Los Angeles County Beaches & Harbors — Caring for Your Coast

To enrich lives through effective and caring service

AGENDA

SMALL CRAFT HARBOR COMMISSION MEETING
FEBRUARY 10, 2004
7:00 p.m.
BURTON W. CHACE PARK COMMUNITY BUILDING
13650 MINDANAO WAY
MARINA DEL REY, CA. 90292

NOTE: Upon adjournment of the regular meeting of the Commission, public workshops will convene. Separate stations, staffed by County personnel and consultants, will provide information and the opportunity for public input and comment on a variety of topics relating to Marina del Rey planning and development.

1. Call to Order and Action on Absences

2. Approval of Minutes: Meeting of January 14, 2004

3. **REGULAR REPORTS** (DISCUSS REPORTS)

   a. Marina Sheriff
      -Crime Statistics
      -Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

   b. Marina del Rey and Beach Special Events

4. **OLD BUSINESS**

   None

5. **NEW BUSINESS**

   a. Extension of Option to Purchase Parcel 77 and a Portion of Parcel 44 (RECOMMEND TO BOARD)

   b. Assignment and Option for Restated and Extended Lease - Parcel 102 (RECOMMENDTO BOARD)

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

6. **STAFF REPORTS** (DISCUSS REPORTS)

   a. Ongoing Activities
      - Board Actions on Items Relating to Marina del Rey
      - Design Control Board Minutes

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

9. **PUBLIC WORKSHOPS**

Public workshop locations will be available at separate stations following the regular meeting. The stations will present materials relating to the following Marina del Rey topics:

1. Urban Design Guidelines
2. Park and "Parkette" Projects
3. Model - Marina Development
4. Individual Leasehold Development Projects
5. Traffic Mitigation Projects
6. Water Shuttle

Each station will be staffed by County personnel and consultants who will be available to answer questions and discuss the topics presented. In addition, materials will be available to provide written follow-up comments to the Commission and the department.

PLEASE NOTE:

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code 93-031 relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.

2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

   Department of Beaches and Harbors' Website Address: http://beaches.co.la.ca.us

   Department of Beaches and Harbors
   Administration Building
   13837 Fiji Way
   Marina del Rey, CA 90292

   MdR Visitors & Information Center
   4701 Admiralty Way
   Marina del Rey, CA 90292

   Burton Chace Park Community Room
   13650 Mindanao Way
   Marina del Rey, CA 90292

   Marina del Rey Library
   4533 Admiralty Way
   Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9546.

Small Craft Harbor Commission
Meeting of January 14, 2004
Minutes

Commissioners Present:

Harley Searcy, Chairman
Carole Stevens, Vice-Chairperson
Joe Crail
John Law

Excused Absences:

Russ Lesser

Department of Beaches & Harbors:	Stan Wisniewski, Director Roger Moliere, Deputy Director, Asset Management & Planning Bureau Joe Chesler, Chief, Planning Division Dusty Crane, Chief, Community & Marketing Services Division
Other County Departments:	Tom Faughnan, County Counsel Lt. Gary Thornton, Sheriff's Department Deputy Paul Carvalho, Sheriff's Department

1. CALL TO ORDER & ACTION ON ABSENCES

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:39 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

Commissioner Crail moved and Commissioner Law seconded a motion to excuse Commissioner Lesser from today's meeting. The motion passed unanimously.

2. APPROVAL OF MINUTES

Vice-Chairperson Stevens moved and Commissioner Law seconded a motion to approve the December 10, 2003 minutes. The motion passed unanimously.

3. REGULAR REPORTS

a. Marina Sheriff's Department Report

--- Crime Statistics

Lt. Thornton announced that a suspect for the underground parking vehicle burglaries and bicycle thefts was recently apprehended in Redondo Beach.

--- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

Deputy Paul Carvalho reported that, to date, 158 vessels have been disposed of, including the 22 vessels that were disposed of since November. This completes the contract with the Wilmington boat movers. There are still 14 vessels waiting to be processed. He expressed hope that some of the vessels would be disposed of under the current state grant. The Property and Evidence Division has to figure out the amount of funds remaining in the grant and the remainder of the money would be used to dispose of at least part of the vessels that are at the dock.

b. Marina del Rey and Beach Special Events

Mr. Wisniewski reported that the Special Events Report includes whale watching tours and Fisherman's Village concerts. There are no beach events for the month.

4. OLD BUSINESS

None.

5. NEW BUSINESS

a. Election of Commission Officers

Vice-Chairperson Stevens commented that she recalls the Commission, several years ago, waiving the rule that limits an officer to serving no more than two consecutive terms of one year each. Mr. Wisniewski affirmed that the Commission waived the rule during an election several years ago. He said that if the Commissioners want to nominate the current officers to serve another term, the Commission would need to waive the rule regarding term limits.

Vice-Chairperson Stevens moved and Commissioner Crail seconded a motion to waive the Commission rule that limits an officer to serving no more than two consecutive terms of one year each. The motion passed unanimously.

Vice-Chairperson Stevens moved and Commissioner Law seconded a motion to re-elect Chairman Searcy to the office of Chairman of the Small Craft Harbor Commission for the year 2004. The motion passed unanimously.

Chairman Searcy moved and Commissioner Crail seconded a motion to re-elect Vice-Chairperson Stevens to the office of Vice-Chairperson of the Small Craft Harbor Commission for the year 2004. The motion passed unanimously.

Commissioner Law commented that, although he supports the re-election of Chairman Searcy and Vice-Chairperson Stevens and believes they're doing an excellent job, he is hopeful the Commission doesn't morph into the same officers leading the Commission for a lengthy period of time since, on general principle, this is not a great thing.

Chairman Searcy said that, while he will go along with the pleasure of the Commission, it isn't his desire to continue forever in the Chairman role and Commissioner Law's point is well taken.

b. Premises Maintenance Inspection Report for August 1 – November 30, 2003

Mr. Wisniewski said this report was developed per the Commission's request for a quarterly update on premises maintenance inspection and Commissioner Law's request for more detail regarding the process.

Mr. Wisniewski informed the Commission that the Department operates pursuant to Policy Statement 25. The Premises Maintenance Inspection Report details the maintenance inspection process and summarizes the important elements of the inspection program. There is a rotation cycle in the program that provides for all of the Marina del Rey facilities to be inspected on a 24-week schedule if there were no deficiencies within the previous year and on an 8-week cycle if there were deficiencies within the previous year. Virtually all of the leaseholds are on the more frequent cycle of 8 weeks.

Mr. Wisniewski said that Facility and Property Maintenance Division staff members send the Maintenance Inspection Report to the Asset Management Division's Real Property Agents (RPAs), who are assigned to specific leaseholds. The RPAs work with the Maintenance Division staff to review the time requirements for correcting deficiencies.

Mr. Wisniewski said the Department uses two tools to ensure that premises maintenance deficiencies are corrected in a timely manner. The first is a pre-default notice, which isn't used often. The notice informs the lessee that he/she is not being responsive and if immediate attention isn't given to the maintenance problem, a default notice will be issued, with a "cc" to the lender. Mr. Wisniewski said that the pre-default notice is quite effective in getting the lessee to address the problem.

Mr. Wisniewski said the Department also has the option to correct deficiencies itself and bill the lessee. This is a cumbersome process and, since the pre-default notices are quite effective, he doesn't recall the Department having used it.

Mr. Wisniewski said that a Request for Proposals (RFP) was issued to augment the Department's inspection program. Currently, a harbor engineer conducts inspections on a full time basis. The purpose of the RFP is to receive bids on the cost for two full-time inspectors. He said the RFP was advertised and the Department's website is the best way to obtain information regarding it.

Mr. Wisniewski said that, per Commissioner's Law recommendation, the new leases include a liquidated damages clause that charges lessees $100 per day per deficiency if they aren't responsive within the period required to correct the deficiency. The new leases also include reinvestment clauses. There are a variety that require, in some cases, the continual infusion of capital improvement money to keep up the capital improvements. The most important clause involves the periodic complete repositioning of the leasehold asset itself. Chairman Searcy asked whether there is a set percentage of the gross across the board or on an individual lease-by-lease basis. Mr. Wisniewski responded that it is generally set up as a percentage of the gross and it varies according to the lease.

Commissioner Law asked whether staff follows up on complaints and what is the procedure for following up on a maintenance complaint. Mr. Wisniewski responded that staff always follows up on specific complaints and the complainant is given the opportunity to meet with Mr. Schumaker or Mr. Moliere. If the problem wasn't already detected and included on the Premises Maintenance Inspection Report, it is added as a maintenance deficiency. If the problem is a safety matter, staff immediately reacts and requests immediate correction by the lessee. Commissioner Law suggested that this type of information be incorporated into the written maintenance report so that people can see the Department's policy. Mr. Wisniewski said that the Department would be happy to include this detailed information in future quarterly reports.

Mr. Wisniewski commended Mr. Moliere and the Asset Management & Planning Bureau staff for their efforts in coordinating the maintenance inspection process with the Facility and Property Maintenance Division. Mr. Wisniewski added that Mr. Moliere was recently promoted to Deputy Director of the Asset Management & Planning Bureau.

Commissioner Law commented that the Department's intent to hire a marine engineering firm to conduct inspections is an excellent idea. Mr. Wisniewski said that many of the lessees have been responsive about maintenance; however, there are lessees who are not responsive and hiring additional inspectors would enable the Department to be vigilant and ensure that maintenance deficiencies are addressed.

Chairman Searcy opened the floor to public comment.

Mr. Donald Klein said that he wanted to applaud the Department's efforts relative to the maintenance inspection program; however, waiting 24 weeks to inspect leaseholds that weren't cited for deficiencies in the previous year might be insufficient since a lot could go wrong during a 24-week period.

Mr. Klein asked, since Mr. Wisniewski considers the process cumbersome, what exactly is involved when the Department needs to hire a contractor to correct deficiencies that a lessee fails to correct.

In response to Mr. Klein's concern regarding the 24-week inspection schedule, Chairman Searcy emphasized to him that staff immediately addresses specific problems brought to its attention during this time-period.

In response to Mr. Klein's question regarding the process of obtaining a contractor, Mr. Wisniewski explained that hiring a contractor is cumbersome because in order for the County to obtain the required manpower it must go out to bid. By the time the bidding process begins, the Department could have already used the lease's default provisions to get the lessee to address the problem.

Mr. Wisniewski commented that the Department has experienced slowness from the lessees because of California Coastal Commission (CCC) rules, which require coastal development permits on virtually every repair. The Department requested delegated authority from the CCC and it was rejected; however, the Department plans to submit the request again. Chairman Searcy requested Mr. Wisniewski to keep the Commission posted on the Department's request for delegated authority.

Commissioner Crail asked whether CCC approval is needed for a lessee to perform maintenance on his/her slips. Mr. Wisniewski responded that CCC approval is required.

Commissioner Crail asked whether CCC approval is needed if a dock's electrical system needs repair. Mr. Wisniewski responded that an electrical system that isn't touching the water can be repaired under a Building and Safety permit.

Chairman Searcy asked whether CCC approval is required for health and safety hazards that touch the water. Mr. Wisniewski responded that the County is required to close down the dock until a CCC permit is obtained. He commented that it is the Department's opinion that as long as the lessee is repairing something that's in kind it should not be considered within CCC jurisdiction.

Mr. Chesler clarified, "the definition the CCC uses in reviewing these matters, if it requires a permit or not, generally deals with the use of mechanical equipment or heavy equipment to make the repair. If it uses hand tools and doesn't involve in the water work, generally, it can be done on a day-to-day basis by maintenance staff. If it involves anything that changes the use or expansion of the dock or involves work in the water using heavy equipment, it would require a permit."

Chairman Searcy asked whether CCC approval is required for work that is done in the water using hand tools. Mr. Chesler responded that anything in the water overrides the type of equipment used. The practical application is that any work done on docks that intrudes on the water requires a coastal permit.

Vice-Chairperson Stevens asked, since this is a health and safety issue, would it be effective to write a letter to the governor expressing concern about existing CCC requirements.

Chairman Searcy suggested that staff might also want to put together a position paper on the impact of the CCC's requirements. Mr. Wisniewski said that the Department has an effective lobbyist in Sacramento and staff will request her advice on this matter. He said that staff would keep the Commission apprised of the Department's outreach efforts in this regard.

Commissioner Crail asked whether it would be effective for the Commission to do a resolution. Mr. Wisniewski responded that he would discuss the issue with the lobbyist and let the Commission know what she advises.

Mr. Steve Weinman said that there has been a lot of discussion about not allowing docks to become unusable, yet this is what has occurred with Parcel 77. Mr. Wisniewski informed him that Parcel 77 is an aberration and the docks were all closed down at the Department's insistence. The Department negotiated a deal with the lessee to continue paying rent as though the docks were occupied. It was a matter of getting the permits and determining the long-term use of the parcel. Mr. Wisniewski said this is the only instance he's aware of where this has been done. Mr. Weinman said that he perceived the situation as 30 empty boat slips for which no revenue was being collected and no benefit to the boater or anyone who repairs boats. Mr. Weinman asked for more background information. Mr. Wisniewski suggested that Mr. Weinman speak to Mr. Moliere either after today's meeting or later about this issue.

c. <u>Next Meeting Scheduled for Tuesday, February 10 at 7:00 p.m.</u>

Chairman Searcy announced that the next Commission meeting is scheduled for Tuesday, February 10, 2004 at 7:00 p.m. in the Burton Chace Park Community Room.

Chairman Searcy suggested that the meeting include several information tables, with representatives providing information on various issues, such as matters relating to the Design Control Board, traffic mitigation and development. He said that the Commissioners could circulate around the room and members of the public could visit the information tables to interact with the representatives and receive material.

Vice-Chairperson Stevens said she would like the Argonaut's meeting notification to include a request for members of the public to submit questions in advance. Arrangements could then be made to have representatives available at the meeting to answer the questions. Vice-Chairperson Stevens expressed her feeling that the prior evening meeting failed to adequately answer the public's questions; perhaps, giving the public the opportunity to submit questions before the February meeting would prevent this from happening again.

Mr. Wisniewski stated that the Department plans for the evening meeting's agenda to have regular business items. After the meeting's adjournment, the public would have the opportunity to obtain information that's available at tables stationed around the room. One of the tables would contain a model of Marina del Rey showing current and proposed development. One of the tables would provide information on the regulatory process. EDAW would staff another table and provide information on the urban design guidelines that they are in the process of preparing for consideration by the Design Control Board. There would also be a miscellaneous table with staff available to address various subjects.

As for Vice-Chairperson Stevens' suggestion, Mr. Wisniewski explained that it isn't necessary for the Department to receive the public's questions before the meeting since there will be a sufficient number of representatives available to address a range of questions. There will also be a drop off box at the meeting for the public to submit their questions and have responses mailed to them later. He added that, although a drop off box will be available, he believes the questions would be answered during the meeting.

Mr. Wisniewski commented that representatives from each of the development projects will be invited to the meeting as well.

Commissioner Law suggested that the public receive information about how all of the planned development affects the Marina so that people can have a holistic sense of the plans.

Vice-Chairperson Stevens emphasized that the meeting should definitely include the impact of the planned development on traffic. Vice-Chairperson Stevens commented that people have frequently expressed their concern to her that a lot of traffic would be taken from Lincoln Blvd. and dumped onto Admiralty Way. She said this concern should be addressed at the meeting.

Mr. Wisniewski said the Department would request its consultant, Barry Kurtz, to attend the meeting to discuss the traffic issue. Mr. Wisniewski requested staff to ensure that Mr. Kurtz brings to the meeting the conceptual design of the Admiralty Way widening.

Commissioner Law suggested that information be provided at the meeting about alternate routes that could be taken to relieve the traffic on Lincoln Blvd.

6. ONGOING ACTIVITIES REPORT

a. Board of Supervisors' Actions on Items Relating to Marina del Rey

Mr. Wisniewski reported that the Board of Supervisors approved the items on Parcel 50 and Parcel 125 (Assignment and Forbearance Agreement). Relative to the Parcel 50 item, Mr. Wisniewski informed the Commission that the Department is currently assisting the lessee with the regulatory process.

In conclusion, Mr. Wisniewski reported that the Design Control Board minutes are included in the Commissioners' packets.

7. COMMUNICATION FROM THE PUBLIC

Chairman Searcy opened the floor to public comment.

Mr. Klein asked the status of his request for empirical data concerning the Marina City Club. He also requested that this issue be agendized. Mr. Klein reminded the Commission that he expressed concern at a previous meeting about the Marina City Club's location on the site of two abandoned oil refineries, one abandoned oil well, a former sewage treatment plant and a city trash dump. Mr. Wisniewski informed Mr. Klein that the matter would not be agendized. He said that staff would provide Mr. Klein with the information, with a copy to the Commission, by the February meeting.

Chairman Searcy reiterated that staff would provide Mr. Klein with the material before the February meeting. Chairman Searcy also informed Mr. Klein that he could pose any questions or make comments regarding the material at the February meeting.

Mr. Weinman expressed his concern that the Boy Scouts no longer use the Sea Scout Base. He asked where the Boy Scouts and various other groups that use the Sea Base are supposed to go. Mr. Weinman commented that he doesn't think when Mr. Pardee built the Sea Base he intended for the County's lease negotiations to be used as a tool to take the facility away from the Boy Scouts.

Chairman Searcy said he also was concerned that the Boy Scouts would lose the Sea Base until a Scouts' representative informed him that the agreement with the County would allow the organization to continue its activities at the Sea Base. There would be, however, a cutback in the Scouts' unfettered use of the facility.

Mr. Wisniewski said that the Department supports the Boy Scouts' programs and, when the agreement expired, the County negotiated an interim agreement that allowed the Boy Scouts to use the facility on a priority basis. The Scouts continue to use the docks and the Department, under the agreement, is allowed to use other elements of the facility that aren't being used by the Scouts. The Sea Scouts agreed with this deal and are content with the arrangement.

Mr. Wisniewski said that the Sea Base isn't currently used by anyone because lead paint and seismic and asbestos problems were found there. Additionally, the facility is non-compliant with the Americans with Disability Act (ADA). The estimated cost to make the Sea Base compliant is $1.5 million. The Department, on a number of occasions, informed the Sea Scouts of all of the various maintenance deficiencies, but the organization was unresponsive; they just don't have the funds to address the problems. The Department told the Sea Scouts that as soon as the building is operational and safe for kids again they would be able to use the facility.

Mr. Weinman asked the amount of money the County plans to invest in the facility and from where would the money come. Mr. Wisniewski responded that the money would come from several sources. Mr. Moliere added that approximately $1.5 million would be used to bring the facility up to ADA and earthquake standards.

Chairman Searcy asked whether County staff is currently using the facility. Mr. Moliere responded that the facility's asbestos problem is being fixed and neither Sea Scouts nor County employees use the facility.

Mr. Weinman commented that he received his information from various representatives of the Boy Scouts. Mr. Wisniewski suggested that Mr. Weinman speak with Mr. Moliere after today's meeting to obtain the names of the official representatives who are authorized to negotiate on the Scouts' behalf.

8. ADJOURNMENT

Chairman Searcy adjourned the meeting at 10:35 a.m.

Respectfully submitted,

Toni Minor, Secretary

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
MARINA DEL REY STATION
PART I CRIMES- JANUARY 2004

	West Marina 2760	East Marina 2761	Lost R.D. 2762	Marina Water 2763	Upper Ladera 2764	County Area 2765	Lower Ladera 2766	Windsor Hills 2767	View Park 2768	TOTALS
Homicide							1			**1**
Rape					2			1		**3**
Robbery: Weapon							2			**2**
Robbery: Strong-Arm										**0**
Aggravated Assault						1	2	1		**4**
Burglary: Residence	2		1		2		3	5	2	**15**
Burglary: Other Structure		1			1		2	1	3	**8**
Grand Theft	4	2		3		1			1	**11**
Grand Theft Auto	6	1				1	3	1	2	**14**
Arson										**0**
Boat Theft										**0**
Vehicle Burglary	5									**5**
Boat Burglary										**0**
Petty Theft		1	1						1	**3**
REPORTING DISTRICTS TOTALS	**17**	**5**	**2**	**3**	**5**	**3**	**13**	**9**	**9**	**66**

Note- The above numbers may change due to late reports and adjustments to previously reported crimes.

Source- LARCIS, **Date Prepared – February 2, 2004**
CRIME INFORMATION REPORT - OPTION B

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

MARINA DEL REY STATION

PART I CRIMES- JANUARY 2004

Part I Crimes	MARINA AREA (RD'S 2760-2763)	EAST END (RD'S 2764-2768)
Homicide	0	1
Rape	0	3
Robbery: Weapon	0	2
Robbery: Strong-Arm	0	0
Aggravated Assault	0	4
Burglary: Residence	3	12
Burglary: Other Structure	1	7
Grand Theft	9	2
Grand Theft Auto	7	7
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	5	0
Boat Burglary	0	0
Petty Theft	2	1
Total	27	39

Note- The above numbers may change due to late reports and adjustments to previously reported crimes.

Source- LARCIS, **Date Prepared –** February 2, 2004
CRIME INFORMATION REPORT - OPTION B

MARINA DEL REY HARBOR ORDINANCE
SEAWORTHY & LIVEABOARD COMPLIANCE REPORT

	December	January
Liveaboard Permits Issued	0	2
Warnings Issued (Yellow Tags)	0	0
Notices to Comply Issued	0	0

Total Reported Liveaboards By Lessees - 543
Total Liveaboard Permits Issued - 435
Percentage of Compliance - 80

No new Warnings were issued in the month of December.

No new Notices to Comply were issued in the month of December. There are no active cases.

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveaboard permit) or 19.12.1060 L.A.C.C. (unseaworthy vessel) in the month of December.

Number Of Unseaworthy Vessels Demolished

To date, one hundred and fifty eight (158) vessels have been removed from the marina for disposal. Currently, six (6) vessels are ready for disposal and eight (8) are awaiting lien sale procedures.

Los Angeles County
Beaches & Harbors
Caring for Your Coast

To enrich lives through effective and caring service

February 4, 2004

TO: Small Craft Harbor Commission

FROM: Kerry Gottlieb for Stan Wisniewski, Director

SUBJECT: **AGENDA ITEM 3b - MARINA DEL REY AND BEACH SPECIAL EVENTS**

MARINA DEL REY EVENTS

VALENTINE'S DAY IN MARINA DEL REY

February 12 – February 15, 2004

Marina del Rey is the perfect waterfront, romantic hideaway to spend with the one you love! Book a hotel and cruise, dance & dine the night away or, for something out of the ordinary, participate in a live Valentine's mystery!

For more information call: Marina del Rey Visitors Center at (310) 305-9545.

FISHERMAN'S VILLAGE WEEKEND CONCERTS

Sponsored by Pacific Ocean Management, LLC
All concerts are from 1:00 p.m. – 4:00 p.m.

Sunday, February 8
Mike Gealer & Euphoria, playing R&B, Contemporary Jazz & Pop

Sunday, February 15
Beach Cities Swing Band, playing Swing

Sunday, February 22
Dirk K., playing Jazz

Sunday, February 29
The Chris Ho Band, playing Jazz

For recorded information call: (310) 823-5411.

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Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

HOUSEHOLD HAZARDOUS WASTE AND E-WASTE ROUNDUP

Saturday, March 6, 2004
9:00 a.m. – 3:00 p.m. (approximately)
Dock 52 Parking Lot – 13483 Fiji Way

The County of Los Angeles Department of Public Works and the Sanitation District, in conjunction with the County of Los Angeles Department of Beaches and Harbors, are sponsoring the annual Household Hazardous Waste and E-Waste Roundup for the proper disposal of environmentally harmful household substances and electronic waste.

BEACH EVENTS

SANTA MONICA PIER
VALENTINE'S DAY DANCE

Santa Monica Pier Lessee's Association
Saturday, February 14, 2004

The FREE Valentine's Day Dance returns to the Pier! Plan now to join them solo or with your sweetie on Saturday, February 14 for a free concert and dance on the Santa Monica Pier. A raffle with great prizes from Pier tenants is offered, complementing this great evening on the Pier.

For recorded Pier event information call: (310) 458-8900 ext 6.

HERMOSA BEACH
53RD ANNUAL SAND AND STRAND RACE & ALOHA SURF CONTEST

City of Hermosa Beach
February 29, 2004
7:00 a.m. – 1:00 p.m.

The 53rd Annual Sand and Strand Run/Walk is a 55% sand and 45% strand race beginning on the north side of Hermosa Beach Pier at shoreline and finishing on the south. All race proceeds benefit Project Touch, a local non-profit group serving community youth and their families in the South Bay. Registration required.

For more information call: Project Touch at (310) 379-2797 or City of Hermosa Beach at (310) 318-0280.

An Aloha Surf Contest will take place south of the Hermosa Beach Pier and will begin at 7:00 a.m. with an awards presentation following. Registration required.

For more information call: Abel Ybarra, Aloha Days at (310) 374-6191.

SW:mc

Los Angeles County
Caring for Your Coast
Beaches & Harbors

To enrich lives through effective and caring service

February 4, 2004

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: AGENDA ITEM 5a – APPROVAL OF FIRST AMENDMENT TO OPTION AGREEMENT FOR LEASES NO. 6734 AND 11140 – PARCELS 44U (PIER 44) AND 77W (77 DEL REY) – MARINA DEL REY

Item 5a on your agenda relates to an extension of the time in which the County may exercise its Board-approved option to purchase Parcel 77W and a portion of Parcel 44U. As part of the ongoing planning for the Mindanao peninsula, the expansion of Chace Park, and the planning for the lessee's (Pacific Marina Venture, LLC – Michael Pashaie and David Taban) adjacent development on the remaining portion of Parcel 44U, the lessee and the County have agreed to extend the time by which the County may determine whether to exercise its option to purchase Parcel 77W and a portion of Parcel 44U.

The attached Board letter contains details regarding the proposed extension of option exercise date. Your Commission's endorsement of our recommendations to the Board of Supervisors, as contained in the attached letter, is requested.

Please let me know if you would like additional information at this time.

SW:rm:
Attachments

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

February 2, 2004

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

Dear Supervisors:

APPROVAL OF FIRST AMENDMENT TO OPTION AGREEMENT FOR LEASES NO. 6734 AND 11140
PARCELS 44U (PIER 44) AND 77W (77 DEL REY) - MARINA DEL REY
(4th DISTRICT)
(3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and authorize the Chair to sign the attached FIRST AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("Amendment") FOR LEASES NO. 6734 (Parcel 44U) and 11140 (Parcel 77W), MARINA DEL REY (Exhibit A) granting an extension of the time in which the County may exercise its rights and options, upon payment of the stated option prices, to acquire full use of Parcel 77W and a portion of Parcel 44U.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of ground leases for Parcels 44U and 77W, each of which were originally entered into for terms of sixty years and which have remaining lease terms of nineteen (19) and twenty-two (22) years, respectively. Pacific Marina Venture, LLC, a Delaware limited liability company (Lessee), is the current lessee of both parcels.

On February 24, 2003, your Board approved and authorized an option agreement (Agreement) with the Lessee for the County to obtain purchase options which will terminate all of Parcel 77W lease and a portion of the Parcel 44U lease in order that the

County may utilize all or portions of these parcels for the intended Chace Park expansion and significant boating and visitor-serving development.

The term of the Agreement is set to expire on February 24, 2003. The County is engaged in planning for the Mindanao peninsula area, including the areas covered by the Agreement, and Lessee is engaged in detailed planning for development of a hotel and related facilities on its remaining portion of Parcel 44U not covered by the Agreement. As part of such planning, the Lessee has asked County to consider, and the County is willing to cooperate towards accomplishing, the development of a parking facility on a portion of County's Parcel 49 located near the southerly corner of Mindanao and Admiralty Ways, which would provide parking to serve both the expansion of Chace Park and the proposed hotel and retail development on Parcel 44U. The Lessee and County each require additional time to complete planning for both projects prior to the County's being able to make its determination whether or not to exercise its option(s) under the Agreement. The Lessee has, accordingly, agreed to extend the date, at no cost to the County, by which the County must give notice of its intent to exercise its option(s) under the Agreement from February 24, 2004, to the earlier to occur of June 30, 2005 or ten business days after the date Lessee and County shall have executed and delivered an Option to Amend Lease Agreement relating to a restated and extended lease for Parcel 44U.

Implementation of Strategic Plan Goals

The proposed action promotes and furthers the Board-approved Strategic Plan Goal of Service Excellence, in that it provides the County additional time to plan and the ability to offer a site for expansion of the adjacent Chace Park facilities and enhanced areas for expanded boating and visitor-serving development. These goals are furthered through proactive implementation of the Marina del Rey Asset Management Strategy, toward both revenue maximization and property redevelopment.

FISCAL IMPACT/FINANCING

There is no cost to the County as a result of the requested Amendment providing an extension of time to exercise the Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Agreement, approved by your Board on February 24, 2003, granted the County options to purchase (buy out the remaining term) and terminate the Parcel 77W lease and a portion of the Parcel 44U lease, giving the County complete control of both areas and thereby allowing the County to provide for planned expansion of Chace Park and for expanded boating and visitor-serving development. The requested Amendment extends the time, at no cost to the County, by which the County may choose to exercise its option(s) to purchase.

The term of the options commenced upon February 24, 2003, the date of Board approval, and will expire on February 24, 2004, the first anniversary of such date ("Expiration Time"), unless the County has exercised the option(s) or the time of exercise is extended. The requested Amendment will extend the Expiration Time during which the County may exercise its options to the earlier of June 30, 2005 or ten days after the date the Lessee and County shall have executed and delivered an Option to Amend Lease Agreement relating to a restated and extended lease for Parcel 44U and, likewise, continue the County's right to specify a later date for closing and payment to any time within two years of exercise of the option(s). County will then have the right, but not the obligation, to exercise the option(s) at any time prior to the extended Expiration Time.

Under the terms of the Amendment, all terms of the current Agreement, except for an extension of the date of exercise of the County's options to purchase will remain the same.

The Small Craft Harbor Commission is scheduled to consider the Amendment at its meeting of February 10, 2004, and we will advise your Board of the Commission's recommendation prior to your consideration of the Amendment. The Amendment has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

Entering into the Amendment does not presently authorize the purchase and termination of the two leaseholds, or portions thereof, nor does it presently authorize any development

on the properties. Exercise of the option(s), if at all, and/or the construction of replacement boater shower and restroom facilities will be in connection with a development plan that is not currently known. Such development, if pursued, will be preceded by full preparation of the appropriate environmental documentation.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed Amendment to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski, Director

SW:rm
Attachments (3)

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

EXHIBIT A

FIRST AMENDMENT TO
OPTION AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

(County Lease No. 11140; Parcel 77W – Marina del Rey)
(County Lease No. 6734; Parcel 44U – Marina del Rey)

THIS FIRST AMENDMENT TO OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**First Amendment**") is made as of February 24, 2004, between **PACIFIC MARINA VENTURE, LLC,** a Delaware limited liability company ("**Lessee**"), and **COUNTY OF LOS ANGELES** ("**County**"), with reference to the following facts:

RECITALS

A. All capitalized terms in this First Amendment shall have the meanings given such terms in the Agreement (defined hereinafter), except where specifically defined herein. County is the lessor and Lessee is the lessee under each of the Parcel 44 Lease and the Parcel 77 Lease, pursuant to which Lessee leases from County certain land and water located in the Marina del Rey Small Craft Harbor. County and Lessee entered into that certain Option Agreement and Joint Escrow Instructions made as of February 25, 2003 (the "Agreement") whereby Lessee granted County rights to acquire certain real property interests as more specifically provided in the Agreement.

B. County is engaged in development planning for the Mindanao peninsula area, including various public and private facilities to be constructed thereon, and Lessee is engaged in detailed development planning for a hotel and related retail facilities on Parcel 44. As part of such planning, Lessee has asked County to consider, and County is willing to cooperate towards accomplishing, the development of a parking facility on a portion of County's Parcel 49 located near the southerly corner of Mindanao Way and Admiralty Way which would

provide additional parking to serve the hotel and retail development on Parcel 44 as well as additional parking for Chace Park. The parties need additional time to complete the planning for both projects prior to the County's being able to make its determination whether or not to exercise its options under the Agreement.

NOW, THEREFORE, with reference to the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and County hereby agree as follows:

1. Section 2.2 of the Agreement is hereby amended and restated in its entirety as follows:

"2.2 Term. The term of the Options shall commence on the Effective Date and shall expire at 5:00 p.m., Los Angeles time, on the earlier to occur of (i) June 30, 2005 or (ii) ten (10) business days after the date Lessee and County shall have executed and delivered the Option to Amend Lease Agreement granting Lessee the right to extend the term of the Parcel 44 Lease (the "**Expiration Time**") unless County has delivered an Exercise Notice as provided in Section 2.3."

2. All other terms and conditions of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date first written above.

LESSEE: PACIFIC MARINA VENTURE, LLC

By: ORIGINAL SIGNED
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COUNTY:

COUNTY OF LOS ANGELES

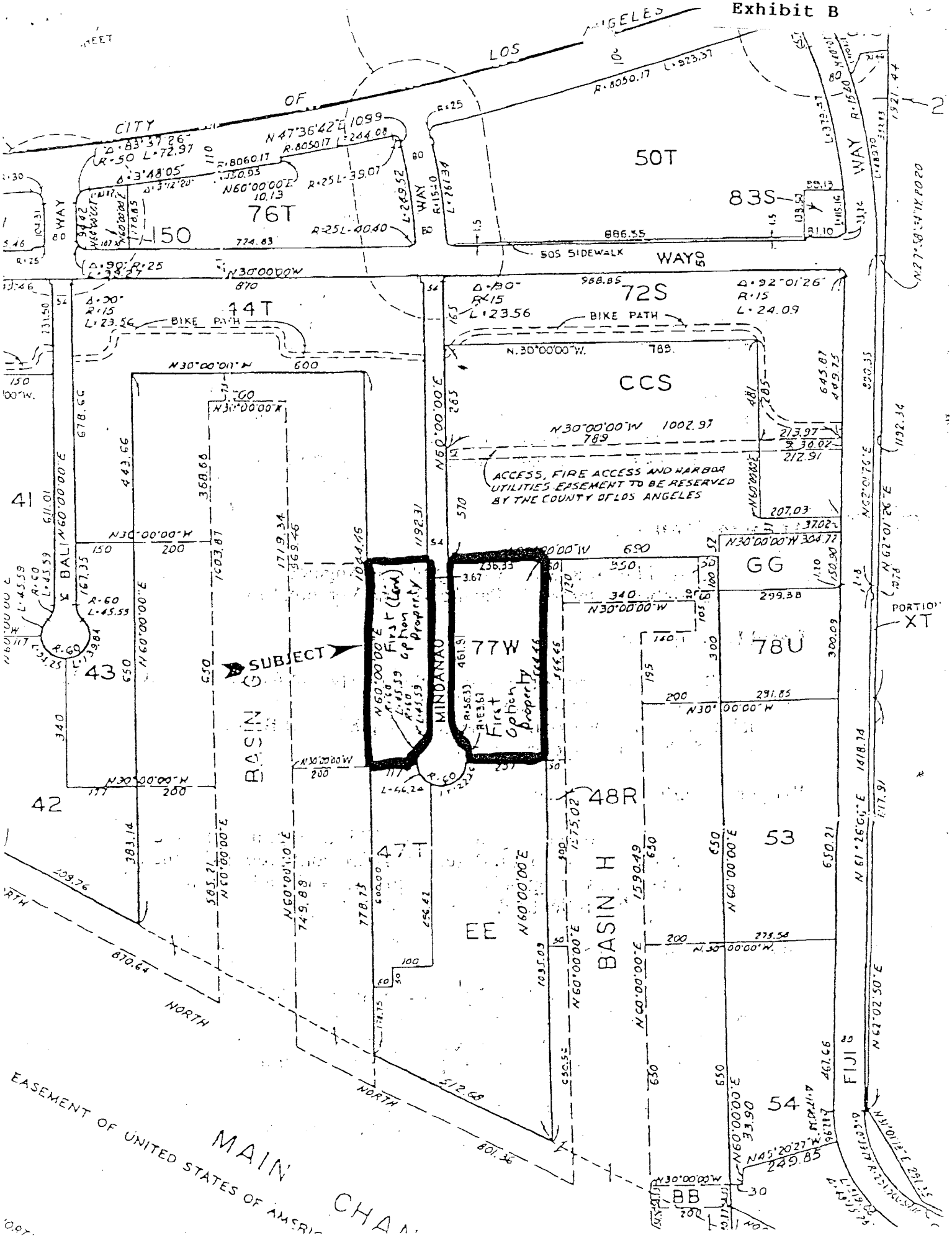
By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By: ORIGINAL SIGNED
_____
Deputy

Exhibit B


CITY OF LOS ANGELES
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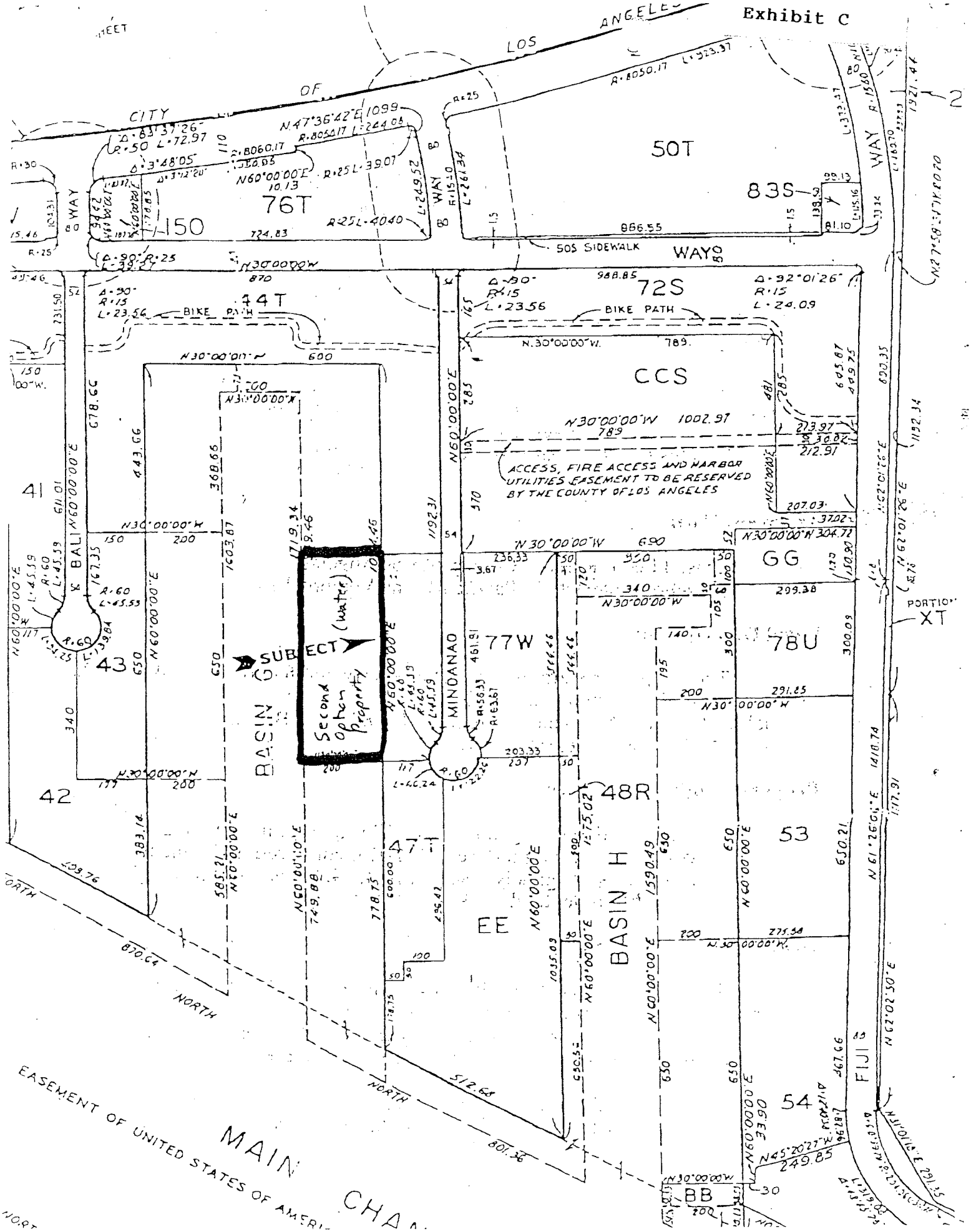
EE
BASIN H
BASIN G
MINDANAO
SUBJECT
First (Lord) Option Property
First Option Property
ACCESS, FIRE ACCESS AND HARBOR UTILITIES EASEMENT TO BE RESERVED BY THE COUNTY OF LOS ANGELES
BIKE PATH
50S SIDEWALK
WAY
PORTION XT
FIJI
BB
41
42
43
EASEMENT OF UNITED STATES OF AMERICA
MAIN CHAN

Exhibit C


CITY OF LOS ANGELES
50T
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50S SIDEWALK
72S
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BIKE PATH
CCS
ACCESS, FIRE ACCESS AND HARBOR UTILITIES EASEMENT TO BE RESERVED BY THE COUNTY OF LOS ANGELES
41
BALI
43
42
SUBJECT
Second Option Property (water)
BASIN G
MINDANAO
77W
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BASIN H
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FIJI
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NORTH
EASEMENT OF UNITED STATES OF AMERI
MAIN CHA

Los Angeles County
Beaches & Harbors
Caring for Your Coast

To enrich lives through effective and caring service

February 4, 2004

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: AGENDA ITEM 5b – CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE DEVELOPMENT – PARCEL 102S (KINGSWOOD VILLAGE APARTMENTS) – MARINA DEL REY

Item 5B on your agenda relates to the proposed assignment of Parcel 102S (Kingswood Village Apartments) from Kingswood Village-Marina, a California limited partnership, to Archstone-Smith Operating Trust, a Maryland real estate investment trust (Archstone), and the proposed option for a lease extension in connection with the proposed complete renovation of the leasehold by Archstone.

The attached Board letter contains details regarding the assignment and option for the extended and restated lease. Your Commission's endorsement of our recommendations to the Board of Supervisors, as contained in the attached letter, is requested.

Please let me know if you would like additional information at this time.

SW:RM:TA

Attachments

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us
Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

February 4, 2004

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

Dear Supervisors:

CONSENT TO ASSIGNMENT OF LEASEHOLD INTEREST AND OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT – PARCEL 102S (KINGSWOOD VILLAGE APARTMENTS) - MARINA DEL REY (4th DISTRICT) (4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed assignment of the leasehold interest in Parcel 102S, Lease No. 3823 (formerly 5576) is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chairman of the Board to sign three copies each of the Consent of County of Los Angeles to Assignment of Lease (Consent), attached as Exhibit A, for Parcel 102S from Kingswood Village-Marina, a California limited partnership (Kingswood), to Archstone-Smith Operating Trust, a Maryland real estate investment trust (Archstone).

3. Find that approval of the proposed Option to Amend Lease Agreement (Option), attached as Exhibit B, is categorically exempt under the California Environmental Quality Act pursuant to Class 1 (r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

4. Approve and authorize the Chairman of the Board to sign the attached Option granting to the recommended lessee, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 102S by 20 years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Assignment of Leasehold

Kingswood is the lessee of Parcel 102S by virtue of a previous assignment, approved by your Board on March 11, 1975. Kingswood is now requesting the County's consent to the assignment of its leasehold interest in Parcel 102S, commonly known as the Kingswood Village Apartments, to Archstone.

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

Our review has found: a) Archstone is a Maryland based Real Estate Investment Trust (REIT) with assets of approximately $9.3 billion that owns, acquires, develops and manages high-quality apartment developments throughout the United States, currently totaling over 80,000 apartment units, and has appropriate financial resources to own and operate the leasehold and perform the anticipated renovations and improvements to the leasehold; b) the sale price appears reasonable for the leasehold and improvements thereon; and c) the assignee has the requisite experience in acquiring, developing and managing apartment developments similar to Kingswood Village Apartments.

Option and Amended and Restated Lease

The proposed Option for Parcel 102S is the result of negotiations with proposed assignee Archstone, with the consent of Kingswood. The attached Option is designed to allow Archstone to exercise its option and receive the benefits of the Amended and Restated

Lease (Restated Lease) attached as Exhibit C, upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. If Archstone does not exercise the Option, the new percentage rents and a number of improved lease terms will nonetheless be incorporated by amendment into the current lease.

The Restated Lease provides for a 20-year lease extension; payment of a $2,210,000 lease extension fee; complete renovation of the existing 624 apartment units over a 3-year period, including all common areas, apartment interiors, exterior building facades, and windows in both the low-rise and tower units; establishment of a capital reserve sinking fund by lessee in an amount equal to 3% of gross annual leasehold revenue for each year during the term of the lease, to be utilized for Director-approved capital expenditures, with all such funds required to be fully utilized for such approved capital expenditures not later than 10 years prior to the expiration of the lease; establishment of new minimum and percentage rents; County participation in leasehold sale and/or refinance; revised arbitration procedures; County right to recapture the leasehold if the lessee pursues its sale; establishment of a sinking fund to remove leasehold improvements at lease termination; liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after the specified cure period; and other miscellaneous improvements to the lease (e.g., payment of late fees and interest on overdue County payments and enhanced audit and record-keeping standards). Once the lessee has obtained all necessary project entitlements and has fulfilled the other requirements entitling it to exercise the Option, we will return to your Board for authority to execute the Restated Lease in substantially the same form as attached.

The Department has obtained an appraisal that confirms the return to the County from the lease extension is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

These recommendations are consistent with the County's Strategic Plan Goal of "Service Excellence," in that appropriate management of the leasehold and protection of County interests are maintained in the transfer of the ownership interests, and the County Goal of "Fiscal Responsibility," in that the recommended Option and Restated Lease will allow the

Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy, toward both revenue maximization and property redevelopment.

The following chart details the proposed deal terms of the Restated Lease providing for the 20-year lease extension as they relate to your Board's existing Lease Extension Policy:

BOARD POLICY ITEM	PROPOSED DEAL TERMS – PARCEL 102S
1) REDEVELOPMENT Redevelopment of existing improvements	• Renovation of existing 624 apartment units, including common areas, interiors of all units, exterior building facades and windows in both low-rise and tower units, as shown in Development Plan attached to the lease, on a phased basis over a 3-year period, exclusive of Force Majeure, which in no event shall exceed 2 years. • Total development cost to be not less than $24.6 million. • A capital reserve sinking fund to be funded annually by lessee in the amount of 3% of gross revenue will be maintained during the term of the extended lease. This fund must be fully expended for permitted capital expenditures by 10 years prior to the expiration date of the extended lease. All permitted capital expenditures are subject to prior approval by the Director, such approval not to be unreasonably withheld.

2) EXTENSION TERM	• Option to extend lease by 20 years from 4/1/22 through 3/31/42 is exercisable by lessee within 1 year of grant of option by Board of Supervisors on condition lessee obtains all required planning, zoning and entitlement approvals, issuance of necessary building permits, payment of an option fee of $100,000, and has provided to County satisfactory evidence of project financing. If required by lender, mortgagee to be permitted an additional 5-year extension in the event of foreclosure. If lessee is unable to obtain all of the necessary entitlement and financing approvals within the one-year period, the Director may grant one 6-month extension if lessee can demonstrate it has diligently pursued required approvals and other conditions of option exercise. If lessee obtains its approvals within the 12-month (or 18-month) period, but such approvals are subject to litigation or appeal brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal; provided, however, that the option exercise date shall in no event be later than 4 years after the date of the grant of option. • If option is not exercised, the following shall be incorporated into the existing lease by amendment: (a) payment of County administrative costs; (b) revised lease assignment and disclosure rules; (c) a required sinking fund for removal of leasehold improvements at expiration of lease term; (d) modernized arbitration procedures; (e) liquidated damages for maintenance deficiencies; (f) late fees and penalties for late payments; (g) security deposit equal to 3-months' minimum rent; (h) provision of a 5-year cycle for renegotiation of insurance requirements; and, (i) enhanced audit and record-keeping requirements.
3) EXTENSION FEE Fee equal to or commensurate with value of the extension	• An extension fee in the amount of $2,210,000, payable as set forth below. 1. Lessee shall pay a nonrefundable $100,000 option fee concurrent with the execution of the option. Such payment shall be credited against the extension fee if the option is exercised, but shall not be refundable in the event the option is not exercised. 2. The remaining $2,110,000 shall be payable at the time of exercise of the option or in 10 equal annual principal installments of $211,000, plus interest accrued on the unpaid balance of the extension fee at the prime rate. The first payment shall be due on the date of lessee's exercise of the option with the remaining 9 payments due on each of the succeeding 9 anniversaries of that date.

4) MARKET RATE RENTS Ensure fair market rents	• Minimum annual rent to be reset upon exercise of option and every 3 years thereafter to 85% of the previous 3 years' average total rent, except that the first 3-year adjustment will be the greater of a) $1,300,000, b) 85% of the previous year's annual rent, or c) 85% of the previous 3 years' average annual rent. • Percentage rent to be set at 10.5% for apartments (including high-rise units currently at 8.5%). • Percentage rents fixed for a 20-year period from effective date of the Restated Lease and subject to renegotiation to fair market rental as of the 1st day of the 21st year and every 10 years thereafter.
5) PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold	• Sale Participation: Greater of 5% of Gross Proceeds or 20% of Net Profit upon assignment of leasehold. • Refinance Participation: 20% of Net Proceeds not reinvested in leasehold improvements.
6) COUNTY ADMINISTRATIVE COSTS Ensure payment for County costs for lease extension and administration	• Reimbursement of County costs for extension negotiations/lease documentation.
7) COUNTY INCOME CONTINUITY Ensure County revenue flow during redevelopment	• Minimum annual rent, as specified in Item 4 above, continues during renovation, and lessee also required to pay percentage rent in accord with the newly set rates effective upon exercise of option.
8) RIGHT TO RECAPTURE	• County has right to recapture the leasehold if lessee desires to either assign or sell a controlling interest in lessee entity.
9) LEASE ASSIGNMENT-DISCLOSURE ISSUES	• Lessee has agreed to County disclosure requirements relating to identity, operating experience and character/reputation of proposed assignees, as well as to disclosure of financial information in conformity with County policies.
10) APPRAISAL	• County has received an appraisal that confirms return to the County from the lease extension is equivalent to, or greater than, fair market value.

Additional Matters

11) OTHER TERMS	1. 10 years prior to expiration of lease, lessee to structure funding for removal of improvements (at County's election). 2. Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration. 3. Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time. 4. Lease administrative items include a) late fee of 6% plus interest at prime plus 3% for any late payments, b) security deposit equal to 3 months' minimum rent, c) insurance levels reset/renegotiated upon execution of the Restated Lease and every 5 years thereafter, d) County maintains approval rights over all construction plans and specifications, e) enhanced audit and record-keeping standards. 5. Liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit.

If the lessee does not or is unable to exercise the Option on or before its stated expiration date (including any extensions), it is required to execute an amendment to the current lease, which will add the following requirements to its currently-existing lease: a) the obligation to reimburse the County's actual costs incurred for outside consultants, County Counsel and the Department's lead negotiator in the review, negotiation, preparation and documentation of the Restated Lease; b) a sinking fund for the removal of lease improvements upon lease termination; c) disclosure provisions in the event of lease assignment; d) assessment of a late fee and interest for late payments due the County; e) security deposit equal to three (3) months' minimum rent; f) insurance levels newly set and renegotiated every five (5) years; g) provision for enhanced audit and record-keeping standards; h) liquidated damages of $100 per day, per deficiency for all cited lease deficiency items remaining uncured beyond allowed cure periods; and, (i) modernized arbitration provisions.

FISCAL IMPACT/FINANCING

The Restated Lease reflects the County's current market rate percentage rents for all relevant categories. It will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to increasing County percentage rent from 8.5% to 10.5% on high-rise units and to increasing gross apartment rent income through the

renovation, upgrading and modernization of the apartment complex. Each component is discussed in detail below.

Extension Fee

Lessee will pay an extension fee of $2,210,000 due on exercise of the Option, payable as a non-refundable option fee of $100,000 concurrent with the execution of the Option with the remaining balance of $2,110,000 payable in ten equal annual installments of $211,000 in principal, plus interest accrued on the unpaid balance at the prime rate, adjusted quarterly, with the first payment due on the date of lessee's exercise of the option with the remaining nine (9) payments due on each of the succeeding anniversary dates.

Rent Increase Due to Renovation

The total rent derived from Parcel 102S during calendar year 2002 was approximately $927,952. After renovation, lease-up and stabilization of the renovated apartment units, and effecting the increase in percentage rent on high-rise units from 8.5% to 10.5%, our economic consultant has estimated that the total County rent will rise to approximately $1,734,346 annually, an annual increase of approximately $800,000.

Costs of consultants and primary County staff involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the lessee on an ongoing basis.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On May 4, 1962, the County entered into a 60-year lease for the premises currently known as Parcel 102S, Kingswood Village Apartments. Through a series of assignments approved by your Board, Kingswood succeeded to the status of lessee.

The parcel is currently improved with 624 apartment units located in seven low-rise buildings and one high-rise building on 9.2 acres of land area. In exchange for a lease extension to the date of March 31, 2042 that will be available upon satisfaction of the Option's enumerated conditions and your Board's approval of the Restated Lease, lessee has agreed to remodel all of the existing improvements.

The assignee has specifically committed, as a condition of the Department's consent to the assignment, to assume the lease obligation to maintain the leasehold in accordance with all maintenance, repair and improvement requirements. A rental audit was completed on June 24, 2003 and the proposed assignee is aware of and has agreed to assume the responsibility for any additional rent or outstanding lease payment obligations or other payments that may be identified in future audits from and after the last audit date.

Archstone has made application to the Regional Planning Department for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

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

At its meeting of February 10, 2004, the Small Craft Harbor Commission _____ the Director's recommendation that your Board approve the assignment of lease and execute the Option for Amended and Restated Lease in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the assignment of leasehold interests and the Option are categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) and 4(j) of the County's Environmental Document Reporting and Procedures Guidelines. Approval of the Option does not authorize construction or re-construction of any improvements on the parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment/replacement contemplated by the Amended and Restated Lease are under review by the Department of Regional Planning.

CONTRACTING PROCESS

The lessee's proposal for a lease extension was submitted to the Department and negotiations were pursued for the proposed Option, as well as Restated Lease, pursuant to the Board-adopted Lease Extension Policy. Upon lessee's demonstration that it has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board for final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and request authorization for execution of the Restated Lease.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Chairman of the Board of Supervisors to sign three copies each of the Consent and Option and authorize the Executive Officer of the Board to acknowledge the Chairman's signature on each document and return two executed copies of each to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski, Director

SW:RM:AK:GB
Attachments (3)

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

EXHIBIT A

CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES ("County"), Lessor under that certain Lease No. 5576, dated May 4, 1962, as amended and now known as Lease No. 3823 ("Lease"), applicable to those certain premises commonly known as Parcel 102S, Marina del Rey Small Craft Harbor, described in Exhibit A, attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, KINGSWOOD VILLAGE-MARINA, a California limited partnership ("Kingswood"), to ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust ("Archstone"), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the "Assignment"). It is further understood and agreed that the County's consent to the Assignment is subject to the following express conditions:

A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within sixty (60) days of the date of execution on behalf of the County of this Consent to Assignment of Lease.

B. This Consent to Assignment is contingent upon Archstone's assumption and agreement to perform the obligations and liabilities of the lessee under the Lease in accordance with the provisions of the Acceptance of Assignment of Lease being executed and delivered by Archstone concurrently herewith. Nothing herein shall limit the County's ability to pursue remedies against either Kingswood or Archstone, at the County's option, for obligations of the lessee created prior to this assignment, by the terms, covenants and conditions of said Lease.

C. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon Archstone whether or not Kingswood and Archstone have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any party thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.

D. Archstone shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of the Lease.

Dated this _____ day of _____, 2004

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of
the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL

LLOYD W. PELLMAN

By: _____
Deputy

APPROVED AS TO FORM

MUNGER, TOLLES & OLSON LLP

By: _____

EXHIBIT B

OPTION TO AMEND LEASE AGREEMENT (PARCEL 102S)

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of February, 2004, by and between the COUNTY OF LOS ANGELES ("County") and ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust ("Lessee").

RECITALS

A. County and Morris Appleman, Norman Beck and Jerry B. Epstein (collectively, the "Original Lessee"), entered into Lease No. 5576 (now referred to as Lease No. 3823), dated May 4, 1962, as amended (the "Existing Lease") regarding the lease from County of certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 102S, as more particularly described in the Existing Lease (the "Premises").

B. Through a series of assignments Lessee has succeeded to the Original Lessee's right, title and interest as lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on March 31, 2022 (the "Existing Expiration Date").

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through March 31, 2042.

AGREEMENT

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

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through March 31, 2042 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 102S attached to this Agreement as Exhibit A (the "Restated Lease").

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) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions, or (ii) the first (1st) anniversary of the date of this Agreement, subject to extension as provided in Section 6 below.

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and

delivery to County of the Restated Lease with the blank or bracketed terms set forth in Exhibit A (i.e., the Coastal Development Permit No. in Section 3.6, the Base Value in Section 4.8.1.1, and the amount of Lessee's deposit towards Actual Costs in Section 15.3) completed in accordance with the terms and provisions of this Agreement, (B) payment of the first Extension Fee Installment Payment (as defined in Section 4.2 below) of $211,000.00, and (C) payment of the amount, if any, by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied; (v) Lessee shall have provided evidence reasonably satisfactory to County of its having sufficient financial resources, as determined by the Director of the Department of Beaches and Harbors of the County ("Director"), to complete the Redevelopment Work; (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement; and (vii) there shall be no legal action or proceeding pending to contest the issuance of the Entitlements (as defined below), or to enjoin or restrain the performance of the Redevelopment Work. For purposes hereof, the "Entitlement Conditions" shall mean the following conditions: (a) Lessee shall have received all planning, zoning and other entitlement approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including without limitation, Design Control Board approval and issuance of any building permit(s) required for the construction of the Redevelopment Work (the "Entitlements"), and (b) any appeal period to contest the issuance of the Entitlements shall have lapsed. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease.

Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease as soon as reasonably possible thereafter, but, in any event not later than forty-five (45) days following the date of Lessee's exercise of the Option. The Effective Date of the Restated Lease (as defined in the Restated Lease) shall be the date the Restated Lease is executed and delivered by County, which date shall be inserted into page 1 of the Restated Lease concurrent with County's execution and delivery thereof. If Lessee's construction financing is in a position to close within the above forty-five (45) day period County agrees to cooperate with Lessee to effectuate a concurrent closing of the construction financing and County's delivery of the Restated Lease such that the Effective Date of the Restated Lease is the same as the date of the close of Lessee's construction financing; provided, however, in no event shall such agreement to cooperate be interpreted to make the execution and delivery of the Restated Lease contingent upon the close of Lessee's construction financing, nor in any event require an extension of the foregoing forty-five (45) day period or the Effective Date of the Restated Lease if Lessee's construction financing is not then in a position to close.

4. Option Fee/Extension Fee.

4.1 Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee'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, but shall be applied against the Extension Fee described below if Lessee exercises the Option.

4.2 Extension Fee. If Lessee exercises the Option, Lessee shall pay County an extension fee in the amount of Two Million Two Hundred Ten Thousand Dollars ($2,210,000.00) (the "Extension Fee") to compensate County for the value of the lease extension set forth in the Restated Lease. The Option Fee shall be applied against the Extension Fee. The remaining Two Million One Hundred Ten Thousand Dollars ($2,110,000.00) of the Extension Fee shall be paid in ten (10) equal annual principal installments of $211,000.00 each, plus interest accrued on the unpaid principal balance of the Extension Fee as provided below (the "Extension Fee Installment Payments"). Interest shall accrue on the unpaid balance of the Extension Fee from the date of Lessee's exercise of the Option until paid by Lessee, at an annual rate of interest equal to the Prime Rate (as defined in subsection 4.4.5 of the Restated Lease) in effect from time to time. The first Extension Fee Installment Payment shall be due concurrent with Lessee's exercise of the Option. The remaining nine (9) Extension Fee Installment Payments shall be due on each of the first nine (9) anniversaries of the date of Lessee's exercise of the Option.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Lessee shall use its commercially reaononable efforts to obtain the Entitlements and to satisfy the Entitlement Conditions as soon as possible following the date of this Agreement. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, and architectural fees, as reasonably necessary to expedite the permit, license and other approval processes.

5.2 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 Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts and assistance, shall, if requested, include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such requested joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Sections 25907 and/or 25536 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and that the Department's duty of cooperation and assistance under this Agreement and/or the Restated 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 Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.3 of the Restated Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of Article 5 of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Section 5.3, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated 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 Lessee in accordance with a schedule intended to facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its sole election, to deliver to Director, for Director's review or approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Restated Lease.

6. Delay in Exercise of Option. If Lessee, despite its commercially reasonable efforts, is unable to obtain the Entitlements by the first (1st) anniversary of the date of this Agreement as a result of a delay beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Lessee's applications for the Entitlements (an "Extraordinary Governmental Delay") or as a result of a delay caused by Force Majeure (as defined in the Restated Lease) (a "Force Majeure Delay"), then the Director may, in the exercise of its reasonable discretion, grant Lessee one or more extensions of the Option Expiration Date. Any such extension shall be limited to the period of the Extraordinary Governmental Delay or Force Majeure Delay, and in no event shall such extensions, in the aggregate, extend beyond six (6) months after the first (1st) anniversary of the date of this Agreement. If Director shall determine not to grant Lessee an extension as provided above, then

Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

If Lessee obtains the Entitlements by the first anniversary of the date of this Agreement (or such longer period as granted by Director as provided above), but such Entitlements are contested by appeal or litigation brought by a third party (a "Contest Delay"), then upon the written request of Lessee, and provided that Lessee continues to use its commercially reasonable efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until five (5) business days after a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved without further right of appeal; provided, however, in no event shall the Option Expiration Date be extended beyond the fourth (4th) anniversary of the date of this Agreement. For purposes of the immediately preceding sentence, a "third party" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect interest in Lessee, or (b) the governmental agency, commission, board or other instrumentality that issued the Entitlement that is the subject of the appeal or litigation.

Director shall have no discretion or obligation to extend the Option Expiration Date under this Section 6 if Lessee is in material breach or default of the Existing Lease following notice and the expiration of any applicable cure period, or if Lessee is in material breach or default under this Agreement. No Extraordinary Governmental Delay, Force Majeure Delay or Contest Delay shall be considered to have commenced under this Section 6 until such time as Lessee shall have notified Director in writing of such delay. If Lessee desires to have the Option Expiration Date extended pursuant to this Section 6, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Option Expiration Date, as such date may have been previously extended; provided, however, that if the basis for the delay first arises during the thirty (30) day period prior to the Option Expiration Date (as previously extended), then the required date by which Lessee must deliver its written request for an extension shall be extended until the earlier of (i) ten (10) days after Lessee first becomes aware of the delay, or (ii) 5:00 p.m. (Pacific Time) on the Option Expiration Date (as previously extended).

7. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall be automatically terminated, and (b) within forty-five (45) days following the Option Expiration Date, County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall

(i) confirm the amendment and restatement of Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Sections 4.1, 4.2, 4.4 and 4.5 of the Restated Lease;

(ii) add Article 16 of the Restated Lease to the Existing Lease;

(iii) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease;

(iv) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3 through 5.8 of the Restated Lease;

(v) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.2 and 2.3 of the Restated Lease;

(vi) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(vii) add to Section 26 of the Existing Lease the third (3rd) paragraph of Section 9.3 of the Restated Lease;

(viii) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease; and

(ix) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (i) through (viii) above.

For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

8. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Seventy Thousand Dollars ($70,000.00) to be applied to those costs (the "Expense Deposit"). County shall deliver to Lessee an initial report detailing such Actual Costs within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for any additional Actual Costs, if any, incurred subsequent to the initial report. Any amount of the Expense Deposit that exceeds the total Actual Costs shall be returned to Lessee within thirty (30) days after the earlier of (a) the date the Restated Lease is executed and delivered, or (b) the date that the Option expires unexercised.

9. Miscellaneous.

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

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or

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

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

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

9.5 Attorneys' Fees. In the event of any action, proceeding or 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.

9.6 No Assignment. Lessee 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.

9.7 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 prior or contemporaneous oral or written agreements, understandings or representations with respect to such matters.

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

9.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to its conflicts or choice of law principles.

9.10 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.

9.11 Successors and Assigns. Subject to Section 9.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.12 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated as an exhibit to this Agreement by reference.

9.13 No Broker. Lessee and County each represent and warrant that it has not dealt with any broker, agent or finder in connection with this Agreement and the transaction contemplated by this Agreement, and each party agrees to indemnify, defend and hold the other party harmless from and against any brokerage or similar fee or compensation that may be asserted by any such broker, agent or finder based on the breach by such party of the foregoing representation and warranty.

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

APPROVED AS TO FORM:

LLOYD W. PELLMAN
COUNTY COUNSEL

By: _____
Deputy

THE COUNTY OF LOS ANGELES

By: _____
Mayor, Board of Supervisors

ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board
of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

EXHIBIT C

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Archstone-Smith Operating Trust,
a Maryland real estate investment trust

(Parcel 102S — Lease No. ___)

Dated as of _____, _____

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AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 102S — MARINA DEL REY

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of the ____ day of _____, ____ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and ARCHSTONE-SMITH OPERATING TRUST, a Maryland real estate investment trust (together with its permitted successors and assigns, "Lessee"), as lessee.

W I T N E S S E T H

WHEREAS, the parties hereto or their predecessors in interest, on May 4, 1962, entered into Lease No. 5576 (now referred to as Lease No. 3823) (as amended to date, the "Existing Lease") whereby Lessee leases from County that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 102S and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises"), the term of which currently extends through March 31, 2022 (the "Existing Expiration Date"); and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated _____, 2004 (the "Option Agreement"), pursuant to which County has granted Lessee an option (the "Option") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, an extension of the term of the lease through March 31, 2042; 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 that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the meanings as follows:

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 cost and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below the County department head) required by the lead lease negotiator/administrator for technical expertise or assistance.

1.1.3 "ADA" shall have the meaning set forth in clause (vi) of subsection 1.2.1.

1.1.4 "ADJUSTMENT DATE" and "ADJUSTMENT DATES" shall have the meaning set forth in subsection 4.2.3.

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

1.1.6 "AFFILIATE" shall have the meaning set forth in Section 17.9.

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

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

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

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

1.1.11 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) the Prime Rate, as defined in subsection 4.4.5, plus three percent (3%) per annum, or (b) ten percent (10%) 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.

1.1.12 "APPROVED APARTMENT LEASE" shall have the meaning set forth in subsection 11.1.2.

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

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

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

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

1.1.17 "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.6.4.

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

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

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

1.1.21 "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.9.

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

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

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

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

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

1.1.27 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange Counties, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

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

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

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

1.1.31 "COUNTY POOL RATE" shall have the meaning set forth in subsection 4.4.5 of this Lease.

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

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

1.1.34 "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.

1.1.35 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 16.14.1.

1.1.36 "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.8.1.2.

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

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

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

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

1.1.41 "ESTIMATED COSTS" shall have the meaning set forth in subsection 2.3.2.

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

1.1.43 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in subsection 4.2.2.4.

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

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

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

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

1.1.48 "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.4.1.

1.1.49 "FINAL ALTERATION PLANS AND SPECIFICATIONS" shall have the meaning set forth in subsection 5.3.3.

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

1.1.51 "FORCE MAJEURE" shall have the meaning set forth in Section 5.6.

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

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

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

1.1.55 "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.8.1.1.

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

1.1.57 "INITIATING PARTY" shall have the meaning set forth in subparagraph (a) of Article 16.

1.1.58 "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.1.3.1

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

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

1.1.61 "LEASE" shall mean this Amended and Restated Lease Agreement.

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

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

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

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

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

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

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

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

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

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

1.1.72 "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.5.7.

1.1.73 "OPTION" shall have the meaning set forth in the preamble to this Lease.

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

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

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

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

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

1.1.79 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.9.

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

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

1.1.82 "PRIME RATE" shall mean the average prime rate of interest published in the Wall Street Journal.

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

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

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

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

1.1.87 "RENEGOTIATION DATE" and "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.88 "RENOVATION PLAN" shall have the meaning set forth in Section 5.1.

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

1.1.90 "REQUIRED RENOVATION COMPLETION DATE" shall have the meaning set forth in Section 5.1.

1.1.91 "RESPONDING PARTY" shall have the meaning set forth in subparagraph (a) of Article 16.

1.1.92 "REVERSION AMENDMENT" shall have the meaning set forth in Section 5.1.

1.1.93 "SECTION" shall mean a section of this Lease.

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

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

1.1.96 "STATE" shall mean the State of California.

1.1.97 "STATEMENT OF POSITION" shall have the meaning set forth in subsection 16.5 (2)(a).

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

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

1.1.100 "SUBSECTION" shall mean a subsection of a Section of this Lease.

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

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

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

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

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

1.2.1 As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since the construction of the original Improvements constructed on the Premises under the Existing Lease, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors

selected by them. Except as provided in subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of County, City, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity to which the Premises is subject ("Applicable Laws") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA"), (vii) the presence of any underground storage tank or hazardous materials on, under about or otherwise affecting the Premises, (viii) the quality of any labor and materials used in any Improvements, (ix) subject to subsection 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

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.

2. TERM.

2.1 Term. Unless terminated sooner in accordance with the provisions of this Lease, the term of this Lease (the "Term") shall continue until and expire at 11:59 p.m. on March 31, 2042. Each twelve (12) month period during the Term from April 1 through March 31 of the succeeding calendar year is referred to herein as a "Lease Year."

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 now existing and constructed by Lessee or its predecessors or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

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

2.3.2 Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term (the "Expert Report"). County may give written notice (the "County Removal Notice") at any time, no later than five (5) years prior to the expiration of the Term, or concurrently upon any earlier termination, of County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or within ninety (90) days after any earlier termination of this Lease, all or any portion of the Improvements of any kind whatsoever placed or maintained on the Premises, whether above or below grade, or whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration of this Lease (or within ninety (90) days after any earlier termination of the Lease), immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If Lessee is entitled to the ninety (90) day removal period described above because the Lease is terminated prior to its scheduled expiration date, then during such ninety (90) day period Lessee shall have a license to enter and perform the removal work as required under this Section 2.3. Such license shall be subject to and in accordance with the same insurance, indemnification and other obligations and liabilities of Lessee set forth in this Lease, which obligations and liabilities shall survive the termination of this Lease and be applicable to any such period of Lessee's entry on to the Premises under this Section 2.3, except that Lessee shall not be

required to pay Minimum Monthly Rent or Percentage Rent during such license period, and Section 15.5 shall not be applicable, as long as Lessee does not conduct business or otherwise use the Premises for purposes other than the demolition and removal of Improvements. If during such license period Lessee conducts business or otherwise uses the Premises for purposes other than the demolition and removal of Improvements, then the Minimum Monthly Rent and Percentage Rent payable during such license period shall calculated in accordance with the provisions of Section 15.5 of this Lease.

If County sends a County Removal Notice to Lessee not later than five (5) years prior to the expiration of the Term, Lessee shall, no later than the date which is thirty (30) days after the date upon which Lessee received such County Removal Notice, provide County with a written plan ("Funding Plan") that sets forth Lessee's proposed method of securing the performance by Lessee of its Improvement removal and restoration obligations pursuant to this subsection. Such Funding 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 security in form and amount, and from an issuer, satisfactory to County, and (ii) a schedule satisfactory to County for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for the full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of the deposit of funds or letter of credit, bond or other security shall be no less than the estimated cost to remove the Improvements as set forth in the Expert Report described above (the "Estimated Costs"), adjusted from time to time to reflect the percentage change in the ENR Index since the date of the Expert Report; provided, however, that in no event shall such adjustments result in a letter of credit, bond or other security or deposit of an amount less than the Estimated Costs. Lessee shall modify its proposed Funding Plan as reasonably required by County to satisfy the foregoing requirements to the reasonable satisfaction of County. Lessee shall thereafter be required to comply with the Funding Plan approved by County pursuant to this section.

If County fails to elect to require Lessee to remove the Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.3.3 County's Right to Remove Improvements. If, following an election by County to cause Lessee to remove the Improvements as provided in subsection 2.3.2 above, Lessee fails to so remove said Improvements and restore the Premises, County may sell, remove or demolish the same, in event of which sale, removal or demolition Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition. If the Actual Cost incurred by County in connection with the removal or demolition of the Improvements, restoration of the Premises as required hereunder, net of any consideration or other proceeds received by County in connection therewith, is less than the security and other funds provided by Lessee in accordance herewith, then any excess security and funds shall promptly be refunded to Lessee within sixty (60) days following the demolition and removal of the Improvements and the restoration of the Premises. In any event, any amounts of the security that are not used by

County for the demolition, removal and restoration work described herein shall be returned to Lessee not later than two (2) years after Lessee's surrender of possession of the Premises after the expiration of the Term or sooner termination of the Lease.

2.3.4 Duty to Remove Equipment, Etc. No later than the expiration of the Term or sooner termination of this Lease, Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for ten (10) business days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.3.5 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 outside of the buildings shall vest in County upon construction or installation to the extent that they are not owned by a utility, and shall constitute part of the Premises leased to Lessee hereunder. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of (i) a residential apartment project, and (ii) 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 Premises shall be used for no other purpose without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes. Lessee shall maintain all landscaping in a good and sightly condition, with no accumulation of brush, weeds or undergrowth permitted on the Premises. Lessee shall not use or permit any portion of the Premises to be used in a manner that renders said Premises a fire hazard. Lessee shall not permit on the Premises any unsanitary, unsightly or offensive condition. Lessee shall not perform nor permit its sublessees, licensees or invitees to perform, any activity on any portion of the Premises that would violate the standards applicable to the Premises that are set forth in this subsection 3.2.1, and Lessee shall not perform or permit its

sublessees to perform any such activity on any adjacent public street or adjacent public property.

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

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

3.2.2.2 The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, including the sale, display or depiction of any 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 activity of an individual confined to such individual's private residence;

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises, or any conditions that induce, breed or harbor infectious plant diseases, rodents, or noxious insects;

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; notwithstanding the foregoing, the requirement to obtain Director's approval with regard to outdoor above-ground antennae or other transmission or reception devices shall not be applicable 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 the Premises (or adjacent to the Premises if the purpose thereof is for boring, mining or exploration on the Premises), except as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease;

3.2.2.7 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion

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

3.2.2.8 The following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; or (c) live bait sales.

3.3 Active Public Use. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises fully and continuously in light of these objectives, consistent with the operation of a residential apartment project, 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 Premises (other than those portions used for private residential purposes) shall be open during the hours of 9:00 a.m. to 5:00 p.m. on all business days. Any changes in the days and/or hours of operation of the public portions of the Premises shall be subject to the written approval of County.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Laws, the Design Control Board), whether pursuant to Article 5 of this Lease or otherwise, in writing, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign; provided, however, that subject to the other requirements of this Lease, including without limitation, the Redevelopment Work required to be completed by Lessee pursuant to Section 5.1, Lessee shall be permitted to maintain those items described in this Section 3.5 that are existing on the Premises as of the Effective Date to the extent that such items have been installed in compliance with the terms and provisions of the Existing Lease.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR REDEVELOPMENT WORK, IF REQUIRED]**, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

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

3.8 Reservations. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way in, to, over or affecting the Premises for any purpose whatsoever existing of record as of the date hereof, or otherwise disclosed or known to Lessee as of the date hereof, or otherwise referenced in this Lease.

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.

4. PAYMENTS TO COUNTY.

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

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to said Premises.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon, 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 in accordance with Applicable Laws; 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 (other than Approved Apartment Leases) to the effect that the interests created therein may also be subject to possessory interest taxes, and that the Sublessee shall be responsible for any and all possessory interest taxes on the Sublessee's interest; however, Lessee acknowledges that the payment of such possessory interest taxes is the ultimate responsibility of Lessee.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent (each as defined below).

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 4.2.3 and 4.4 below) during each year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent").

During the three (3) year period from the Effective Date through the day preceding the third (3rd) anniversary of the Effective Date, the Annual Minimum Rent shall be equal to eighty-five percent (85%) of the average total annual square foot rental and percentage rentals which were payable by Lessee under the Existing Lease during the three (3) year period immediately preceding the Effective Date.

Effective as of the third (3rd) anniversary of the Effective Date, the Annual Minimum Rent payable for the following three (3) year period shall be adjusted to equal the greatest of (i) eighty-five percent (85%) of the average total Annual Minimum Rent and Percentage Rent which were payable by Lessee under this Lease during the three (3) year period immediately following the Effective Date, (ii) eighty-five percent (85%) of the total Annual Minimum Rent and Percentage Rent which were payable by Lessee under this Lease for the one (1) year period immediately preceding the third (3rd) anniversary of the Effective Date, and (iii) $1,300,000.

Effective on and after the sixth (6th) anniversary of the Effective Date, the Annual Minimum Rent shall be as set forth in Sections 4.2.3 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 Section. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee and/or any sublessee shall be reported under one or more of the percentage categories set forth below in this subsection 4.2.2, 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 scope of the

percentage categories as set forth in this subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the term hereof, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages of Gross Receipts for said previous month, less the amount of Monthly Minimum Rent paid for said previous month as provided herein:

(a) Intentionally omitted;

(b) Intentionally omitted;

(c) TEN AND ONE-HALF PERCENT (10.5%) of Gross Receipts for the occupancy of structures and other facilities, including but not limited to, (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, and (5) other activities not otherwise provided for in this section, such as but not limited to, television and/or motion pictures or other media filming purposes;

(c1) TWELVE PERCENT (12%) of Gross Receipts for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities, business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that, except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses are required to be reported under other subsections of this Section;

(d) Intentionally omitted;

(e) TWENTY FIVE PERCENT (25%) of commissions or other fees received from 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 commissions (exclusive of coin operated services, which shall be covered by paragraph (h) below) and other similar activities where earnings are normally on a commission basis when said activity is approved in advance by Director;

(f) With respect to service enterprises, including, without limitation, cable, 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 sublessee from such enterprise if Lessee or a sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a sublessee from such enterprise if a third (3rd) party provider is the operator of such enterprise;

(g) Intentionally omitted;

(h) With respect to the installation and/or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of the Gross Receipts received by Lessee or sublessee from such enterprise if Lessee or a sublessee is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee or a sublessee from such enterprise if a third (3rd) party provider is the operator of such enterprise;

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

(j) THREE AND ONE-HALF PERCENT (3½%) of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under subsection (s); 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 the 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 (which Gross Receipts shall be reportable under subsection (s));

(r) TWENTY FIVE PERCENT (25%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty five percent (25%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this subsection, but instead shall be included in Percentage Rent under subsection (f) above;

(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 Section;

(s1) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail; and

(t) The specific percentages set forth above apply to those Permitted Uses of the Premises which are applicable as of the Effective Date. Where a specific percentage in the foregoing schedule has not been provided for a specific additional or related use, then, concurrent with County or Director's approval of such additional or related use, Director shall establish the specific percentage to be applied to such additional or related use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, 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 related use as determined by Director shall remain in effect until the next Renegotiation Date.

4.2.2.1 Other Activities. If Director or Lessee 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. If Director and Lessee are unable to agree upon such minimum monthly amount, the matter shall be resolved by arbitration as provided in Article 16 hereof.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of its sublessees, licensees, permittees and concessionaires to agree to and comply with, the record keeping 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, or paid to, Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise. Gross Receipts shall not include any security deposit received from

a Sublessee until such time as the security deposit is applied against the rental or other obligations of such Sublessee or is otherwise retained by Lessee.

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

(4) Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

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

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

d. receipts from insurance claims other than rental interruption or business interruption insurance;

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

f. the Cost of Lessee's Sublessees' submetered electricity, provided (1) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such tenant's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and, (3) the receipt is actually credited against the cost of the Sublessee's electricity; For the purpose of the foregoing sentence, the "Cost" of the Sublessee's electricity shall mean the actual 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.

4.2.2.4 Excess Payments Credit. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this 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 (or has not fully recouped any Excess Percentage Rent Payment from any prior period), County shall refund such amount to Lessee within thirty (30) days of notice from Lessee and verification by County of such overpayment (which verification shall take no more than thirty (30) days from County's receipt of Lessee's notice, subject to any audit rights of County set forth in this Lease).

4.2.2.5 Effect of Sublessee, etc. Doing Business. Except as specifically provided to the contrary in this Lease, where a sublessee, licensee, or permittee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for those uses or occupations delineated under Item (1) of subsection (c1) of subsection 4.2.2, Lessee shall report whichever of the following results in the greater percentage rental: (1) the Gross Receipts of each sublessee under one or more of the appropriate subsections of this Section; or (2) Lessee's receipts from each sublessee under subsection (c) or (c1) of this Section.

4.2.2.6 Interest; Etc. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be

reported in the same percentage category as the transaction, sale or activity is reported.

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

4.2.2.8 Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of gross receipts, with such interpretations to be a guideline in implementing the foregoing subsections of this Lease.

4.2.3 Adjustments to Annual Minimum Rent. As of the sixth (6th) anniversary of the Effective Date and each 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 subsection 4.2.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals eighty five percent (85%) of the average of the total annual rent (i.e., the total Annual Minimum Rent and Percentage Rent), payable by Lessee to County under Section 4.2 of this Lease during the thirty six (36) month period immediately preceding the Adjustment Date.

4.3 Extension Fee Installment Payments. In consideration of the extension of the Term as provided herein, Lessee shall be required to pay to County the Extension Fee Installment Payments described in Section 4.2 of the Option Agreement. The Extension Fee Installment Payments shall be considered as additional rent payable by Lessee under this Lease.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on the twentieth (20th) anniversary of the Effective Date, and 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 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 taking into account relevant market considerations for setting minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account

in accordance with California law applicable from time to time to eminent domain proceedings.

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

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days 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, 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 with Lessee's (or County's, as the case may be) determination of the Fair Market Rental Value 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 Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County to memorialize the agreed Fair Market Rental Value. 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 pay to County Annual Minimum Rent and Percentage Rent at the level existing for the last year of the ten (10) year period then completed.

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 Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease (including, without limitation, the use of the Premises for the Permitted Use), the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

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

(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 plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.5 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 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 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 unpaid when due and payable; provided that the Late Fee shall be waived with respect to the first occurrence during any Lease Year of a late payment, if such payment is received by County within one (1) business day following written notice from County that the unpaid amount was not paid by the date due. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership 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) a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 11 and 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 or in any Major Sublease, (b) Lessee's granting of a Major Sublease or (c) any transaction or series of related transactions not described in clauses (a) or (b) of this subsection 4.6.1 which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in, or a Change of Control of, Lessee, this Lease or a Major Sublease. For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee, this Lease or a Major Sublease which brings its cumulative beneficial interest in Lessee, this Lease or a Major Sublease, as appropriate, to over fifty percent (50%).

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

4.6.2.1 a transfer by any partner of Lessee, as of the Effective Date, to any other partner of Lessee as of the Effective Date;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, provided, however, that County shall have the right to approve of any change in management of Lessee following such a transfer, which approval shall not be unreasonably withheld, conditioned or delayed;

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 mean 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, or (iii) from such a trust to the trustor 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;

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 real estate investment trust whose stock or other equity interest is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; provided, however, that this exclusion shall not apply to a single transaction or series of related transactions whereby fifty percent (50%) or more of the beneficial interests in such entity are transferred, or which otherwise effects a Change of Control in such entity;

4.6.2.5 a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer (as defined below) of fifty percent (50%) or more of the beneficial interests in Lessee, this Lease or a Major Sublease has occurred, unless the Aggregate Transfer is purely a change in the corporate or other entity structure, such as the conversion of a partnership, corporation, limited liability company or other entity to another corporate or partnership form or the change of the jurisdiction of incorporation of the entity;

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, this Lease or a Major Sublease, as appropriate) transferred in all transactions (other than those enumerated in subsection 4.6.2) occurring since the latest of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, and (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County.

4.6.4 Beneficial Interest. As used in this Lease, the "beneficial interest," "beneficial interest in this Lease," or "beneficial interest in a Major Sublease" shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Lessee's interest in this Lease or a Major Sublease, or a Major Sublessee's interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with a direct or indirect ownership interest in the Lease or a Major Sublease is a partnership, corporation or limited liability entity (a) whose beneficial interest in this Lease or a Major Sublease, whichever is appropriate, comprises less than fifteen percent (15%) of its total assets or (b) in which no ten (10) shareholders, partners or members together own more than thirty percent (30%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of Sections 4.6 through 4.8 hereof, the entity itself shall be deemed to be the ultimate owner of the beneficial interest in this Lease or a Major Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to

County of the proposed Change of Ownership or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, 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 and any supporting documentation reasonably requested by Lessee within ten (10) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("Calculation Notice"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the date of the execution of this Lease (or a Major Sublease) by Lessee, (c) 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

(or a Major Sublease), or (d) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.7.2 Purchase Money Notes/Stock Consideration. 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"), the Net Proceeds Share shall be payable by Lessee in cash at the time of the consummation of the transaction notwithstanding the deferred nature of the consideration. In such case, the face amount of the Purchase Money Note shall be treated as sale proceeds; 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. If the transferor of an interest accepts stock or other non-cash consideration in payment of all or a portion of the acquisition cost, the fair market value of the stock or other non-cash consideration shall be treated as having been received in the form of cash. 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, or with respect to the value of other non-cash consideration, shall be settled by arbitration pursuant to Article 16 of this Lease.

4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor 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), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. With respect to 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.

4.8.1 Transaction by Original Lessee. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "Net Transfer Proceeds" shall mean the total cash and other consideration received, determined in accordance with subsection 4.7.2 hereof (but in the case of a transfer to a party affiliated with or otherwise related to the transferor 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), less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1 **[Insert value of leasehold, as extended as of the Effective Date, as determined prior to the execution and delivery of the Lease either by agreement of the parties or, if the parties are unable to agree, then pursuant to**

the arbitration procedures set forth in Article 16] (the "Base Value"), together with the final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work or other physical Improvements to the Premises in accordance with Article 5 herein, whose costs have been submitted to County within thirty (30) days after the completion of such Improvements and which costs shall have been approved in writing by County ("Improvement Costs").

4.8.1.2 Commissions, title and escrow costs, legal fees and other bona fide closing costs actually paid to third parties and documented to the satisfaction of County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "Documented Transaction Costs"). In the event that the transaction involves multiple assets, Documented Transaction Costs shall be prorated based on the relative values of the assets transferred.

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 total cash and other consideration received by that successor Lessee (but in the case of a transfer to a party affiliated with or otherwise related to the transferor 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), minus the following costs with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the Base Value, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share;

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, and not subsequently repaid with Net Refinancing Proceeds, provided that such costs have been submitted to and approved by County to the extent provided in subsection 4.8.1.1 with respect to Lessee; 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, except that any rents or other amounts received by Lessee from the Major Sublessee and 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 not described in subsections 4.8.1 through 4.8.3 (i.e., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the

interest being transferred (which shall in no event be deemed to be less than the fair market value of the interest based on the Base Value) 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 such Net Proceeds Share, as if it had been realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5 Net Refinancing Proceeds. "Net Refinancing Proceeds" shall mean the gross principal amount of any Financing Event after the Effective Date, minus (i) the greatest of (a) the Base Value, (b) the principal amount of Lessee's existing financing as of the Effective Date or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share, together with any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (ii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iii) Documented Transaction Costs with respect to such Financing Event.

4.8.6 Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay the 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 fees and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid. 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. Prior to the Effective Date, prior to each subsequent 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 or members of Lessee 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 in either case such interest (or the aggregate of all interests beneficially owned by the same person, directly or indirectly) 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 that meets the five percent (5%) beneficial interest threshold described above, based on the beneficiaries actuarial interest in distributions from, or the corpus of, said trust, as applicable; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its commercially reasonable best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or its constituent shareholders, partners, members or other interest holders, this Lease or a Major Sublease.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Promptly following the Effective Date, Lessee shall commence the renovation of all existing apartment units, building facades, exterior windows, interior common areas (including, without limitation hallways and lobbies), exterior common areas (including, without limitation, all hardscape, pool deck areas, walkways, parking areas and other exterior common areas), and landscaping on and about the Premises in accordance with the Renovation Plan attached to this Lease as Exhibit B (the "Renovation Plan"). The renovation work described in the immediately preceding sentence is referred to herein as the "Redevelopment Work." There shall be no changes, modifications or exceptions to the Renovation Plan, except as expressly approved in advance in writing by the Director. The design, layout, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be subject to County's approval as set forth in this Section 5, and shall be subject to the receipt by Lessee of all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend not less than $24,600,000 for the cost of the Redevelopment Work (the "Required Investment"), which expenditures shall be subject to the verification and reasonable approval by County. Lessee shall comply with all time deadlines and schedules described in this Section 5 relating to the completion of the design and construction of the Redevelopment Work. Lessee's failure to do so shall, if not cured following written notice from County and the expiration of the applicable cure set forth in subsection 13.1.2, constitute an Event of Default. Lessee shall perform the construction of the Redevelopment Work on a phased basis in accordance with the construction schedule set forth as a part of the Renovation Plan. All of the Redevelopment Work shall be substantially completed in accordance with the Final Redevelopment Work Plans and Specifications on or before that date (the "Required Renovation Completion Date") which is three (3) years following the Effective Date. Lessee acknowledges that the principal inducement to County to enter into this Amended and Restated Lease Agreement and to extend the

Term as provided herein is the timely completion of the Redevelopment Work. In the event that Lessee fails to substantially complete the Redevelopment Work on or before the Required Renovation Completion Date, as the Required Renovation Completion Date may be extended pursuant to Section 5.6 of this Lease, then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.2 Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Lessee may desire to make to the Premises during the Term. 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 Redevelopment Work shall be considered to be an Alteration. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease which are applicable to Alterations shall be applicable to the Redevelopment Work.

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

5.3.1 Schematics and Narrative. Lessee shall submit to the Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such schematic plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties which are located thereon. Director shall have sixty (60) days within which to approve or disapprove such submission. Any disapproval by Director shall include the disclosure by Director of the Director's objections to the submission. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary or final plans) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency having jurisdiction thereover, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove the changes required by the California Coastal Commission or other governmental agency, as appropriate, unless such changes materially prejudice County's ability to enjoy the rights and benefits granted to County pursuant to this Lease.

5.3.2 Preliminary Plans and Specifications. As soon as practicable, but in no event later than sixty (60) days after Director's approval of the materials submitted pursuant to subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. Director shall have twenty-one (21) days within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans on the grounds that they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative. Any disapproval shall be accompanied by a statement from Director disclosing the specific objections to the submission. 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, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

5.3.3 Final Plans and Specifications. As soon as practicable, but in no event later than sixty (60) days after approval of the preliminary plans, outline specifications and construction cost estimate (or when and to the extent appropriate, no later than sixty (60) days after final approval is obtained from the California Coastal Commission as to items that require California Coastal Commission approval), Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from

those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission on the grounds that they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates. Failure of Director to disapprove said materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Director's approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications. Any disapproval shall be accompanied by a statement from Director disclosing the specific objections to the submission. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the "Final Alteration Plans and Specifications") without the prior written approval of Director, which shall not be unreasonably withheld.

5.4 Conditions Precedent to the Commencement of Construction. No 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 not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County:

5.4.3.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved work. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "Payment Bond"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.3.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds required by subsection 5.4.3, Lessee may provide any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, (ii) a letter of credit, or (iii) a Set Aside Letter from Lessee's construction lender. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit County to draw thereon to complete the construction of the Improvements if the same have not been completed by Lessee after written notice from County and the expiration of the cure period set forth in subsection 13.1.2, or if an Event of Default has otherwise occurred under this Lease. 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 discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 Evidence of Financing. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Alterations. Lessee shall furnish Director with copies of all final notes, guarantees,

partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, within seven (7) days after such document or instrument becomes effective.

5.5 Manner of Construction.

5.5.1 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. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control deleterious effects associated with construction projects in well populated and developed areas of southern California.

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

5.5.3 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.

5.5.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.5.5 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. Lessee shall add the work necessary to repair such damage to the construction schedule for the Redevelopment Work (or other Alteration work, as applicable), and shall complete such repair work in accordance with such schedule; provided, however, that if such damage to County-owned improvements creates a threat to public health and safety, or materially adversely affects the condition, appearance or operation of any County-owned improvements or other property, then Lessee shall promptly commence the completion of such repair work and complete such repair work as soon as reasonably possible thereafter. In the event that Lessee fails to effectuate such repair in accordance with the foregoing requirements, then upon written notice to Lessee, County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within five (5) business days after demand by County.

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

5.5.7 Notice of Completion. Upon completion of the Redevelopment Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "Notice of Completion") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of conoflex or mylar final as-built plans and specifications of the Improvements.

5.6 Construction Schedule. Once construction of the Redevelopment Work has been substantially commenced, Lessee shall thereafter diligently pursue the completion of such construction by the Required Renovation Completion Date. During this period, delays due to fire, earthquake, flood, tornado, tsunami, civil disturbance, war, organized labor dispute or other unforeseeable event reasonably beyond the control of Lessee, or a hidden condition relating to the foundation, substructure or subsurface of the Premises that was not known to Lessee as of the commencement of such construction activity ("Force Majeure"), shall extend the time in which said construction must be completed by the length of time of such delay, although Lessee shall commence and complete the portions, if any, of the Improvements not impacted by such delay within the time frame set forth in this Lease. No such event or condition of Force Majeure shall be considered to have commenced until Lessee shall first provide County with written notice of the Force Majeure event or condition. Lessee and Director shall discuss and attempt in good faith to agree on the length of time of such delay. If Lessee and Director are unable to agree on the length of time of the delay within thirty (30) days after Lessee's written notice of Force Majeure, then the matter shall be arbitrated as set forth in Article 16.

5.7 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County 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 may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor.

5.8 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than Fifty Thousand Dollars ($50,000), 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 Fifty Thousand Dollars ($50,000); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.9 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.

5.9.1 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.

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

provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.9.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within five (5) business days after demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.10 Capital Improvement Fund. Commencing on and after the Effective Date 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 5.9 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work ("Permitted Capital Expenditures"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. 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 Mortgagee, which is hereby approved for this purpose) reasonably acceptable to Director into which deposits shall be made by Lessee pursuant to this Section 5.10. Lessee shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.10 with capital improvement reserves required by Lessee's Mortgagee, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.10.

On the fifteenth (15th) day of each month during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to three percent (3%) of total Gross Receipts for the previous month; provided, however, that to the extent that Lessee at any time has paid for Permitted Capital Expenditures reasonably approved by Director in excess of the amounts available in the Capital Improvement Fund to fund such expenditures, such excess amounts shall be deemed to be advance deposits into the Capital Improvement Fund that are applicable as a credit against the future monthly Capital Improvement Fund deposits required under this Section 5.10. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.10.

Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.10. For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld, 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 in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Thereafter, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.9 towards Lessee's obligations to fund the security requirements in subsection 2.4.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's sole and absolute discretion.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a

voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "Date of Taking" means the date the Condemnor has the right to possession of the Premises being condemned.

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

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

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

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

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction (to the extent that funds therefor are available from the anticipated Award), Lessee's business on the Premises could not be operated at an economically feasible level. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

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

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "Partial Taking"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market

value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in subsection 4.2.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "Income Approach"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. The provisions of this Lease constitute an express agreement between County and Lessee with respect to any condemnation or taking of all or any portion of the Premises, and each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

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

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination hereof or a taking for temporary use shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

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

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

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Minimum Rent, Percentage Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

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

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

Fourth: The balance shall be paid to County.

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

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to the sum of three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term). 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 five (5) 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 five (5) 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 13.1.3, shall constitute an Event of Default hereunder.

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

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or

regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

9. INSURANCE.

Lessee shall maintain at all times during the Term of this Lease policies of liability, worker's compensation and property insurance from companies authorized to transact business in the State of California by the Insurance Commissioner thereof.

9.1 Property Insurance. The policy of property insurance shall provide fire insurance with extended coverage, insuring against loss or damage by fire, lightning and the additional perils included in the standard extended coverage endorsement, as well as those included in the "all risk" policy, and burglary and theft insurance, on the structures, Improvements, inventory, trade fixtures, furnishings and equipment used or to be used by Lessee on the Premises. Such insurance shall be in an amount sufficiently adequate to enable the resumption of the leasehold operations by Lessee following the occurrence of any of the risks covered by said insurance. The policy shall provide standard fire and extended coverage insurance, and shall cover vandalism, malicious mischief, and those risks ordinarily defined in "All-Risk coverage." The policy shall also contain "business interruption", "rental interruption" and/or continuous operation coverage payable to County equal to one (1) year's Annual Minimum Rent. During periods of substantial construction on the Premises, Lessee or Lessee's contractor will provide completed value builder's risk insurance reasonably satisfactory to County, together with (i) broad form liability and breach of warranty coverages by endorsement; and (ii) non owned, non hired automotive liability coverage with a policy limit of Two Million and 00/100 Dollars ($2,000,000). Such insurance shall be in an amount equal to one hundred percent (100%) of the full replacement value of said buildings, structures, equipment, and Improvements, with a deductible not greater than five percent (5%) of such replacement value) (as such replacement value is determined by such insurance company and approved by County's risk manager), and shall be placed and maintained with such insurance company or companies and in such form as shall be reasonably satisfactory to County.

9.2 Form of Policy. All such insurance policies required under Section 9.1, along with their endorsements, shall name the Major Sublessee, if any, County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, as additional insureds and any Encumbrance Holder as loss payee. Upon the occurrence of any loss, the proceeds of such 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. In the event of such loss Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

Subject to the immediately following grammatical paragraph, a duplicate policy or policies evidencing such insurance coverage, in such form as shall be reasonably acceptable to

County, shall be filed with Director no later than five (5) business days after the Effective Date, and such policy or policies shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

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

Any such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County, taking into account any additional protection that County reasonably deems prudent to provide for losses related to such other properties.

9.3 Liability Insurance. Lessee shall maintain in full force and effect during the Term of this Lease, commercial general liability insurance together with premises operations, products, completed operations, advertising, independent contractor and contractual liability coverages, including liquor liability, with a combined single limit of not less than Fifteen Million Dollars ($15,000,000); Lessee agrees 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 such liability insurance policy or policies.

Subject to Lessee's option to provide a certificate of insurance as set forth below, a duplicate policy or policies evidencing such insurance coverage shall be obtained by Lessee and filed with Director no later than five (5) business days after the Effective Date, and said policy shall provide that such insurance coverage shall not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least thirty (30) days prior to the expiration of any such policy, a policy showing that such insurance coverage has been renewed or extended shall be filed with Director.

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

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 such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County, taking into account any additional protection that County reasonably deems prudent to provide for losses related to such other properties.

9.4 Worker's Compensation Insurance. Lessee shall maintain in force during the Term of this Lease, in an amount and with coverage in compliance with applicable California law or, if no such law exists, then reasonably satisfactory to Director, Worker's Compensation Insurance.

9.5 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 the full amount of any losses to the extent 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;

(b) 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;

(c) 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;

(d) that the policies shall provide coverage on a "primary basis" with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

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

(f) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(g) that the 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,

(h) that such 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.

9.6 Failure to Procure Insurance. Failure of Lessee to procure or renew the herein required insurance shall, if not cured within five (5) days after written notice from County, constitute a default hereunder. In the event of such failure, 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 and all monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County upon demand.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in conformance with such reasonable rules and regulations regarding the use and occupancy of residential apartment buildings in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time and delivered to Lessee. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10. Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws and the terms and provisions of this Article 10. Lessee's standard of maintenance and repair shall be in compliance with the Minimum Standards regarding the use and occupancy of residential apartments buildings in Marina del Rey (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable residential apartment buildings in Marina del Rey (the "Maintenance Standard"). Lessee shall maintain all Improvements on the Premises in a safe, clean, 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 Premises and the building footprints or paved areas of the Premises as is reasonably necessary to maintain the appearance of the Premises in a manner consistent with the Maintenance Standard. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Article 10. Restoration shall take place in accordance with the provisions of Article 5.

10.2 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not reasonably capable of cure within the cure period specified in County's notice (for

example, as a result of permitting requirements, construction material procurement delays or other delays or circumstances 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, and the daily penalty set forth above shall not be applicable during such cure period. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.2 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest, and the daily penalty set forth above in this Section 10.2 shall not be applicable during the period that the cure period is tolled. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 Option to Terminate for Uninsured Casualty. Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on Premises are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "Uninsured Loss"), and where all of the following occur:

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

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

shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

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

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

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

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

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

10.7 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises.

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

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

11. ASSIGNMENT AND SUBLEASE.

11.1 Subleases.

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

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease or an Approved Apartment Lease (as defined below), or of any amendment or assignment of such Sublease (other than a Major Sublease or Approved Apartment Lease), Lessee shall submit a copy of such Sublease, amendment or assignment to Director for approval, which approval shall be given or withheld at Director's reasonable discretion. 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.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain Director's approval of any Sublease (or amendment, modification or extension) of an individual apartment unit in the ordinary course (but not the master lease of multiple units) to a person or persons who will physically occupy the subleased unit, as long as such Sublease is in the form of the standard residential apartment lease hereafter submitted to and approved by Director and the term of such Sublease does not exceed one (1) year before reverting to a month-to-month tenancy (each, an "Approved Apartment Lease"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Apartment Leases. Upon written request by County, Lessee shall furnish County with a current rent roll respecting the Approved Apartment Leases and a copy of all of such Approved Apartment Leases.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable residential apartment facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("Assignment Standards"), either directly or indirectly give, assign, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Any encumbrance of Lessee's interest in the Lease shall be subject to the provisions of Article 12 below. Any Change of Ownership (other than an Excluded Transfer) shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following 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; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock in a corporation which owns or is a general partner or managing member of a partnership or limited liability entity owning an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the assignment as provided herein. These same limitations and approval requirements shall apply with respect to the Sublessee's interest under a Major Sublease. Any disapproval by County with respect to a proposed assignment of the Lease or with respect to a proposed Major Sublease shall include a statement from County disclosing the specific objections to the proposed transaction.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold or delay its consent to any proposed assignment.

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 Prior to entering into any agreement requiring the approval of County pursuant to Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed

agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

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

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. However, in the event that County approves the proposed assignment, Lessee shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

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

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

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

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, if applicable, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections. Subject to the requirements of the Public Records Act, County shall endeavor to keep such business plan and other confidential or proprietary information regarding Lessee or its business confidential.

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

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

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

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information which it reasonably requests of Lessee in

connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of $25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Nondisturbance. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement on commercially reasonable terms in favor of any Major Sublessee.

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

11.2.4 County Right to Recapture. Other than in connection with an Excluded Transfer, if Lessee proposes to assign its interest in this Lease or the Premises, proposes to enter into any Major Sublease affecting the Premises (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. Within sixty (60) days after receipt of Lessee's notice of a Proposed Transfer, 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 sixty (60) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said sixty (60) 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 ("County Option Period"). During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option Period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "County Option Price") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to cause Lessee to issue

the County Option within said sixty (60) day period or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the ensuing nine (9) month period after the date (the "Trigger Date") which is the earlier of such notice or the expiration of such sixty (60) day period, Lessee shall be entitled to enter into an agreement with a third party for the Proposed Transfer (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the Proposed Transfer price is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material other terms than those offered to County, and (2) the closing of the Proposed Transfer is actually consummated within twelve (12) months after the Trigger Date (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 Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to such portion of the Premises which is the subject of the proposed Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or to any Excluded Transfer.

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 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 lieu of the credit described in (2) above, 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.

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. Lessee may, with the prior written consent of Director, which consent shall not be unreasonably withheld, and subject to any specific reasonable conditions which may be imposed by Director, consummate one or more Financing Event(s) (as defined below). Lessee shall submit to Director a complete set of all proposed transaction documents in connection with each proposed Financing Event. Director shall have sixty (60) days in which to grant or withhold approval of the Financing Event. If not approved in writing within such sixty (60) day period, the proposed Financing Event shall be deemed disapproved by Director. Lessee shall further reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof, a "Financing Event" shall mean any financing or refinancing consummated by Lessee, whether with private or institutional investors or lenders, where such financing or refinancing is secured by an Encumbrance (as defined below).

12.1.1 Encumbrances. As used in this Lease, an "Encumbrance" shall be any direct or indirect grant, assignment, transfer, mortgage, hypothecation, grant of control over, or encumbrance of all or any portion of 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, and a pledge of partnership interests or other beneficial ownership interests in Lessee by the principals of Lessee, to a lender (upon County approval of the Encumbrance and consummation of the lending transaction, the "Encumbrance Holder") on the security of Lessee's interest in the Lease and the Premises, the shares or interests of beneficial ownership in Lessee, or otherwise secured by Lessee's rights in and to the Premises. 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 provided to Director not later than seven (7) days after the effective date thereof. These same limitations and approval requirements shall apply with respect to the financing and the Encumbrance Holder of any Major Sublessee's interest pursuant to a Major Sublease.

12.1.2 Consent Not Required to Transfer Resulting from Foreclosure. The consent of County shall not be required in the case of (nor shall County's recapture rights provided in subsection 11.2.4 be applicable to, and no Net Proceeds Share shall be due or payable on account of):

12.1.2.1 A transfer of this Lease or a Major Sublease at a foreclosure sale or at a judicial foreclosure or voluntary conveyance to the Encumbrance Holder or an affiliate in lieu thereof; or

12.1.2.2 A single subsequent transfer of the Lease or a Major Sublease by an Encumbrance Holder, or its affiliate, who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided the transferee expressly agrees in writing to assume and to perform all of the obligations under this Lease and, if applicable, a Major Sublease.

12.1.3 Effect of Foreclosure. In the event of a transfer under subsection 12.1.2, the Encumbrance Holder shall forthwith give notice to County in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.1.3.1 Any transferee under the provisions of subsection 12.1.2.1 which is a commercial bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust or other similar financial institution which ordinarily engages in the business of making loans secured by real estate collateral, or an affiliate thereof or a syndicate of such entities ("Institutional Lender"), shall be liable to perform the full obligations of Lessee under this Lease until a subsequent transfer of the Lease approved by County. Following the transfer, County shall recognize such transferee as the lessee under the Lease and shall not disturb its use and enjoyment of the Premises, provided that such transferee cures any pre-existing default or event of default which may be cured by the payment of money and thereafter performs the full obligations of Lessee under this Lease, other than those, if any, which are personal to a prior lessee. No transferee under this subsection 12.1.3.1 shall be liable for any of Lessee's obligations under this Lease until such transferee has acquired Lessee's interest in this Lease.

12.1.3.2 A transferee under subsection 12.1.2.1 which is not an Institutional Lender and any subsequent transferee under the provisions of subsection 12.1.2.2 shall be liable to perform the full obligations of Lessee under this Lease and as a condition to the completion of such transfer must cure, remedy, or correct any Event of Default existing at the time of such transfer or arising thereafter due to an event or occurrence before date of transfer.

12.1.3.3 Neither an Administrative Charge nor any Net Proceeds Share shall be payable in respect of or charged in connection with any transfer pursuant to subsection 12.1.2.

12.2 Right to Notice and Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the Term and the term of its Encumbrance or Major Sublease, as applicable, and as further provided in Section 12.4, 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.

12.3 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 Section 12.1, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder.

12.4 Delay in Exercising Termination Remedy. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than pursuant to Section 13.5), unless it first shall have given written notice of such default to each and every Major Sublessee and Encumbrance Holder, where the Event of Default is one where notice is required to be given to Lessee pursuant to the terms of this Lease and the Encumbrance Holder and/or Major Sublessee have 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, and as to the Encumbrance Holder and/or Major Sublessee shall not be deemed to have been given to Lessee until County has complied with the first sentence of this Section 12.4. 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 below. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Similarly, County shall not agree to a consensual termination, surrender or cancellation of this Lease, unless it first shall have given written notice of such termination, surrender or cancellation to the Encumbrance Holder(s) and/or Major Sublessee(s) who have notified Director in writing of their interest in the Premises or this Lease and the addresses to which such notice should be delivered, and procured the consent of such Encumbrance Holder and/or Major Sublessee.

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

(1) 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 receipt of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. 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.

(2) 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:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within thirty (30) days after the end of Lessee's cure period as provided in Section 13.1 hereof; provided, however, if curing of such default requires activity

over a longer period of time, such default may be cured if within said thirty (30) day period, such Encumbrance Holder or Major Sublessee commences 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 thirty (30) day 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.

(b) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of said thirty (30) day period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the receipt of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, said sixty (60) day period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings by 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 order, judgment or decree, said sixty (60) day period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty five (35) days after such foreclosure sale and the vesting of title in the purchaser thereat (whether or not such purchaser is the Encumbrance Holder), said purchaser shall, as a condition to the completion of such transfer, cure, remedy or correct the default, or commence and thereafter pursue with due diligence, the performance of the thing or acts required to be done to cure, correct and remedy said default.

(3) In the event that this Lease is terminated by County at any time by reason of a default or Event of Default by Lessee which shall be incurable by Encumbrance Holder, or by a surrender, cancellation or termination by Lessee, or if Lessee shall have rejected or otherwise terminated this Lease pursuant to Applicable Laws, then, at Encumbrance Holder's election, County shall enter into a new lease with Encumbrance Holder or an affiliate thereof on the same terms and conditions as shall then be contained in this Lease and with the same priority as this Lease, to the extent possible. County's obligation to enter into such new lease shall be conditioned upon the cure of all then-existing monetary defaults under the Lease and the agreement by Encumbrance Holder to commence the cure of all then-existing curable non-monetary defaults under the Lease. Encumbrance Holder's election shall be made by giving County written notice of such election within ten (10) days after the event giving rise to Encumbrance Holder's election. Promptly after request therefor, County shall execute and return to Encumbrance Holder any and all documents reasonably necessary to secure or evidence Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, Encumbrance Holder (or its affiliate) shall notwithstanding anything to the contrary contained elsewhere in this Lease, have the one time right to assign or transfer its interest to any person or entity without obtaining County's or Director's consent thereto (and without the applicability of Section 11.2.4 and without the requirement to pay a Net Proceeds Share), and Encumbrance Holder (or its affiliate) shall be thereupon relieved of all liability under the Lease or the new lease, and such assignee or transferee shall become liable for all of the lessee's obligations thereunder.

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent of each then existing Encumbrance Holder or Major Sublessee. 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 or Major Sublessee. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder and Major Sublessee shall be binding on any such Encumbrance Holder or Major Sublessee.

12.6 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.

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

12.8 One Time Extension of Term. Upon the first occasion during the Term that an Encumbrance Holder (which for purposes of this Section 12.8 includes an affiliate of such Encumbrance Holder) either (a) acquires Lessee's interest in this Lease pursuant to foreclosure or transfer in lieu of foreclosure in accordance with subsection 12.1.2.1 above, or (b) enters into a new lease with County pursuant to subsection 12.4.1(3) above, then at the request of such Encumbrance Holder the Term of the Lease (or such new lease, if applicable) shall be extended by five (5) years on the same terms and conditions as set forth in this Lease. In the case of the Encumbrance Holder's acquisition of the leasehold interest by foreclosure or transfer in lieu of foreclosure, then such Encumbrance Holder shall notify County in writing within thirty (30) days after its acquisition of the leasehold interest of its election to have the Term extended as provided above. If County is so notified within such thirty (30) day period, then County and Encumbrance Holder shall with all due diligence enter into an amendment to the Lease to reflect such extension of the Term. If the Encumbrance Holder does not notify County in writing within such thirty (30) day period of its election to have the Term extended for such additional five (5) year period, then such right to have the Term extended as provided in this Section 12.8 shall be deemed to have been waived and shall be considered terminated. If Encumbrance Holder acquires the leasehold pursuant to a new lease in accordance with subsection 12.4.1(3), then Encumbrance Holder must request the five (5) year extension in writing concurrent with its request for such new lease, failing which the right to such five (5) year extension shall be deemed to have been waived and shall be considered terminated. The right to a five (5) year extension of the Lease pursuant to this Section 12.8 shall be a one-time right only, and there shall not be more than one such extension of the Term. Notwithstanding any contrary provision of this Lease, the terms and provisions of this Section 12.8 shall be applicable only to an Encumbrance Holder that is an Institutional Lender and no Encumbrance Holder that is not an Institutional Lender shall have any rights under this Section 12.8.

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), 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 Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within fifteen (15) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4 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.

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

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

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section

12.4 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages.

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

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

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

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

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

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

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

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person 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 Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) delinquent rents due from individual tenants (but not corporate tenants) is not accrued, (B) expenses are accrued on an approximate basis (i.e., materiality) each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

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

Lessee shall cause to be implemented point of sale systems which can accurately verify all retail sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval will not be unreasonably withheld. Requirements of this paragraph may be waived in advance by the Director upon submission of an acceptable plan for recording sales and other income used to calculate Gross Receipts.

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

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement 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 hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

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

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

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

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

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

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

accounting records and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

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

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

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of _____ dollars ($_____) toward those costs. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Effective Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since the construction of the original Improvements constructed on the Premises under the Existing Lease. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by

Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

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

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 fifty percent (150%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed

by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

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

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

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

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

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and 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 and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, or by overnight delivery by an overnight courier service providing for receipted delivery such as Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee (but not as to such Encumbrance Holder or Major Sublessee) notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of the Effective Date, 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: Archstone-Smith Operating Trust
9200 East Panorama Circle
Englewood, Colorado 80112
Attn: Mr. Brett Johnson
Phone: (303) 708-6970
Fax: (303) 858-0394

With a Copy to: Greenberg Traurig
200 Park Avenue
New York, New York 10166
Attn: Glenn Kleinberg, Esq.
Phone: 212/801-6899
Fax: 212/801-6400

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 ten (10) 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 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.

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.

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 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 or an Encumbrance Holder, 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); (iii) the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of the Lease; and (iv) the dates, if any, to which the rental due hereunder has been paid, and whether County is then aware of any charges, offsets or defenses against enforcement by county of any agreement, covenant or condition hereof to be performed or observed by Lessee (and, if so, specifying the same). Prospective purchasers and lenders may rely on such statements.

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

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be

final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

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" by sending notice to the other party 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 by sending notice to the other party setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

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

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

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

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a

potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the

terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. 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 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

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

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

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

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

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

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

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

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

16.15 Section 1298 Notice. NOTICE: BY INITIALLING 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 RIGHT YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING 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.

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

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

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

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Section 25536 of the California Government Code as a result of various provisions contained herein.

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

17.9 Affiliate. For the purposes of this Lease, "affiliate" shall mean, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person or entity. The term "control" means the possession, directly or indirectly, of the power, whether or not exercised, to direct or cause the direction of the management or policies of a person or an entity, whether through the ownership of stock or other equity ownership interest, by contract or otherwise, and the terms "controlled" and "common control" have correlative meanings.

17.9 No Broker. Lessee and County each represent and warrant that it has not dealt with any broker, agent or finder in connection with this Lease, and each party agrees to indemnify, defend and hold the other party harmless from and against any brokerage or similar fee or compensation that may be asserted by any such broker, agent or finder based on the breach by such party of the foregoing representation and warranty.

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

ARCHSTONE-SMITH OPERATING TRUST,
a Maryland real estate investment trust

By: _____
Its: _____

By: _____
Its: _____

APPROVED AS TO FORM:

LLOYD W. PELLMAN
COUNTY COUNSEL

By: _____
Deputy

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[To be added]

EXHIBIT B

RENOVATION PLAN

[To be added]

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure of an approved Encumbrance, 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). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement.

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 Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. If County's approval of the transaction is based on the identity of third party service providers, then subsequent changes in such service providers or changes to the contractual arrangements on which such services are provided must be approved by the County. All such approvals of the County will not be unreasonably withheld or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or 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 the County.

4. The price to be paid for the acquired interest shall not, in County's reasonable judgment, result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to the County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or indirect

transfers of interests in the entity or the applicable lease, to the extent required under Article 11 of the Lease; provided however, that a transfer of ownership of a publicly held parent corporation or other entity 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, except to the extent the transfer is expressly permitted by the terms of the Lease.

EXHIBIT D

CONDITIONS TO COASTAL DEVELOPMENT PERMIT

Los Angeles County Beaches & Harbors — Caring for Your Coast

To enrich lives through effective and caring service

February 4, 2004

TO: Small Craft Harbor Commission

FROM: Kerry Gottlieb for Stan Wisniewski, Director

SUBJECT: **AGENDA ITEM 6a - ONGOING ACTIVITIES REPORT**

BOARD OF SUPERVISORS ACTIONS ON ITEMS RELATING TO MARINA DEL REY

At its January 27, 2004 meeting, the Board of Supervisors approved and instructed the Chairman to sign a three-year contract with Grace Building Maintenance Company, Inc., for janitorial services at public buildings in Marina del Rey and Redondo Beach, at an annual cost of $99,802, with authorized additional services to be provided at the rate of $15.80 per hour, effective February 6, 2004, with two one-year extension options that may be exercised at the discretion of the Director.

DESIGN CONTROL BOARD MINUTES

The draft minutes for the Design Control Board meeting of January 15, 2004 are in your packet.

SW:tlh

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

Stan Wisniewski Director • **Kerry Gottlieb** Chief Deputy

DRAFT

MINUTES
OF
MARINA DEL REY
DESIGN CONTROL BOARD

January 15, 2004

Department of Beaches and Harbors
Burton Chace County Park
Community Building – 13650 Mindanao Way
Marina del Rey, CA 90292

Members Present:	Susan Cloke, First District, Chair David Abelar, Second District Katherine Spitz, Third District Jackie Ingon, Fourth District Tony Wong, Fifth District
Department Staff Present:	Joe Chesler, Chief, Planning Division Julie Cook, Planner LaTrina Hancock, Secretary
County Staff Present:	Tom Faughnan, County Counsel Sam Dea, Regional Planning
Guests Present:	Mary Hayes, Club Natique Pat Younis, The Bridge Group & Westchester/LAX MdR Chamber of Commerce

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1. Call to Order & Absences
   Ms. Cloke called the meeting to order at 2:12 p.m.

2. Approval of Minutes from December 18, 2003
   Ms. Spitz (Ignon) moved to approve the minutes as submitted. Motion passed unanimously.

3. Approval of DCB Reviews #03-017
   Ms. Cloke (Ignon) moved to approve DCB Review #03-017 with the language change. The applicant also has to submit an approved drawing for the DCB records. The applicant is not to manufacture the sign until it is approved by Staff. Motion passed unanimously.

4. New Business

   A. Parcel 21 – Club Natique at Holiday Harbor – (DCB #04-001)

Approval of one sign.

Mary Hayes, applicant, explained in further details the request for the sign.

Board Questions/Comments:
Mr. Abelar asked about other tenants signs at the location. Ms. Cook advised that the department recommends that any additional or revised signs for the existing tenants at the leasehold require an overall sign program. Ms. Cloke advised that the County should write a letter to the leasehold regarding the sign program and add as a condition to the permit for the proposed sign.

Ms. Cloke (Ignon) moved to approve the proposed sign with the condition that any additional or revised signs for the existing tenants at the leasehold require an overall sign program. Any other signs at this location must be removed except for the sign over the doorway. Motion passed unanimously. Staff was advised to prepare a letter to the leaseholder for the Boards review regarding a sign program.

5. Old Business

A. Parcel 61 – Shanghai Reds – (DCB #03-013)
Approval of promenade improvements, including paving, benches, trash receptacles and lighting.

The applicant asked that the item be continued until the February meeting.

Ms. Ignon asked if the applicant had given Staff any specifics on the durability of the surface material that is being proposed. Ms. Cook advised that the applicant had given Staff the brochure from the vendor. Ms. Cook explained that Facilities and Property Maintenance had the same concerns.

6. Reports from the Chief of Planning

A. Temporary Permits:
Mr. Chesler advised the Board that only two temporary permits have been issued since the last Board meeting. One was to the County Department of Public Works for a banner promoting the *Hazardous Household Waste Roundup*, scheduled for March 7, 2004, at Parcel 52. This permit goes into effect February 3, 2004. There was also a temporary permit issued to accommodate a corporate name change of *Mailbox, Etc.*, an existing business in the Waterside Shopping Center (Parcel 50) to *The UPS Store*. A temporary permit for a banner has been issued until a new sign is made.

DRAFT

B. Project Updates

Marina Water Shuttle Program – Mr. Chesler made the Board aware of the Department's intention to move ahead with the purchase of four (4) new boats and operate the Summer 2004 Water Shuttle for an estimated total program cost of $655,000, based upon the recommendations of our marine transportation consultant's evaluation of the Summer 2003 Pilot Project, and additional program analyses. In response to questions from the Board, Mr. Chesler further described the likely vessel configuration, capacity and accessibility requirements and indicated that the vessels would be powered by clean-fuel technology (clean-diesel, solar-electric, etc.). Mr. Chesler also indicated that the Department is pressing forward quickly to ensure that there is sufficient time to have the required boats manufactured, outfitted, certified, and delivered before Memorial Day. The Board expressed annoyance at the current approach, raising the following points:

- The Department appears to be rushing forward to purchase new boats that may not be the most "environmentally-friendly," which would make them more attractive to a wider range of users, and therefore more profitable. They suggested that the Department seek the purchase of the most exciting boat design with advanced marine technology (e.g., *Solar Sailor*) so that it would attract more users and therefore guarantee success.
- The purchase for four "uninteresting" boats is shortsighted and not a prudent business decision. If the Department proceeds as planned for 2004, it will compromise future options of using more "exciting and attractive" vessels.
- For Summer 2004, rather than rushing to purchase vessels, the Department should repeat the 2003 operational profile and take more time to make a better decision on vessel acquisition for implementation in Summer 2005.
- The vessels must be "environmentally-friendly."
- There were also concerns about the political sensitivity of the Department spending money on a Water Shuttle, while other County facilities are facing the possibility of being closed.

Mr. Chesler responded by indicating that the Director has recommended the purchase of four (4) new smaller boats. He further advised that one potential funding source that would be used to support this project appears to be in jeopardy because one of complications with the State budget; however, a second funding source through the County, looks more hopeful. Ms. Cloke asked if the vessels that would be purchased for the program would be "ecologically friendly." Mr. Chesler advised that alternatively-fueled boats would be used this year.

Ms. Spitz asked staff what financial advantage derives from purchasing new boats. Mr. Chesler advised the advantage would be enhanced revenue generation from increased visitor and resident spending and Marina exposure. Ms. Spitz felt that the County should spend the extra money and purchase a boat, or boats, that would more directly attract people to the Marina. Mr. Chesler indicated that these comments have been considered, but that we may find it impossible to have a fully-operational shuttle program this summer by using a vessel with more advanced technology, like the *Solar Sailor*. Ms. Cloke and Ms. Ignon felt that the Department should consider leasing the

boats for the Summer 2004 program, so that the Department has more time to investigate more interesting boats that will draw more people to the Marina for the Summer 2005 program. Mr. Chesler explained that the Department intends to purchase vessels that conform better to the existing facility constraints, that they would be themed and made attractive, and a would use a clean-fuel technology.

Mr. Chesler also advised that the new fee for the shuttle will be $2 and a seasonal pass will be available.

Public Comments

Pat Younis, representing the Westchester/LAX Chamber of Commerce, commented on the proposed $2.00 boarding fee for the shuttle. She indicated that she was concerned that the $2.00 boarding fee was too expensive and would deter users from using the water shuttle.

Parcel 51 Interim Park Development – The Department has received the 90% design plan, which is undergoing final revisions, including consideration for the use of "preventative landscaping" instead of fencing, before being released for construction purposes. The final plans should be ready by next week and construction could begin, budget permitting, within the next few months. Ms. Cloke asked staff to bring the final plans back to the Board for final approval.

Marina Beach WQIP – Mr. Chesler reported the range of approaches includes things such as bringing cleaner water into the basin from an adjacent source, putting in in-stream devices, underwater propeller that mixes the better, putting in bubblers and other things to help encourage bacteria depletion. The Department also looked into cloronation and ozonation, which is not being proposed. There are some tremendous time constraints that have to be met with the State Water Resources Control Board and new constraints place on this agency by the Department of General Services and their contracting agencies. The Department has to have the environmental processes completed by March with a contract in place for the second phase. Initially it was scheduled for late June.

Ms. Cloke expressed doubt that the County would be able to complete Phase I of this project (scientific analysis, project scope definition and CEQA) to enable it to proceed and receive State Clean Beaches Initiative funding for Phase II (project implementation). Mr. Chesler assured the Chair and the Board that the Department is along in completing the required scope of services for Phase I, and that the project will be defined next week so that CEQA documentation can proceed and be completed within the deadlines established by the State. Mr. Chesler also advised the Board that this is one of the Director's highest priorities and that Department expects to meet these critical scheduling challenges.

Ms. Spitz asked what stage is the Department in completing what is needed for this project. Mr. Chesler advised an analysis phase had to be completed, sample sediments and a number of engineering analyses, which is about 90% complete. The Department

feels that it makes no sense to implement a measure that does not target the known source of the contaminate. Mr. Chesler advised the Board that most of the samples have been completed and now have to be analyzed. Then the Department has to start the procedure to have the project reviewed. Mr. Chesler also advised that the source of the water contaminate has to be identified.

Ms. Spitz expressed the Boards concerns regarding this project. Mr. Chesler advised the Board that although this has been a long process it is not all the County's delay; other agencies procedures have to be followed.

EDAW – Urban Design Update – Mr. Chesler reported that the Executive Staff has decided to move forward with the rollout of the Urban Design Guidelines. The Department will be starting this process at the Small Craft Harbor Commission Meeting the night of February 10, 2004. The Director would like to have a disclosure/discussion of all of the various redevelopment projects that will be going on, including EDAW work efforts to date. The following meeting will be the DCB Meeting in which the Urban Design Guideline Draft which will be subject to the public hearing process. This would be one of two or three workshops at the Board discretion that would occur throughout the rest of the spring leading up to the adoption of these guidelines.

Ms. Spitz asked what the RFP that is now out for this project is for. Mr. Chesler advised it is for the renewal of the contract for consultants for this project. EDAW would likely be a contender in the next round.

7. Election of Officers

Ms. Ignon (Spitz) moved that the slate of officer remain as they are presently before the Board. Motion passed unanimously. *The next election of officers will take place in January 2005.

Mr. Chesler introduced and welcomed Mr. Sam Dae, representing the Department of Regional Planning, who was taking Kevin Johnson's place for this meeting.

8. Public Comments

None

9. Adjournment

Mr. Abelar (Wong) moved adjournment at 3:23p.m. Motion passed unanimously.

Respectfully Submitted,

La Trina Hancock-Perry
Design Control Board Secretary