposes in connection with the construction of the Development Work on the Hotel Related Premises except as permitted by Applicable Laws and any third party agreements pertaining to the Wetland Park Premises, and as approved by Director in writing, which approval may be withheld in Director’s sole and absolute discretion; and (b) the Wetland Park Premises may not be used for events held at the Hotel Related Premises, including weddings. Lessee shall have a right of access to the Wetland Park Premises for the purpose of inspecting or investigating the condition of the Wetland Park Premises, including performance of any Phase I environmental assessment

that may be required in connection with a Financing Event or assignment of Lessee's interest under this Lease, provided that Lessee shall not unreasonably interfere with the use of the Wetland Park Premises or conduct any invasive testing on the Wetland Park Premises without the prior written consent of the Department.

Following completion of the Wetland Park Development County shall be responsible for the monitoring and maintenance of the Wetland Park Premises in accordance with Applicable Laws, including any requirements of the Coastal Development Permit issued for the Wetland Park Premises and any applicable on-going monitoring and maintenance obligations set forth in any wetland restoration plan applicable to the Wetland Park Premises approved by County or any other public agency with oversight authority. Except for any period during which Lessee is performing the Wetland Park Development work pursuant to Section 5.1.1 of this Lease (if applicable), Lessee shall have no obligations with respect the maintenance, monitoring, repair, alteration or restoration of the Wetland Park Premises. If County defaults in the performance of County's obligations under this paragraph (after notice and the expiration of the grace and cure periods set forth in Section 13.6 of this Lease), then Lessee shall have the right to notify County in writing that Lessee intends to cure such default on behalf of County (a "**Self-Help Notice**"). If County fails to commence to cure County's default within thirty (30) days after County's receipt of such Self-Help Notice and diligently pursue the cure of such default to completion, then Lessee shall have the right to take action to cure County's default, provided that any action taken by Lessee to cure County's default shall be (i) subject and limited to compliance by Lessee with all Applicable Laws and the other requirements of this paragraph pertaining to the monitoring and maintenance of the Wetland Park Premises, and (ii) taken in accordance with a detailed plan and cost estimated submitted to and approved by Director, which approval shall not be unreasonably withheld. If Lessee cures County's default in accordance with the terms and provisions of this paragraph, then County shall reimburse Lessee for the reasonable third party costs and expenses incurred by Lessee to cure County's default.

Except for the recovery of its third party costs and expenses incurred to cure a County default under the immediately preceding sentence, Lessee agrees that neither County nor its boards, departments, agencies, commissions, or other governmental divisions, nor their respective officials, officers, board members, agents, attorneys or employees shall have any liability to Lessee, or anyone claiming under or through Lessee, for or in connection with any occurrence, condition or other matter in, on or about the Wetland Park Premises, including without limitation, any damage to or loss of property or business, or injury to persons, arising from or in connection with the ownership, use, operation or maintenance of the Wetland Park Premises, and Lessee hereby waives any and all such claims or causes of action.

15.22 Parking Easement for Wetland Park Premises. County hereby reserves a public easement for access to and use of twenty-one (21) parking spaces on the Hotel Related Premises, at no charge, by visitors to the Wetland Parking Premises. The location and terms of use of such parking spaces shall be as reasonably approved by Director.

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 Hotel Related Premises, or any portion thereof ("**Written Appraisal Evidence**"), unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Hotel Related 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 Hotel Related Premises as prescribed by Section 4.4.1. 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 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.6, 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 ten (10) days after the issuance of any award by the arbitrator becomes final, if the award involves the adjustment of the rent, insurance levels or other matters under the Lease, then County will draft a proposed amendment to the Lease setting forth the relevant terms of such award and transmit such proposed amendment to Lessee and any Encumbrance Holder(s) as to which County has been provided written notice, for their review. Within ten (10) days after delivery of the proposed amendment to Lessee and such Encumbrance Holder(s) for their review, Lessee or any such Encumbrance Holder(s) shall have the right to notify County in writing of any deficiencies or errors in the proposed amendment. If County does not receive notice of a deficiency or error within such ten (10) day period, then Lessee shall execute the amendment within seven (7) days after the end of such ten (10) day period and such amendment shall be binding on Lessee and all Encumbrance Holders. If the parties (including an Encumbrance Holder) shall, in good faith, disagree upon the form of any such amendment, such disagreement shall be submitted to the arbitrator for resolution. Upon execution by Lessee, any amendment described in this Section 16.13 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 draftsman 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 or an express response period is specifically provided herein, whenever the consent or approval of County or Lessee is required under this Lease, such consent or approval shall not be unreasonably withheld, conditioned or delayed, 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, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

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

THE COUNTY OF LOS ANGELES

By: _____
Mayor, Board of Supervisors

MDR HOTELS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

ATTEST:

PATRICK OGAWA,
Acting Executive Officer – Clerk of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKMAN,
Interim County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

EXHIBIT A-1

LEGAL DESCRIPTION OF PREMISES

[TO BE ATTACHED PRIOR TO EXECUTION]

Hotel Related Premises:

Wetland Park Premises:

EXHIBIT A-2

DEPICTION OF HOTEL RELATED PREMISES AND WETLAND PARK PREMISES

[TO BE ATTACHED PRIOR TO EXECUTION]

EXHIBIT B

DEVELOPMENT PLAN

[DRAFTING NOTE: FOR PURPOSES OF THE EXECUTION OF THE OPTION AGREEMENT, THE DEVELOPMENT PLAN FOR THE HOTEL DEVELOPMENT IS ATTACHED HERETO. PRIOR TO LEASE EXECUTION, THE FINAL PLANS AND SPECIFICATIONS FOR THE HOTEL DEVELOPMENT SHALL BE APPROVED AND SECTION 5.1 OF THE LEASE AND THIS EXHIBIT B SHALL BE REVISED TO REPLACE REFERENCES TO THE ATTACHED DEVELOPMENT PLAN WITH REFERENCES TO SUCH FINAL PLANS AND SPECIFICATIONS.]

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 from 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 Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the 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 year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to 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 assignee 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 Hotel Related Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.
3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such 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 County.
4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.
5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) 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; 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

EXAMPLES OF PERMITTED CAPITAL EXPENDITURES

Subject to the terms and provisions of Section 5.12 of the Lease, 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.

Painting of the building exterior*

Walkways and driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal)

Windows replacement*

Roof replacement* (may be on a building by building basis)

Elevators (replacement or addition)

HVAC replacement

Light fixtures replacement* (interior and exterior)

Irrigation system* (replacement or major addition)

* To qualify, these expenditures need to incorporate replacement or renovating of at least seventy percent (70%) of the items or facilities in question with respect to a particular Hotel as to which the subject work is being performed.

EXHIBIT E

TREE TRIMMING POLICY

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

EXHIBIT F

AAA DIAMOND RATING GUIDELINES

[TO BE ATTACHED PRIOR TO EXECUTION]

EXHIBIT G

COMPARABLE HOTELS LIST FOR EACH HOTEL

[TO BE ATTACHED PRIOR TO EXECUTION]

LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

MDR HOTELS, LLC

(Parcel 9U -- Lease No. _____)

Dated as of _____, _____

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