

AMENDMENT NO. 1 TO RESTATED LEASE NO. 8106
PARCEL 50T

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED LEASE NO. 8106 ("Amendment") dated as of ~~September~~ ^{November} 1, 2005 (the "Amendment Date"), is entered into by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and MARINA WATERSIDE, LLC, a California limited liability company ("Lessee"), as lessee.

RECITALS

A. County and Lessee entered into that certain Amended and Restated Lease Agreement dated as of November 10, 2004, and referred to as Amended and Restated Lease No. 8106 (the "Lease"), pertaining to the real property located in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 50T (the "Existing Premises").

B. County and Lessee desire to amend the Lease to add to the Premises under the Lease that certain real property located in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 83S and more particularly described on Exhibit A attached to this Amendment and incorporated herein by reference (the "Additional Premises"), on and subject to the terms and provisions of this Amendment.

AGREEMENT

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

1. Capitalized Terms. All capitalized terms used in this Amendment, and not otherwise defined herein, shall have the same meanings given such terms in the Lease.

2. Lease of the Additional Premises. Effective as of the Amendment Date, County leases to Lessee and Lessee leases from County, the Additional Premises as an addition to, and as part of, the Premises under the Lease, and the definition of "Premises" under the Lease is modified to include the Additional Premises. The Additional Premises shall be leased as a part of the Premises on all of the same terms, covenants and conditions as set forth in the Lease, except as modified by this Amendment. Without limitation of the foregoing, the Term of the Lease with respect to the Additional Premises shall commence on the Amendment Date and expire in accordance with the Lease at 11:59 p.m. on January 31, 2063, unless terminated sooner in accordance with the provisions of the Lease.

3. As-Is. Lessee accepts the Additional Premises in their present condition notwithstanding the fact that there may be certain defects in the Additional Premises, whether or not known to either party to this Amendment, 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 Additional Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Additional Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Amendment, 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 Additional Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Additional 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 Additional Premises and/or any Improvements located thereon, (iv) the development potential of the Additional Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Additional 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 Additional Premises or any other public or private restrictions on use of the Additional Premises, (vi) the compliance of the Additional Premises and/or any Improvements located thereon with any Applicable Laws, including, without limitation, applicable provisions of ADA, (vii) the presence of any underground storage tank or hazardous materials on, under or about the Additional Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Additional Premises, and (x) the economics of the operation of the Additional Premises and/or any Improvements located thereon.

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 Additional 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. 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 this Section 3.

Lessee's Initials



4. Use of Additional Premises. Notwithstanding any contrary provision of Section 3.1 of the Lease, the "Permitted Uses" of the Additional Premises shall mean, and the Additional Premises shall be used by Lessee only for the construction and operation by Lessee of

parking facilities for the Existing Premises, along with associated landscaping and the signage purposes described in Section 10 of this Amendment. The Additional Premises shall not be used for any other purpose without the prior written consent of County, which consent may be withheld by County in its sole and absolute discretion.

5. Rent. In consideration of the addition of the Additional Premises to the Premises, effective on and after the Amendment Date the Annual Minimum Rent set forth in Section 4.2.1 of the Lease shall be increased from Seven Hundred Fifty Thousand Dollars (\$750,000.00) per year to Seven Hundred Seventy Thousand Dollars (\$770,000.00) per year, subject to the provisions of Section 9 below. Such Annual Minimum Rent shall remain in effect through the day preceding the fifth (5th) anniversary of the Effective Date of the Lease. From and after the fifth (5th) anniversary of the Effective Date of the Lease, the Annual Minimum Rent shall thereafter be adjusted in accordance with the provisions of Sections 4.2.3 and 4.4 of the Lease based on the inclusion of the Additional Premises as part of the Premises.

6. No Adjustment to Base Value. There shall be no adjustment to the Base Value set forth in Section 4.8.1 of the Lease by virtue of Lessee's lease of the Additional Premises other than the following: the Base Value shall be adjusted based on actual development costs of the Additional Premises as described in Section 7 below.

7. Redevelopment Work. The Redevelopment Work described in Section 5.1 of the Lease shall include the development of the Additional Premises in accordance with the provisions of Exhibit B attached to this Amendment and incorporated herein by reference (the "Additional Premises Development Work"). The Additional Premises Development Work shall include a landscaped area suitable for the installation by County, at County's costs, at a later date of a monument sign identifying Marina del Rey as provided in Section 10 below. As part of the Additional Premises Development Work, Lessee, at Lessee's cost, shall widen the sidewalk located outside of the Additional Premises along Admiralty Way and Fiji Way as depicted on Exhibit B. The area in which such sidewalk is widened shall remain subject to future modification at the discretion of County, including without limitation, in connection with any future widening of Admiralty Way and Fiji Way. Such future modification will be performed at no cost to Lessee, and County shall be responsible for repair and replacement of any improvements upon the Additional Premises damaged or destroyed during modification. The Additional Premises Development Work shall be performed by Lessee as a part of the Redevelopment Work under the Lease, in accordance with the same schedule, subject to delays resulting from obtaining all necessary governmental approvals, including Building Permits, DCB approval and Force Majeure, which in no event shall exceed 2 years from the date of execution of this Amendment by the Board of Supervisors, and upon all of the same terms and conditions as applicable to such Redevelopment Work. The amount of the required Redevelopment Work Investment set forth in Section 5.1 of the Lease shall be increased to include actual development costs for the Additional Premises Development Work as approved by County. For purposes of clarification, the Reversion Amendment described in Section 5.1 of the Lease shall, among other things, effectuate a termination of this Amendment and forfeiture by Lessee of its leasehold interest in the Additional Premises described herein.

8. Maintenance and Repair. For purposes of clarification, Lessee shall be responsible for the maintenance and repair of the Additional Premises and all Improvements, not

including the County Monument Sign, located thereon in accordance with the terms and provisions of the Lease.

9. Covenant Regarding Space Conversion. As of the date hereof, Lessee is engaged in the renovation of the Existing Premises pursuant to the Renovation Plan set forth in the Lease. The intent and purpose of County's agreement to lease the Additional Premises to Lessee pursuant to this Amendment is to make additional parking available to Lessee to facilitate a conversion to restaurant space of a portion of the retail space currently existing in the Improvements on the Existing Premises. The Improvements currently existing on the Existing Premises include restaurants operated by California Pizza Kitchen, Top Cloud and Chipotle that, in the aggregate, constitute approximately 7,994 square feet of space with seating capacity of 258 seats (the "Existing Restaurant Space"). The addition of the Additional Premises to the Premises will provide Lessee with thirty (30) additional parking spaces, subject to various governmental approvals and final site design changes, including changes to the configuration of the Existing Premises. Such new parking will satisfy the parking code requirements for additional restaurant space serving ninety (90) occupants. Additional parking of four (4) spaces per 1,000 square feet of retail space that is converted to restaurant space will also become available to further satisfy the parking code requirements for such restaurant space. For purposes hereof, the "New Available Restaurant Space" means the maximum additional restaurant space that can be added to the Existing Premises in compliance with parking code requirements (through conversion of existing retail space to restaurant space) based on the thirty (30) parking spaces provided by the Additional Premises and the additional parking no longer allocated to the converted retail space.

In material consideration for County's agreement to lease the Additional Premises to Lessee on the terms and conditions set forth herein, Lessee agrees to use its commercially reasonable efforts to develop and operate (or cause to be operated) during the term of the Lease an amount of restaurant space equal to at least the following (the "Restaurant Space Covenant"):

(a) the square footage or seating capacity of the Existing Restaurant Space, plus (b) seventy-five percent (75%) of the New Available Restaurant Space (the sum of (a) and (b) referred to as the "Restaurant Space Requirement"). Lessee shall not be in breach of the Restaurant Space Covenant as a result of any discontinuance of business by a restaurant Sublessee during the term of a Sublease as long as (a) Lessee diligently enforces its rights against such Sublessee in the case of a breach by such Sublessee (including termination of the Sublease if the Sublessee fails to cure the breach within the applicable cure period), and (b) in the case of a Sublease termination Lessee uses its commercially reasonable efforts to find a replacement Sublessee as soon as reasonably possible. Lessee shall not be in breach of the Restaurant Space Covenant as a result of a discontinuance of business by a restaurant Sublessee at the expiration or termination of its Sublease as long as Lessee uses its commercially reasonable efforts to replace such Sublessee.

If prior to the fifth (5th) anniversary of the Effective Date of the Lease, Lessee converts any restaurant space to retail space, and as a result of such conversion breaches the Restaurant Space Covenant, then upon the earlier of the date of the opening for business of such retail space or the date that Sublease rent commences for such retail space, and continuing until the day preceding the fifth (5th) anniversary of the Effective Date of the Lease, the Annual Minimum Rent shall be increased to Seven Hundred Seventy-Seven Thousand Dollars (\$777,000.00). From and after the fifth (5th) anniversary of the Effective Date of the Lease, the

Annual Minimum Rent shall be adjusted in accordance with the provisions of Sections 4.2.3 and 4.4 of the Lease (based on the inclusion of the Additional Premises as part of the Premises). The increase in the Annual Minimum Rent as provided in this paragraph shall be the sole remedy for the actions described in clauses (i) or (ii) above.

10. County Reservation for Monument Sign. County's lease of the Additional Premises to Lessee is subject to the reservation by County of the right at County's cost to install, operate, repair, maintain, alter and replace on the Additional Premises a monument sign (the "Monument Sign") and any utilities lines or equipment associated with the use and operation of the Monument Sign (collectively, the "Monument Sign Improvements"), along with rights of access to and over the Additional Premises as reasonably necessary for the above purposes. The Monument Sign shall be located at the corner of Fiji Way and Admiralty Way in the general location depicted on Exhibit B attached to this Amendment County shall have the right to determine the exact location, size and specifications for the Monument Sign. County shall be responsible for the installation of the Monument Sign Improvements and repair or replacement of any landscaping or other improvements damaged or destroyed during such installation and maintenance, when, and if, it elects to install the Monument Sign Improvements. County shall be responsible for the cost of any electricity that may be consumed in providing lighting, if any, for the Monument Sign. The Monument Sign Improvements shall be owned by County.

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

12. No Other Modifications. The parties acknowledge that the Lease remains in full force and effect, unmodified except as set forth herein. This Amendment constitutes the entire agreement of the parties with regard to the amendment of the Lease, and this Amendment supersedes any and all previous negotiations, communications or understandings between the parties, whether oral or written, with regard thereto.

13. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall collectively constitute one fully-executed document.

14. Recording of Memorandum. A Memorandum of Lease with reference to this Amendment shall be recorded by Lessee within ten (10) days of execution of Amendment.

SIGNATURES ON FOLLOWING PAGE

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

THE COUNTY OF LOS ANGELES

MARINA WATERSIDE, LLC, a California limited liability company

By: *Gloria Molina*
Chair, Board of Supervisors

By: *Rick J. Caruso*
Rick J. Caruso, Manager

ATTEST:

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



By: *Luis G. Villalobos*
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: *Raymond G. Fortner, Jr.*
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

13

NOV 01 2005

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: *[Signature]*

Violet Varona-Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER