

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

**COPY**

BROWN, WINFIELD & CANZONERI, INC.  
300 South Grand Avenue, Suite 1500  
Los Angeles, California 90071  
Attention: Dennis S. Roy, Esq.

**MEMORANDUM OF LEASE**

This Memorandum of Lease, dated for identification purposes only as of July 1, 2008, is entered into by CITY OF REDONDO BEACH, a chartered municipal corporation ("Landlord") and ROBERT DALE RESNICK, as Trustee of the RDR Living Trust of 1996 ("Tenant").

1. Grant of Lease: Term. For good and valuable consideration received, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") located in the City of Redondo Beach, County of Los Angeles, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all buildings, structures, improvements and fixtures now or hereafter erected thereon during the initial term of the Lease, commencing on the Lease Commencement Date (as defined in the Lease) and expiring, without notice or other action by either party, at 11:50 p.m. Pacific Time, on the day prior to the fifty-fifth (55<sup>th</sup>) anniversary of the Lease Commencement Date, subject to the terms, conditions, provisions and covenants of that certain Lease Agreement (the "Lease") between the Parties hereto, dated for identification purposes only as of the 1<sup>st</sup> day of July, 2008. Pursuant to the terms and conditions of the Lease, Tenant has the right to extend the term of the Lease for two (2) separate additional option periods. The first option period shall be a six (6) year period commencing when the initial Term expires. The second option period shall be a five (5) year period commencing when the first option period expires. All of the terms, provisions and covenants of the Lease are incorporated in this Memorandum of Lease by reference as though written out at length herein, and the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for recordation purposes only, and it in no way modifies the terms, conditions, provisions and covenants of the Lease. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum of Lease and the Lease, the terms, conditions, provisions, and covenants of the Lease shall prevail.

3. Counterparts. This Memorandum of Lease may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

The Parties hereto have executed this Memorandum of Lease at the place and on the dates specified immediately adjacent to their respective signatures.

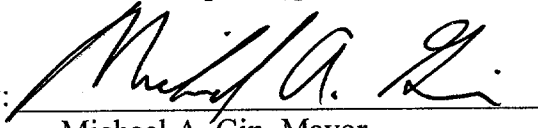
TENANT:

RDR LIVING TRUST OF 1996

By: \_\_\_\_\_  
Robert Dale Resnick, Trustee

LANDLORD:

CITY OF REDONDO BEACH,  
a chartered municipal corporation

By:  \_\_\_\_\_  
Michael A. Gin, Mayor

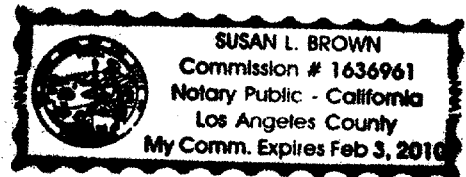
STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

On MAY 13, 2008, before me, Susan L. Brown, Notary Public, personally appeared Michael A. Gin, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~) and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~) or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: Susan L. Brown (Seal)



STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

## **EXHIBIT "A"**

### **PROPERTY**

Those certain tidelands and submerged lands in the City of Redondo Beach, County of Los Angeles, State of California, more particularly described as follows:

Beginning at a point on the southerly line of Coral Way (formerly known as Pier Avenue) produced westerly, which bears south  $74^{\circ}-42'-35''$  west, a distance of 66.12 feet from the northwest corner of Lot B, Tract 5322, as recorded in Map Book 56, pages 91 and 92, records of said County in said State,  
to the westerly line of Harbor Drive; thence south  $74^{\circ}-42'-35''$   
west a distance of 192.15 feet, thence north  $15^{\circ}-17'-25''$   
west a distance of 9.00 feet, thence south  $74^{\circ}-42'-35''$   
west a distance of 24.85 feet, thence south  $15^{\circ}-17'-25''$   
east a distance of 22.00 feet, thence south  $74^{\circ}-42'-35''$   
west a distance of 23.79 feet, thence south  $15^{\circ}-17'-25''$   
east a distance of 67.79 feet, thence north  $74^{\circ}-42'-35''$   
east a distance of 0.79 feet, thence north  $15^{\circ}-17'-25''$   
west a distance of 0.79 feet, thence north  $74^{\circ}-42'-35''$   
east a distance of 240.28 feet, thence north  $15^{\circ}-29'-25''$   
west along the westerly line of said Harbor Drive a distance of 80.00 feet to the Point of Beginning

Containing therein approximately 11,604 square feet.

**COPY**

**LEASE AGREEMENT**

**by and between**

**City of Redondo Beach,  
a chartered municipal corporation**

**and**

**Robert Dale Resnick,  
as Trustee of the  
RDR Living Trust of 1996**

**Dated July 1, 2008**

## SUMMARY OF LEASE TERMS

The information provided below is a summary of detailed provisions set forth in this Lease agreement by and between Landlord and Tenant identified below. This summary is intended to provide an overview only and is not intended to alter, limit or expand the provisions set forth at length in the Lease. In the event of any conflict between the information in this summary and the other provision of the Lease, the latter shall control.

LANDLORD: City of Redondo Beach, a chartered municipal corporation

TENANT: Robert Dale Resnick, as Trustee of the RDR Living Trust of 1996

PERMITTED USES: See Article 4

DATE OF LEASE: July 1, 2008

LEASE  
COMMENCEMENT  
DATE: July 1, 2008

TERM: Fifty-Five (55) years

OPTION TO EXTEND: Yes

Length: First option of six (6) years  
Second option of five (5) years

BASE RENT: Seven Thousand One Hundred and Seventy-Seven Dollars and 91/00  
(\$ 7,177.91 ) per month, subject to adjustment

A) CPI Adjustment: Yes \_\_\_\_\_ No \_\_\_\_\_, Other   X  

B) Adjustment Dates: Every five (5) years, commencing on the  
fifth (5<sup>th</sup>) anniversary of the Lease Commencement Date and  
continuing every five (5) years thereafter.

ADDITIONAL RENT: Yes   X   No \_\_\_\_\_

ADDRESS FOR NOTICES:

To Landlord:

City of Redondo Beach  
415 Diamond Street  
Redondo Beach, California 90277  
Attn: Assistant City Manager  
Facsimile: (310) 379-9268

To Tenant:

Robert Dale Resnick, as Trustee of the RDR Living Trust of 1996  
c/o RDR Properties  
1545 Sawtelle Blvd., Suite 21  
Los Angeles, California 90025  
Attn: Robert D. Resnick  
Facsimile: (310) 459-4497

With a copy to:

Brown, Winfield & Canzoneri, Inc.  
300 South Grand Avenue, Suite 1500  
Los Angeles, California 90071  
Attn: Dennis S. Roy, Esq.  
Facsimile: (213) 687-2149

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## LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Lease**") is dated for identification purposes and is made and entered into as of the 1<sup>st</sup> day of July, 2008 ("**Lease Commencement Date**"), by and between the City of Redondo Beach, a chartered municipal corporation ("**Landlord**") and Robert Dale Resnick, as Trustee of the RDR Living Trust of 1996.

### RECITALS

A. The State of California has granted to Landlord certain tide and submerged lands on condition the Landlord develop, improve and operate said lands for the promotion and accommodation of commerce and navigation, all as more particularly stated in the "**Tidelands Grant**" which grants to Landlord said lands, a copy of which Tidelands Grant is attached hereto as Exhibit "A" and by this reference incorporated herein.

B. The real property which is the subject of this Lease is located in the City of Redondo Beach, California, and more particularly described on Exhibit "B" attached hereto ("**Leased Land**"). The Leased Land either is subject or is adjacent to property which is subject to the terms and conditions of the Tidelands Grant as set forth in Exhibit "A".

C. Landlord is willing to lease to Tenant, and Tenant is willing to hire from Landlord, the Leased Land, for the term and upon the conditions set forth in this Lease. The Leased Land is currently leased to Tenant pursuant to that certain First Restatement and Amendment of Lease, Redondo Pier Approach, dated January 18, 1988, as amended (the "Existing Lease"). The Existing Lease shall remain in effect until the Lease Commencement Date. Upon the Lease Commencement Date, the Existing Lease shall be deemed superseded and replaced by this Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

### ARTICLE 1 DEFINITIONS, GRANT AND TERM

1.1 **Definitions.** For the purposes of this Lease, the following definitions shall apply:

"**Additional Rent**" shall mean all sums which are to be paid by Tenant to Landlord pursuant to the terms hereof, specifically excluding Base Rent.

"**Assessments**" shall mean any and all special assessments, levies and charges on the Premises made by any governmental entity, political subdivision, community facilities district, maintenance district, and any like entity.

"**Award**" shall have the meaning ascribed to it in Section 11.2(d).

"**Base Rent**" shall have the meaning ascribed to it in Section 3.1.

**"Capital Improvement Fund"** shall have the meaning ascribed to it in Section 2.3.

**"Claims"** shall mean any and all claims, demands, obligations, liabilities, costs, charges and expenses (including reasonable attorneys' fees), interest, fines and penalties.

**"Default"** shall mean, and a Default shall be deemed to have occurred, when a party breaches any of its obligations, agreements, or duties under this Lease and the other party provides written notice to the breaching party of such breach.

**"Development Documents"** shall mean all plans, drawings, specifications and documents evidencing governmental approvals or partial approvals; permits; environmental documents (including undertakings to complete appropriate environmental mitigations); soil, engineering and planning studies; working drawings and the like; architects' agreements and construction agreements, pertaining to the Development Plan..

**"Development Plan"** shall mean the plan described in Exhibit "C".

**"Fixtures"** shall mean the fixtures, furnishings and equipment, installed in the Improvements.

**"Gross Income"** shall mean any and all gross rentals, receipts, fees, proceeds and amounts of any kind actually received by Tenant from any portion of the Premises, including without limitation, amounts received from or in respect of any Subleases, concessionaires' income, other agreements for use or occupancy, including but not limited to fixed rentals, minimum rentals, rental computed on the basis of sales or other criteria, temporary rentals, proceeds of business interruption and rental loss insurance applicable to or in replacement of such lost rental income, casualty and disaster award proceeds to the extent, but only to the extent, if any, not used towards restoration of the Premises or payment for debt financing secured by the Premises, parking income, advertisement income and signage rights income. Notwithstanding the foregoing, "Gross Income" shall not include (i) any amounts received by Tenant from any Subtenants, licensees or concessionaires as tenant advances or reimbursements of taxes, insurance or utilities (ii) any refundable security or other like deposits; (iii) proceeds of sale, financing or refinancing of the Premises, or Improvements thereon; (iv) proceeds from a Taking of the Premises or a portion thereof; (v) proceeds from any policies of insurance (other than proceeds of rental interruption insurance as provided above or excess casualty of disaster award proceeds not applied to either loan repayment or restoration of the Premises); (vi) the value of free rent or rental abatements granted to Subtenants; and (vii) taxes, licenses and other like fees or charges collected by Tenant and paid over to taxing or other governmental authorities, late charges and interest payable by Subtenants, interest accruing on investment funds of Tenant, and any damage recoveries of Tenant from any Subtenant or other third parties (except for damage recovery reflecting recovery of rent, net of the out-of-pocket costs of collecting such amount, including reasonable attorneys' fees incurred).

**"Hazardous Substance"** shall mean any product, waste, material or substance, or any by-product or derivative thereof which is (a) defined as a "hazardous waste," "extremely

hazardous waste,” or “restricted hazardous waste” under sections 25115, 25117 or 25122.7, or listed pursuant to section 25140 of the California Health and Safety Code, division 20, chapter 6.5 (Hazardous Waste Control Law); (b) defined as a “hazardous substance” under section 26316 of the California Health and Safety Code, division 20, chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (c) defined as a “hazardous material,” “hazardous substance” or “hazardous waste” under section 25501 of the California Health and Safety Code, division 20, chapter 6.95, “Hazardous Substance” under section 25281 of the California Health and Safety Code, division 20, chapter 6.7 (Underground Storage of Hazardous Substance); (d) gasoline, oil or petroleum; (e) asbestos; (f) a hydrocarbon or polychlorinated biphenyl; (g) defined as “hazardous” or “extremely hazardous” pursuant to article 11 of Title 22 of the California Administrative Code, division 4, chapter 4, chapter 20; (h) designated as a “hazardous substance” pursuant to section 311 of the Clean Water Act, 33 United States Code section 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to section 307 of the Clean Water Act (33 U.S.C. § 6903); (i) defined as a “hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code section 9601 et seq. (42 U.S.C. § 9602); (j) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 United States Code section 6901 et seq. (42 U.S.C. § 6901); (k) found to be a pollutant, contaminant, hazardous waste or hazardous substance in any reported decision of a federal or California state court; or (l) whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, or (ii) a basis for potential liability to any governmental agency or third party under any Laws or common law theory.

**“Improvements”** shall mean all improvements located on the Premises as of the Lease Commencement Date or otherwise constructed on the Premises during the Term, including, without limitation, the improvements described in the Development Plan, the improvements described on Exhibit “C” attached hereto, and any replacements, reconstructions or restorations during the Term.

**“Insured Loss”** shall mean damage or destruction of the Premises which was caused by an event required to be covered by the insurance described in Article 9, irrespective of any deductible amounts of coverage limits involved.

**“Landlord”** shall mean the City of Redondo Beach.

**“Landlord Indemnified Parties”** shall mean Landlord, its officers, employees, elected and appointed officials, volunteers, agents, successors and assigns.

**“Landlord’s Interest”** shall mean Landlord’s interest in the Premises and Landlord’s rights pursuant to this Lease.

**“Law” and “Laws”** shall mean the applicable statutes, ordinances, rules, codes, requirements, regulations, and the like, of any governmental authority, whether federal, state, or local, or court.

**"Lease Commencement Date"** shall mean July 1, 2008.

**"Leasehold Estate"** shall have the meaning ascribed to it in Section 10.1(d).

**"Leased Land"** shall have the meanings ascribed to it in Recital B.

**"Mortgage"** shall mean any mortgage or deed of trust executed by Tenant in favor of a Mortgagee, which mortgage or deed of trust constitutes a lien upon any portion of Tenant's Interest.

**"Mortgagee"** shall mean any lender who has made a loan to Tenant and who holds a lien upon any portion of Tenant's Interest as security for such loan.

**"Partial Taking"** shall have the meaning ascribed to it in Section 11.2(c).

**"Participation Rent"** shall mean all sums which are paid by Tenant to Landlord as set forth on Exhibit "E", which shall be included as Additional Rent.

**"Premises"** shall mean the Leased Land, the Improvements, and the Fixtures.

**"Purchase Agreement"** shall have the meaning ascribed to it in Section 10.1(d).

**"Qualified Appraiser"** shall have the meaning ascribed to it in Section 11.4.

**"Renovation Fund"** shall have the meaning ascribed to it in Section 2.4.

**"Rent"** shall mean Base Rent and Additional Rent.

**"ROFO"** shall have the meaning ascribed to it in Section 10.1(d).

**"ROFO Notice"** shall have the meaning ascribed to it in Section 10.1(d).

**"Security Device"** shall mean any mortgage, deed of trust, or other hypothecation of security device.

**"Senior Debt Service"** shall mean, at any time, all principal, interest, late charges, default interest, prepayment premiums and all other sums then due in respect of the Senior Loan, including, without limitation, any loan fees and closing costs associated with the origination of the Senior Loan.

**"Senior Loan"** shall mean any and all loans or other financing obtained by Tenant (and approved by Landlord pursuant to Section 15.1) which are secured by Tenant's Interest in the Premises, in whole or in part.

**"Senior Mortgage"** shall mean the deed(s) of trust securing the obligations of the Senior Loan.



**"Senior Mortgagee"** shall mean the holder(s) of the Senior Mortgage and the obligations secured thereby.

**"Taking"** shall have the meaning ascribed to it in Section 11.2(a).

**"Taxes"** shall mean real and personal property taxes, fees, assessments and charges, water and sewer rates and charges, and other similar governmental charges and impositions, whether general or special, ordinary or extraordinary, which may be levied, assessed, charged or imposed, or may become a lien or charge upon the Premises or any part or parts thereof, or upon Tenant's Interest or Landlord's Interest including, without limitation, possessory interest taxes. Landlord is a public entity, and as such, Landlord's underlying fee and reversionary interest in the subject property is, or may be, exempt from property tax assessments. In accordance with California Revenue and Taxation Code Section 107.6(a) Landlord states that by entering into this Lease a possessory interest in Tenant subject to property taxes may be created. Tenant shall be responsible for the payment of property taxes levied on such interest.

**"Tenant"** shall mean Robert Dale Resnick, as Trustee of the RDR Living Trust of 1996.

**"Tenant Indemnified Parties"** shall mean Tenant, its officers, members, employees, agents, successors and assigns.

**"Tenant's Interest"** shall mean Tenant's Leasehold Estate in the Premises, including all of Tenant's rights pursuant to this Lease.

**"Term"** shall mean the term of this Lease as set forth in Section 1.3.

**"Total Taking"** shall have the meaning ascribed to it in Section 11.2(b).

**"Transfer Notice"** shall have the meaning ascribed to it in Section 10.1(a)(i).

**"Uncured Default"** shall mean a Default under this Lease which has not been cured by the defaulting party within the cure period applicable thereto.

**"Work"** shall mean the construction and installation of any Improvements and Fixtures including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Leased Land.

**1.2 Grant of Lease.** In consideration of the covenants and agreements to be observed and performed by Tenant, and subject to all matters recorded in the Official Records of Los Angeles County, California, Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Leased Land (including any Improvements and the Fixtures now or hereafter located thereon).

**1.3 Term.** The term of this Lease ("**Term**") shall commence on the Lease Commencement Date and expire, without notice or other action by either party, at 11:59 p.m.

Pacific Time, on the day prior to the fifty-fifth (55th) anniversary of the Lease Commencement Date, unless sooner terminated pursuant to the terms of this Lease or extended pursuant to Section 1.4 of this Lease or by other agreement of the parties. Notwithstanding the foregoing, the Term of this Lease shall be subject to adjustment pursuant to the provisions set forth in Section 2.10 below.

#### **1.4 Options to Extend Term.**

(a) **Grant of Options.** Landlord hereby grants to Tenant the option to extend the Term of this Lease for two (2) additional option periods. The first option period shall be a six (6) year period commencing when the initial Term expires. The second option period shall be a five (5) year period commencing when the first option period expires. If Tenant elects to exercise either such option, Tenant shall deliver written notice of its election to exercise each such option period to Landlord at least twelve (12) months but not more than forty-eight (48) months prior to the date that such option period would commence. If proper notification of the exercise of an option is not given during such period, such option shall automatically expire. Within forty-five (45) calendar days after receipt of a notice of election to exercise either such option period, Landlord shall notify Tenant of any deficiency in or objection by Landlord to the exercise of such option and shall specify in reasonable detail the reasons Landlord believes such deficiency or objection exists and the actions by Tenant, if any, necessary to render such option exercise effective. If Landlord fails to respond within that forty-five (45) calendar day period Tenant may provide a second written notice of its election to exercise such option and if Landlord fails to respond within fifteen (15) calendar days after delivery of such second notice, the option shall be conclusively deemed to have been effectively exercised and Landlord may not thereafter contest the adequacy or effectiveness of Tenant's election to exercise that option. Options may only be exercised consecutively so that the Term of this Lease shall be without interruption and a later option cannot be exercised unless the prior option has been validly exercised.

(b) **Effect of Default on Options.** Tenant shall have no right to exercise an option granted pursuant to Section 1.4(a) above during any of the following periods:

(i) during any period in which all or a portion of Rent due remains unpaid (provided, that, for purposes of this provision and as provided in Section 12.1(b), Rent which is paid under protest or with a reservation of rights shall be deemed to have been paid); or

(ii) during any period following Tenant's commission of a Default with respect to payment to Landlord of any other monetary obligations under the Lease (provided that, for purposes of this provision and as provided in Section 12.1(b) below, Tenant shall not be deemed to be in Default of any such monetary obligation which has been paid by Tenant under protest or with a reservation of rights) and continuing until said monetary Default is cured; or

(iii) during any period following Tenant's commission of an Uncured Default with respect to a non-monetary obligation under the Lease not subject to (i) or (ii) above and continuing until said non-monetary Default is cured

In addition, in the event Tenant has committed three (3) or more separate and distinct material Defaults (monetary or non-monetary) during the twelve (12) month period immediately preceding the exercise of the option (not including (i) any alleged monetary Default with respect to which Tenant has paid the alleged monetary obligation under protest or with a reservation of rights or (ii) any alleged non-Monetary Default which is the subject of a pending contest pursuant to Section 12.1(b) or which was determined not to be a Default in conjunction with any such prior contest), whether or not the Defaults are cured, then Tenant shall not have the right to exercise such option.

**1.5 Quiet Enjoyment.** So long as the Tenant has not committed an Uncured Default under this Lease, and except for Landlord's actions in the case of an emergency for the purposes of protecting public health or safety which actions shall be strictly limited in duration and scope so as to minimize to the extent possible any interference with the possession and use of the Premises by Tenant, Tenant may lawfully and peaceably hold, occupy and enjoy the Leased Land without disturbance, interruption or hindrance by Landlord, or any person or entity claiming by or through Landlord. However, Landlord shall in no event be liable in damage or otherwise, nor shall Tenant be released from any obligation hereunder, because of the unavailability, delay, quality, quantity or interruption of any service or amenity, or any termination, interruption or disturbance of services or amenities, or any cause due to any omission, act or neglect of Tenant or its servants, agents, employees, licensees, business invitees, or any person claiming by or through Tenant or any third party except to the extent any of the foregoing are caused by the act, omission or neglect of Landlord in violation of its obligations under this Lease.

**1.6 Condition of Leased Land.** On the Lease Commencement Date, Tenant shall be deemed to have accepted the Leased Land "AS-IS" without any representation or warranty of Landlord. Tenant acknowledges that it has had the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation and study of the Leased Land, and has, to the extent it deemed necessary, independently investigated the condition of the Leased Land, including the soils, hydrology, seismology, and archaeology thereof, and the Laws relating to the construction, maintenance, use and operation of the Improvements, including environmental, zoning and other land use entitlement requirements and procedures, height restrictions, floor area coverage limitations and similar matters, and has not relied upon any statement, representation or warranty of Landlord of any kind or nature in connection with its decision to execute and deliver this Lease and its agreement to perform the obligations of Tenant. Landlord makes no covenant, warranty or representation as to the suitability of the Leased Land for the uses permitted by this Lease, or respecting the condition of the soil, subsoil or any other condition of the Leased Land, nor does Landlord make any covenant, representation or warranty regarding the suitability of the Leased land for the proposed development, construction of the proposed development, or construction or use of the Improvements.

**1.7 Ownership and Removal of Improvements.**

(a) **Ownership of Improvements and Fixtures.** Upon any expiration or termination of this Lease, Landlord shall become the owner of all Improvements and Fixtures. During the Term, Tenant shall be the owner of all Improvements and Fixtures as the same may

be altered, replaced, expanded or improved from time to time. Except as otherwise specifically provided in this Lease, Tenant shall not remove or destroy any Improvements from the Leased Land, and, except to replace or repair, Tenant shall not remove or destroy any of the Fixtures; provided, however, that Tenant shall have the right to remove or destroy any Fixtures which, in the reasonable opinion of Tenant, is no longer necessary for the use and operation of the Premises. Upon or at any time within thirty (30) calendar days after the expiration or earlier termination of this Lease, as requested by Landlord, Tenant shall, without charge to Landlord, promptly execute, acknowledge and deliver to Landlord all documents reasonably necessary to (i) confirm Landlord's ownership of the Premises; (ii) assign to Landlord, to the extent assignable, all contracts or warranties designated by Landlord, relating to the construction, operation, management or maintenance of the Premises; and (iii) convey or assign to Landlord, as the case may be, to the extent assignable, all Development Documents and other plans, records, registers, permits, and all other papers and documents, then in Tenant's possession or control, which may be necessary or reasonably appropriate for the proper operation and management of the Premises, and shall deliver all of the foregoing to Landlord.

**(b) Removal of Improvements Upon Termination.** Ten (10) years prior to the expiration of this Lease, Landlord shall notify Tenant if Landlord elects to have any Improvements removed upon termination. In such case, Tenant shall provide Landlord with a report estimating the costs for removal of any such Improvements upon termination of this Lease. At Landlord's option, Tenant shall establish a funding method approved by Landlord to pay for any such removal of Improvements, and, if a funding method is required by Landlord, (i) any funds then on deposit in the Capital Improvement Fund shall be transferred to such "removal fund" and the Capital Improvement Fund shall be closed, (ii) any unfunded balance of the removal cost shall be funded in ten equal annual installments and once the removal fund is adequate to cover the anticipated expenses of removal no further contributions shall be required to the "removal fund", and (iii) no further capital expenditures (not including any non-capital and ordinary course repair or maintenance expenditures otherwise required under the Lease) shall be required of Tenant during the remaining Term of the Lease.

**(c) Tenant's Right to Remove Personal Property.** At the expiration or earlier termination of this Lease, Tenant may remove any or all of Tenant's personal property from the Leased Land, so long as (i) such personal property can be removed without material damage to the Improvements (or any such damage resulting from such removal is repaired concurrent therewith), (ii) such personal property is removed within thirty (30) calendar days following such expiration or earlier termination of this Lease, and (iii) all resultant injuries to the Leased Land and the Improvements are promptly and completely remedied and Tenant takes reasonable steps necessary to preserve the appearance of the Leased Land and the Improvements. Any personal property of Tenant remaining on the Leased Land after said thirty (30) calendar day period shall automatically vest and become the sole property of Landlord without any payment by Landlord and without any further action or agreement required including the necessity of a deed, bill of sale, conveyance or other act or agreement of Tenant.

## **1.8 Surrender of Premises.**

**(a) Surrender of Lien-Free Title.** Upon the expiration or earlier termination of this Lease, Tenant shall deliver the Premises, and every part thereof, to Landlord, in first-class

and broom-clean condition considering the age of the improvements, ordinary wear and tear excepted (provided, however, that such exception for ordinary wear and tear shall not diminish Tenant's obligations hereunder, including, without limitation, the provisions of Article 5 to repair, restore and maintain the Premises in first-class order, condition and repair, considering the age of the improvements), and shall grant and convey all of Tenant's right, title and interest in the Premises to Landlord, in full compliance with all Laws, free and clear of all liens and encumbrances other than (i) those created by Landlord, and (ii) those liens and encumbrances approved in writing by Landlord with the express agreement of Landlord that the same may survive the expiration or earlier termination of this Lease.

(b) **Failure to Surrender.** If Tenant fails to surrender possession of the Premises upon the expiration or earlier termination of the Lease, or any part thereof, as required hereunder, at the expiration or earlier termination of this Lease, Tenant shall indemnify, defend and hold the Landlord Indemnified Parties harmless from and against any and all Claims resulting from or relating to the delay or failure to so surrender, including, without limitation, Claims made by any prospective tenant, founded on or resulting from Tenant's failure to so surrender, and any direct or indirect or consequential damages which the Landlord Indemnified Parties or any of them may incur. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Tenant holds over without the consent of Landlord, then the Base Rent shall be increased to one-hundred fifty percent (150%) of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant. Notwithstanding anything herein to the contrary, so long as Tenant is exercising commercially reasonable efforts to cause all Subtenants, licensees and concessionaires to vacate the Property, Tenant's liability to Landlord because such Subtenant, licensee or concessionaire refuses to vacate the Property upon the expiration or earlier termination of this Lease shall be limited to the Base Rent applicable to the space where such holdover Subtenant, licensee or concessionaire is located (and, for purposes of such provision, the Base Rent payable hereunder shall be allocated evenly over the Premises based upon the rentable square footage of the Premises). Tenant shall have no obligation to remove any Subtenant, licensee or concessionaire with respect to which Landlord has entered into a non-disturbance agreement providing such Subtenant, licensee or concessionaire a right to possession following the expiration or earlier termination of this Lease.

## ARTICLE 2 CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS AND FIXTURES

**2.1 Development Program.** Tenant shall invest no less than One Million Dollars (\$1,000,000) (the "**Threshold Expenditure Requirement**") in hard/out-of-pocket costs for improvements to the Premises (such improvements to include building facades, exterior common areas and hardscape) in accordance with the development plan attached hereto as Exhibit "C" (the "**Development Plan**"). For purposes of determining satisfaction of the foregoing Threshold Expenditure Requirement, such improvements shall not include any deferred maintenance items or current structural deficiencies unrelated to the Development Plan. Tenant shall use commercially reasonable efforts to obtain all planning, zoning, entitlement, and Coastal Commission entitlement approvals (excluding building and other like permits) within three (3) years following the Lease Commencement Date; provided that such period shall be extended (up

to a maximum of two (2) additional years) due to delays caused by any "Force Majeure" events (as defined in Section 13.3 below) beyond the reasonable control of Tenant. If Tenant fails to obtain all necessary approvals within such three (3) year period (as extended by Force Majeure events (up to a maximum of two (2) additional years)), then Tenant shall have an additional ninety (90) calendar days to obtain, and if not possible then to notify Landlord when Tenant reasonably believes it will obtain, such approvals. Within twelve (12) months following Tenant's receipt of all required approvals referenced herein, Tenant shall prepare detailed drawings suitable for construction and submit such drawings for building permits. Tenant shall commence the Development Plan within one hundred twenty (120) calendar days following Tenant's receipt of all necessary building permits.

**2.2 Landlord Improvements.** Landlord shall build, or cause to be built, the improvements listed on Exhibit "D" attached hereto (the "**Landlord Improvements**"). The Landlord Improvements shall include, but not be limited to, updated pier streetscape (e.g., paving, lighting, benches, signage, trash cans, landscaping, etc.) and Landlord's best efforts to construct a temporary pavilion area to the south of the Premises (subject to Coastal Commission and any other required third party approvals). Landlord shall complete such Improvements prior to Tenant's completion of the Development Plan improvements to be constructed by Tenant pursuant to Section 2.1 above.

**2.3 Capital Improvement Fund.** Upon Tenant's completion of the Development Plan improvements, Tenant shall deposit Thirty Thousand Dollars (\$30,000) into a capital improvement fund (the "**Capital Improvement Fund**"). The Capital Improvement Fund and all accumulated interest shall be maintained in an impound account by Tenant. Tenant shall furnish to Landlord an annual accounting statement of the Capital Improvement Fund on or before March 1<sup>st</sup> of each calendar year. Tenant shall be permitted to use the Capital Improvement Fund for capital expenditures upon prior approval of Landlord's City Manager and/or designee, such approval not to be unreasonably withheld or delayed. Further, in the event Landlord provides Tenant with notice of any capital improvements which are required with respect to an improvement which (i) Tenant has the right and obligation to maintain under this Lease, (ii) has exceeded its useful life, and (iii) relates to an exterior element or structural component of the Premises, and if Tenant fails to complete such improvement within forty-five (45) calendar days following receipt of such notice, then Landlord shall have the right to draw upon the Capital Improvement Fund for the purpose of completing any such necessary capital improvements; provided that Landlord shall not draw upon the Capital Improvement Fund more than once in any twelve (12) month period, and any work on the Premises by or at the direction of Landlord shall be subject to the rights of all Subtenants under their Subleases and shall be performed in a manner that avoids any unreasonable disruption of or interference with any Subtenants. All funds expended from the Capital Improvement Fund shall be fully replenished by Tenant within thirty (30) calendar days following any such withdrawal. The Capital Improvement Fund shall be closed and terminated as provided in Section 1.7 upon Landlord's election to require removal of improvements upon the expiration of this Lease.

**2.4 Renovation Fund.** Commencing upon the first anniversary of the Tenant's completion of the Development Plan improvements and continuing upon each anniversary thereafter, Tenant shall deposit an amount equal to one percent (1%) of Tenant's first \$1,000,000 in Gross Income for the prior year *plus* one-half of one percent (.5%) of all other Gross Income

in excess of \$1,000,000 for the prior year into a renovation fund (the "**Renovation Fund**"). The Renovation Fund and all accumulated interest shall be maintained in an impound account by Tenant. Tenant shall furnish to Landlord an annual accounting statement of the Renovation Fund on or before March 1<sup>st</sup> of each calendar year. The Renovation Fund shall be used to provide funds for renovation, enhancement, and construction that is necessary or desirable in the reasonable judgment of Tenant, subject to Landlord's prior approval, which shall not be unreasonably withheld. The purpose of the Renovation Fund is to renovate and upgrade the condition and appearance of the Improvements to a quality that is reasonably comparable to newer projects or renovated projects in the competitive marketplace containing similar types of uses for the Premises, in this case, retail and restaurant facilities. Renovation utilizing the Renovation Fund shall occur between the twenty-fifth (25<sup>th</sup>) and thirtieth (30<sup>th</sup>) year of the Lease Term in accordance with a "mid-term" renovation plan and budget to be agreed upon between Landlord's City Manager and/or designee and Tenant. The Renovation Fund shall terminate following completion of the "mid-term" renovation plan contemplated by this Section 2.4 and no further contributions to the Renovation Fund shall thereafter be required.

**2.5 Right to Inspect, Audit and Dispute Resolution.** Landlord shall, within five (5) years after receipt of the statements required to be delivered by Tenant pursuant to Sections 2.3 and 2.4 above, be entitled to inspect and audit, on reasonable written notice and at the place where such records are maintained within the County of Los Angeles, at Landlord's sole cost and expense and not more than once in any calendar year, and to make and retain copies of, all of Tenant's books, records and accounts relevant to the Capital Improvement Fund and Renovation Fund (collectively the "Funds"). Such audit shall be conducted either by Landlord or by an auditor designated by Landlord. If Landlord determines as a result of such audit that there has been deficiency and/or overpayment in the funding of either Fund then Landlord shall provide written notice to Tenant detailing the deficiency and/or overpayment. Tenant shall have thirty (30) calendar days to object to the calculation of any such deficiency by delivering a reasonably detailed written response to Landlord describing its objection(s). If the parties are unable to obtain a final resolution within thirty (30) calendar days of receipt of Tenant's objections, a mutually agreeable accounting firm having no prior material relationship with either party (the "**Accounting Firm**") shall be retained to resolve any remaining objections. The determination of the Accounting Firm shall be set forth in writing and will be conclusive and binding among the parties. In the event the parties submit any unresolved objections to such Accounting Firm as provided herein, the non-prevailing party, as determined by the Accounting Firm will be responsible for any fees and expenses of the Accounting Firm. Any deficiency in the Funds shall become immediately due and payable and bear interest at the lesser of eight percent (8%) per annum or the maximum applicable rate per annum allowed by law from the date such underpayment should have been made until the date such payment is made; provided, that, in any event, such interest shall not begin accruing more than one (1) year prior to the date of the audit identifying such underpayment (i.e., the period of retroactive interest shall not exceed one (1) year). Any overpayment identified by such audit shall be promptly returned to Tenant without interest thereon.

**2.6 Compliance with Laws.** Tenant shall cause the Improvements and Fixtures constructed and installed by Tenant to be constructed and installed in accordance with applicable Laws. Upon the written request of Landlord, Tenant shall furnish Landlord with copies of all certificates and approvals relating to any Work performed by or on behalf of Tenant that may be

required by applicable Law or by underwriters and insurers or by any Mortgagee in connection with the construction and installation of the Improvements and Fixtures, which copies Tenant shall certify as true, correct and complete to Tenant's actual knowledge.

**2.7 Copies of Development Documents.** Within two (2) months after substantial completion of any discrete Improvement project (including, without limitation, the improvements described on Exhibit "C" attached), Tenant shall furnish Landlord with a complete set of Development Documents in Tenant's possession, including (a) permanent, transparent reproductions of the final working drawings, including revisions (if then available) made during construction, and (b) a complete set of specifications, including revisions made during construction, for all Work done on or to the Premises in connection with such Improvement project.

**2.8 Tenant's Obligation to Construct Improvements.** Tenant shall bear all costs and expenses associated with the design, construction and installation of all Improvements and Fixtures constructed or installed by Tenant, which costs and expenses include, without limitation: (i) utility hook-up and connection fees and all distribution facilities, conduits, pipelines and cables required to distribute utilities and amenities to or within the Premises; (ii) all design, engineering, financing and construction costs; (iii) all costs, fees and expenses incurred in processing and obtaining permits and entitlements; (iv) all environmental approvals, all subdivision approvals, use permits or variances, and all grading, building and like permits required to construct and occupy the Improvements; and (v) all Taxes and Assessments.

**2.9 Landlord's Cooperation.** Provided that Landlord shall not incur any direct or indirect liability or obligation, Landlord will cooperate with Tenant (and Landlord shall execute applications, certificates and like documents) as shall reasonably be required in Landlord's capacity as owner of the Leased Land to enable and facilitate Tenant's filing for and receipt of all building permits, licenses, variances, permissions and consents necessary to construct, install and operate the Improvements and Fixtures. Nothing in this Section 2.9 shall require Landlord, in its capacity as a governing body, to approve, consent to or otherwise grant any permit or entitlement which may be necessary or useful in conjunction with the Development Plan so long as Landlord is acting in good faith and so long as such refusal and/or denial constitutes a discretionary decision in the ordinary course of Landlord's governing obligations.

**2.10 Development Plan Deadline / Modification of Lease Term.**

(a) **Failure to Obtain Approvals or Complete Construction.** In the event Tenant (i) fails to obtain all necessary planning, zoning, entitlement, and Coastal Commission approvals along with evidence of adequate financing for the Development Plan within the timeframe set forth in Section 2.1 above, or (ii) fails to execute and complete all work in substantial compliance with the Development Plan (as it may be modified by mutual agreement of Tenant, Landlord and any other applicable governmental agencies granting such approvals) within five (5) years following the Lease Commencement Date, as such date may be extended for Force Majeure events (provided such Force Majeure extension shall not exceed two (2) years), the Term of this Lease, at Landlord's or Tenant's option and sole discretion exercised within six (6) months after the occurrence of such event, shall, except as otherwise provided in Section 2.10(b) below, be modified to expire on September 27, 2036. Subject to the procedures



for exercising an option set forth in Section 1.4 above, in the event the Term of this Lease is modified pursuant to this Section 2.10(a), Tenant shall also have the option to extend the Term of this Lease for one (1) additional five (5) year option period. Tenant shall deliver written notice of such election to Landlord at least twelve (12) months but not more than forty-eight (48) months prior to the date that the option period would commence. If proper notification of the exercise of an option is not given pursuant to Section 1.4, such option shall automatically expire; provided, that, in connection with any exercise of the option Landlord shall notify Tenant of any objection to or deficiency in the Tenant's exercise of such option as provided in Section 1.4 above, and the provisions of such Section shall likewise apply to any exercise of the option set forth in this Section 2.10. Except as expressly provided in Section 2.10(b) below, in the event the Term of this Lease is modified pursuant to this Section 2.10 due to the denial of any necessary consent, permit or approval required to proceed with the Development Plan, Landlord shall be required to reimburse Tenant for the Execution Fee, less the amount of Ten Thousand Dollars (\$10,000), which \$10,000 amount shall be retained by Landlord for reimbursement of costs.

(b) **Failure to Obtain City Approval.** Notwithstanding anything in Section 2.10(a) above to the contrary, in the event that the entitlements required for Tenant to proceed with the Development Plan are not approved by the Landlord (either initially or after a modified Coastal Commission approval which requires the City's concurrence or approval); then, at Landlord's or Tenant's option and sole discretion exercised within six (6) months after the occurrence of such event, (i) Landlord shall be required to reimburse Tenant for the Execution Fee in full, (ii) Landlord shall also be required to reimburse Tenant for the Tenant's documented out-of-pocket expenses for legal, accounting, architectural, engineering, consulting, investigative, and construction services relating to the Development Plan as well as its out of pocket expenses relating to application and permit fees, investigative fees and entitlement fees relating to the Development Plan; provided such reimbursement under (i) and (ii) above shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) (comprised of a combination of the Execution Fee and reimbursement of the Tenant costs and expenses described above), and (iii) the Term of this Lease shall be modified to expire on September 27, 2043; provided, that, subject to the procedures for exercising an option set forth in Section 1.4 above, in the event the Term of this Lease is modified pursuant to this Section 2.10(b), Tenant shall also have the option to extend the Term of this Lease for one (1) additional five (5) year option period, subject to the same general provisions concerning manner of exercise and notice set forth in Section 2.10(a) above. For purposes of applying this Section 2.10(b), it shall be conclusively determined that the City has not approved the entitlements required by Tenant if Tenant proposes a project in substantial conformance with the requirements set forth in Exhibit "C" attached hereto and the City disapproves those entitlements. For purposes of this Section 2.10(b), in the event the City conditionally approves the Tenant's proposed project, such conditional approval shall not be deemed a failure of Landlord to approve Tenant's entitlements under this Section.

(c) **Manner of Reimbursement; Modification of Other Lease Terms.** Any reimbursement or payment to Tenant provided for in the preceding Sections 2.10(a) or (b) shall be in the form of rent credits under this Lease. Such rent credits shall be taken by application of such credits to the next Rents due from Tenant to Landlord under the terms of this Lease following occurrence of the events resulting in such reimbursement or payment obligation. In

addition, if the Term of this Lease is modified pursuant to Section 2.10 (a) or (b), then (i) Sections 1.7(b) [Removal of Improvements Upon Termination], 2.1 [Tenant Development Program], 2.3 [Capital Improvement Fund], 2.4 [Renovation Fund], 2.7 [Copies of Development Documents] (except that such Section shall remain operative with respect to the Development Plan improvements, if any, in fact completed), 3.1(c) [Lease Execution Fee], 5.1(c) [Structural Review], Exhibit "C" [Tenant Development Plan], and Section C of Exhibit "E" [Appreciation Rent] of this Lease shall be cancelled and of no further force and effect, and (ii) the Security Deposit required pursuant to Section 3.1(b) shall be reduced to Seven Thousand Five Hundred Dollars (\$7,500).

### ARTICLE 3 RENT

#### 3.1 Base Rent.

(a) **Monthly Payment of Base Rent.** Subject to the provisions of Section 3.2 below, base rent ("Base Rent") during the Term shall be a monthly amount equal to Seven Thousand One Hundred and Seventy-Seven and 91/100 Dollars (\$7,177.91). Base Rent shall be due and payable, in advance, on the first (1<sup>st</sup>) day of each month of the Term of this Lease, provided, however, if the Lease Commencement Date is not the first day of the month, the first payment of Base Rent shall be due on the first date of the Term and shall be prorated for that partial month.

(b) **Security Deposit.** On or prior to the Lease Commencement Date, Tenant shall deposit with Landlord a security deposit in the amount of Twenty-One Thousand Five Hundred and Thirty Four Dollars (\$ 21,534.00 ) (the "**Security Deposit**"), which is equal to three (3) months' Base Rent, as security for Tenant's faithful performance of its obligations under this Lease. If Tenant fails to pay Rent, or otherwise defaults under this Lease, Landlord may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Landlord and/or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord uses or applies all or any portion of the Security Deposit, Tenant shall within thirty (30) calendar days after written request deposit monies with Landlord sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the Term of this Lease, Tenant shall, upon written request from Landlord, deposit additional monies with Landlord so that the total amount of the Security Deposit shall be equal to the Base Rent. Within ninety (90) calendar days after the expiration or termination of this Lease, Landlord shall return that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Tenant under this Lease.

(c) **Lease Execution Fee.** Concurrently with the execution of this Lease, Tenant shall deliver to Landlord a one-time fee ("**Execution Fee**") in the amount of Sixty Thousand Dollars (\$60,000). Alternatively, Tenant may opt to make six (6) annual installment payments of \$10,000 each on the Execution Fee beginning on the Lease Commencement Date and continuing through the fifth (5<sup>th</sup>) anniversary thereof. If Tenant chooses to make installment

payments, all deferred payments shall bear interest at a rate of five percent (5%) per annum from and after the Lease Commencement Date until the date paid.

(d) **No Abatement.** Tenant shall cause payment of Base Rent and all other Rent or charges, as the same may be adjusted from time to time, to be received by Landlord in lawful money of the United States, and, except as expressly provided in this Lease, without abatement, offset or deduction, on or before the date on which it is due under the terms of this Lease. Base Rent and all other Rent and charges for any period during the Term which is less than one (1) calendar month shall be prorated based upon the actual number of days of the calendar month involved. Payment of Base Rent and other Rent and charges shall be made to Landlord at its address stated herein or to such other persons or at such other address as Landlord may from time to time designate in writing to Tenant.

**3.2 Adjustments to Base Rent.** The Base Rent shall be increased (but not decreased) on the first day of the month following the fifth anniversary of the Lease Commencement Date and on the date that is every five years thereafter (i.e., on the first day of the month following the tenth anniversary, the fifteenth anniversary, the twentieth anniversary, and so forth through the fiftieth anniversary of the Lease Commencement Date and continuing every five years for any option period set forth in Section 1.4) (each such first day of a month being referred to as an "Adjustment Date") as follows: The new monthly Base Rent for each month during the five-year period commencing with the relevant Adjustment Date shall be seventy-five percent (75%) of the average total monthly Rent (inclusive of all Base Rent and Percentage Rent but exclusive of any Appreciation Rent) payable by Tenant during the preceding 5-year period. For example only, if the total Rent (inclusive of all Base Rent and Percentage Rent but exclusive of any Appreciation Rent) payable by Tenant during the preceding 5-year period is \$6,000,000, then the new Base Rent as of the Adjustment Date would be \$75,000:  $.75 \times [\$6,000,000 / 60] = \$75,000$ .

**3.3 Additional Rent.** In addition to Base Rent, Tenant shall pay or cause to be paid when due, as Additional Rent, throughout the Term all other additional sums described on Exhibit "E" as Participation Rent which Tenant is obligated to pay pursuant to the provisions of this Lease. Additional Rent shall constitute rent payable hereunder with the same effect as if such rent were part of the Base Rent and, in the event of the nonpayment by Tenant of any such Additional Rent, Landlord shall have the same rights and remedies in respect thereof as Landlord may have in respect of Base Rent.

**3.4 Triple Net Lease; Reimbursement of Costs; No Rent Abatement or Reduction.** The Rent has been established on the assumption that Landlord will not have to pay any costs or incur any liabilities or obligations of any kind relating to or arising out of the Tenant's improvement of or operation on the Premises during the Term (except for the provision of ordinary and customary municipal services arising from Landlord's role as a governing body and except as expressly set forth in this Lease). Accordingly, except as otherwise specifically set forth herein, Tenant shall promptly pay during the Term all reasonable out-of-pocket third party legal and appraisal expenses incurred by Landlord due to assignment, encumbrance, estoppel and appraisal resulting from Tenant's request for consent or approval. Reimbursement shall be up to a maximum amount to be reasonably determined by the parties before Landlord incurs expenses for the particular event. Landlord shall utilize its best efforts to minimize such expenses, including, if Tenant shall so request, utilization of in-house legal and other services rather than

outside advisors or consultants to the extent such in-house resources are available. Tenant shall not be required to reimburse Landlord's costs related to the negotiation and preparation of this Lease, including all legal, consulting and appraisal costs related thereto, or any other costs incurred by Landlord prior to the Lease Commencement Date. Finally, except as expressly provided in this Lease, Tenant shall not be entitled to any abatement or reduction of Rent.

## **ARTICLE 4 USE AND COMPLIANCE WITH LAWS**

### **4.1     Use of Premises.**

(a)     **Compliance with Applicable Laws.** The Premises may be used solely for those uses not expressly prohibited by applicable Laws, including any zoning and planning ordinances.

(b)     **Limitations on Uses.** Tenant agrees that with respect to any subleases or other occupancy or operating agreements ("**Subleases**") entered into covering any portion of the Premises from and after the Lease Commencement Date, Tenant shall at all times exercise best efforts, and at no cost or expense to Landlord, to cause such subtenants, licensees or concessionaires ("**Subtenants**") to use such portions of the Premises in accordance with the limitations set forth on Exhibit "F" ("**Limitation of Uses**").

(c)     **Use of Tidelands.** If at any time during the Term, or any extension thereof, the terms of this Lease are or become inconsistent with the continuation of the trust under which the Leased Land or any portion thereof are held by Landlord pursuant to the Tidelands Grant, Landlord and Tenant shall use their best efforts to modify the Lease and/or the tenancy contemplated hereunder to correct, resolve, or eliminate such inconsistencies, and if they cannot, then Landlord shall have the right to terminate this Lease upon giving six (6) months written notice to Tenant. Upon such termination, Tenant shall be entitled to the fair market value of the Leasehold Estate, assuming for the purpose of such value that the improvements are capable of being used on the Premises. The value of such Leasehold Estate shall be determined in accordance with the procedures set forth in Section 11.4(c) and shall be based on Tenant's loss of use over the portion of the Term which would have remained but for termination pursuant to this Section 4.1(c).

**4.2     Changes in Use.** If Tenant or any person claiming under Tenant shall change the use of the Leased Land or the Premises in a manner that violates Section 4.1, at any time during the Term, without the prior written consent of Landlord, such change in use shall constitute a material breach of this Lease and, subject to Article 12 regarding notice and opportunity to cure such breach, Landlord may terminate this Lease as provided in Article 12. Upon any such termination, all right, title and interest to the Premises, including the Improvements and Fixtures, shall vest solely in Landlord, without further cost or expense to Landlord, subject only to the rights of any Senior Mortgagee and other Mortgagees. Tenant agrees to execute all documents, including deeds, reasonably necessary to effect the rights of Landlord hereunder, including the right to have all right, title and interest to the Premises vest solely in Landlord.

**4.3 Waste; Nuisance.** Tenant shall not use, or permit to be used, the Premises, or any part thereof, in any manner which constitutes a waste, nuisance or unreasonable annoyance or which violates any Laws.

**4.4 Environmental Requirements.** Tenant shall not use or permit to be used any "Hazardous Substance" in the construction, operation, maintenance or use of the Premises in violation of any applicable Law, rule, regulation, code or ordinance, including, without limitation, any storage, handling, release, emission, discharge, generation, abatement, disposition or transportation of any Hazardous Substance to, from, on or otherwise relating to the Premises. Tenant shall, at its sole cost and expense, comply, and shall expend commercially reasonable efforts to cause each of its employees, agents, contractors, subtenants, invitees and customers to comply, with all applicable Laws, rules, regulations, codes and ordinances relating to any Hazardous Substance, including, without limitation, obtaining and filing all applicable notices, permits, licenses and similar authorizations. Tenant shall not use or store or permit to be used or stored on or in the Premises any Hazardous Substance in violation of any applicable Law.

**4.5 Environmental Remediation and Indemnification.**

(a) **Hazardous Substance.** If Tenant discovers any Hazardous Substance on the Premises, the presence of which violates any applicable Laws, Tenant shall immediately undertake, at Tenant's sole cost and expense, to remediate the presence of such Hazardous Substance in compliance with applicable Laws to the extent necessary to permit the construction, operation, maintenance and use of the Premises. Notwithstanding the foregoing, Tenant shall not be obligated to remediate the presence of any Hazardous Substance placed on the Premises by Landlord or any agent, employee, contractor or representative of Landlord (which Hazardous Substance shall be remediated by Landlord at its sole expense as required by applicable Laws), or any Hazardous Substance which has migrated onto the Premises from an adjacent property and which is the legal responsibility of such adjacent owner to remediate.

(b) **Indemnification.** Tenant shall indemnify, defend and hold the Landlord Indemnified Parties harmless from and against any and all third-party Claims against Landlord arising directly or indirectly from any breach of this Article 4 by Tenant. The foregoing indemnity includes, without limitation, remediation and disposal of any Hazardous Substance as and to the extent required by the foregoing provisions, and any Landlord Indemnified Party's reasonable consultants' fees and charges, reasonable attorneys' fees and charges, reasonable investigation costs and expenses and other similar costs and expenses incurred by any Landlord Indemnified Party. The obligations of Tenant under this Section 4.5 accruing prior to the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.

**4.6 Evidence of Compliance.** Tenant shall deliver to Landlord, upon Landlord's reasonable request, and at Tenant's sole cost and expense, copies of documents and such other evidence as are normally and customarily issued by governmental authorities with jurisdiction over the Premises to demonstrate proof of compliance with all Laws pertaining to permits and authorizations relating to the Premises generally and to the Improvements specifically.

**4.7 Right to Contest.** At Tenant's sole cost and expense, Tenant, by appropriate legal proceedings brought in good faith and diligently prosecuted in its name, may contest the validity or applicability to the Premises of any Laws, provided, however, that any such contest shall be maintained without cost to Landlord, and Tenant shall indemnify, defend and hold the Landlord Indemnified Parties and the Premises harmless from and against any and all Claims arising or resulting from Tenant's failure to observe or comply with the contested Laws during the contest. If required in order for Tenant to bring or maintain any such contest, Landlord shall join in any such action or proceeding as the owner of the Premises subject to the indemnification and cost provisions set forth above.

## **ARTICLE 5 MAINTENANCE AND OPERATION**

### **5.1 Maintenance.**

(a) **Tenant's Responsibility.** Subject to the provisions of Article 8 and 11, at all times during the Term, Tenant shall, at its sole cost and expense, keep and maintain all parts of the Premises in first-class order, condition and repair, reasonable wear and tear excepted. Such obligation shall include, without limitation, the obligation to maintain all facilities on or in the Premises in a clean, sanitary, neat, tidy, orderly and attractive condition. It is the intention of the parties hereto that, except as expressly set forth in Section 5.1(d) below, Landlord have no obligation during the Term, in any manner whatsoever, to maintain the Premises, the Improvements located thereon, or the Fixtures therein, whether structural or non-structural, all of which obligations are intended to be that of Tenant.

(b) **Tenant's Rights to Alter Premises.** Nothing in this Section 5.1 defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Lease for Tenant to alter, modify, demolish, remove, repair or replace any portion of the Premises.

(c) **Structural Review.** On or before the seventh (7<sup>th</sup>) anniversary of the Lease Commencement Date and every seven (7) years thereafter during the Term of the Lease, Tenant shall contract with a reputable licensed and insured structural engineer to perform a complete structural review of the Premises and to determine the viability of the Improvements to perform throughout the remaining Lease Term. Should the review contain tasks necessary to maintain the structural integrity of the Improvements, Tenant shall forthwith begin said improvements (which shall qualify for use of the Capital Improvement Fund as an approved capital expenditure).

(d) **Landlord's Responsibility.** Landlord covenants and agrees to keep in proper maintenance and repair and, if necessary, to replace all pilings, bracings, stringers, decking, and other public improvements on said pier, and to make all necessary and appropriate structural repairs to and, if necessary, to replace the exterior walls, ceiling, and floor of the concrete basement in the Premises. In the event of any damage to or destruction of such improvements to be maintained by Landlord, or in the event Landlord's failure to properly maintain such improvements renders them unusable or inadequate, Tenant's obligation under Article 8 to repair or restore any Tenant improvements shall be suspended until Landlord has completed the required work of repair, replacement or improvement, but only to the extent such

damage, destruction or failure interferes with Tenant's performance of its obligations under Article 8. If Landlord fails to perform such work after written notice from Tenant, then Tenant may bring an arbitration proceeding pursuant to Section 17.4 below, and if it is determined that Landlord is in breach of its obligations hereunder (i) Tenant shall be entitled to recover its past damages resulting therefrom as determined by the arbitrator, including, without limitation, the right to offset any such damages incurred against any Rent otherwise payable by Tenant under the Lease, and (ii) to the extent such ongoing damages are established or provided for by such arbitration, Tenant shall thereafter be entitled to offset such on-going damages against any further Rent payments under this Lease (without reduction or credit to Tenant's damages under (i) above).

## **5.2 Requirements of Governmental Agencies.**

**(a) Tenant's Responsibility.** At all times during the Term, Tenant, at Tenant's sole cost and expense, shall:

**(i)** Make all alterations, additions or repairs to the Premises and every part thereof, required by all Laws now or hereafter in effect; and

**(ii)** Indemnify, defend and hold the Landlord Indemnified Parties and the Premises harmless from and against any and all Claims arising from or relating to Tenant's failure to comply with and perform the requirements of this Section 5.2.

**(b) Tenant's Right to Contest.** Notwithstanding the provisions of subparagraph (a) above, Tenant may contest any and all such requirements provided that Tenant shall first post with Landlord a bond or other security, in form and amount reasonably acceptable to Landlord, to secure compliance with all such requirements and the obligations of Tenant under subparagraph (a) above if such requirements are determined to be applicable and enforceable.

## **ARTICLE 6 TAXES AND ASSESSMENTS**

**6.1 Taxes.** Tenant shall pay all Taxes and Assessments during the Term of this Lease at least ten (10) calendar days prior to delinquency. If the right is given to pay any of the Taxes or Assessments which Tenant is herein obligated to pay either in one sum or in installments, Tenant may elect either mode of payment.

**6.2 Indemnification.** Tenant shall indemnify, defend and hold the Landlord Indemnified Parties harmless from and against any and all Claims resulting from Tenant's failure to pay all such Taxes and Assessments. Subject to the provisions of Section 6.3 below, Tenant shall prevent any such Tax or Assessment from becoming a delinquency lien upon the Premises. Landlord shall in no way be obligated to pay such delinquent Taxes or Assessments, but Tenant authorizes Landlord to make such payment, and, if Landlord makes such payment, it will become immediately due and payable to Landlord by Tenant and shall bear interest at the rate of ten percent (10%) per annum, or the maximum rate permitted by law, whichever rate is lower, from the date of payment by Landlord to the date of repayment by Tenant.

**6.3 Tenant's Right to Contest.** Tenant shall have the right, at its sole cost and expense, to contest the amount or validity of any Tax or Assessment by appropriate proceedings diligently conducted in good faith. As a condition precedent to Tenant's contesting any Tax or Assessment, Tenant shall (i) comply with all laws, orders, rules and regulations respecting such contest, (ii) give Landlord prior written notice of Tenant's intent to so contest said amount or validity; and (iii) in order to protect Landlord from any sale or foreclosure against the Premises or any part thereof, provide a good and sufficient surety bond or other security deemed reasonably acceptable by Landlord in the amount of such Tax or Assessment plus estimated penalties and interest which may be imposed. Tenant shall bear any and all costs, liabilities or damages, including reasonable attorneys' fees and costs, arising out of such contest. Nothing in this Section relieves, modifies, or extends Tenant's covenant to pay any such Tax or Assessment at the time and in the manner provided in this Article 6 in the event such Tax or Assessment is determined to be due following such contest.

**6.4 Landlord's Cooperation in Tenant's Contest.** Provided Landlord suffers no unreimbursed out-of-pocket cost or liability in participating in such proceeding, Landlord shall reasonably cooperate (and Landlord shall execute applications, certificates and like documents) with Tenant in any proceedings brought by Tenant to contest the validity or the amount of any Taxes or Assessments or to recover any Taxes or Assessments paid by Tenant. If the provisions of any Law at the time in effect shall require that such proceedings be brought by or in the name of Landlord, then, provided Landlord incurs no cost or liability in doing so, Landlord shall join in any such proceedings or permit the same to be brought in its name. If any such proceedings shall be brought by Tenant, Tenant shall defend, indemnify and hold the Landlord Indemnified Parties harmless from and against any and all Claims arising from the conduct of such proceedings. Landlord shall not object to Tenant's right to contest any Taxes and Assessments solely because the governmental revenues received by Landlord from such Taxes and Assessments may be adversely affected.

**6.5 Prorations.** Taxes and Assessments shall be prorated at the beginning and end of the Term to reflect periods during tax fiscal years at the commencement and expiration of this Lease for which said taxes are paid during which this Lease is not in effect. All such Taxes and Assessments shall be prorated and allocated between Landlord and Tenant to reflect the dates of commencement and termination.

## **ARTICLE 7 UTILITIES**

**7.1 Construction of Utilities; Costs.** Tenant shall cause to be constructed all utilities necessary to serve the Premises. All costs associated with bringing utilities to the Premises, including, without limitation, related professional, engineering and consultant fees, service charges, meters, and the costs of connections, including, without limitation, any hook-up fees assessed by any utility company, water district and/or government agency, shall be treated as a cost of construction of the Improvements and Fixtures, and shall be paid by Tenant.

**7.2 Contracts with Public Utility.** Tenant shall not enter into any contract or agreement binding on Landlord or Landlord's Interest with any government agency, special district or public utility with reference to sewer, water, gas, electricity, telephone, storm drain



and other utility lines, street improvements (including landscaping), street lighting, utility facilities, improvements and/or connections, lines, pipes, distribution systems or easements and the like, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Copies of such executed contracts or agreements shall be provided to Landlord promptly upon execution. Notwithstanding the foregoing, neither Tenant nor any subtenant shall be prohibited from purchasing electricity from an on-site power station (if applicable).

**7.3 Utility Easements.** Tenant shall have the right to grant to others in the future nonexclusive utility easements under or through the Leased Land for the purpose of facilitating the development of the Project. All such easements shall be underground, with the right, however, to reasonable surface access for maintenance and repair. Any interference arising as a result of construction of such utility systems and facilities shall be temporary, and all work on the Premises shall proceed expeditiously. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, including but not limited to pavement, curbs, landscaping and sidewalks, Tenant shall repair the same, or cause the same to be repaired, at no cost or expense to Landlord.

Tenant shall not enter into any reciprocal easement agreements, covenants, conditions and restrictions, operating covenants or other similar types of agreements relating to the Premises which would survive the expiration or earlier termination of this Lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord shall respond in writing to Tenant's request for consent as quickly as practicable and in no event later than within forty-five (45) calendar days after Landlord's receipt thereof. The failure of Landlord to respond in writing to Tenant's request within said forty-five (45) day period shall be deemed to constitute Landlord's approval of the same; provided, however, that in the event Landlord reasonably requests additional information and/or documentation from Tenant regarding Tenant's request, said forty-five (45) day period shall be extended by the amount of time it takes Tenant to provide such information and/or documentation to Landlord. In the event Landlord disapproves Tenant's request, such disapproval shall be accompanied by a detailed explanation of the reasons underlying such disapproval. Any dispute between Landlord and Tenant as to whether Landlord unreasonably withheld its consent shall be subject to the arbitration provisions set forth in Section 17.4 of this Lease.

## **ARTICLE 8**

### **ALTERATION, DAMAGE OR DESTRUCTION**

**8.1 Alteration of Improvements.** Except as may be required by applicable Law, Tenant may not alter or modify the structural components of the Premises in a manner that is visible from the exterior of the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Within twenty (20) calendar days of such submittal by Tenant, Landlord shall provide its consent or a detailed written explanation of why its consent has been denied or withheld. If Landlord fails to provide such consent (or detailed explanation for its denial) within said period then Tenant may provide a second written notice of such requested approval and if Landlord fails to either approve or disapprove (with explanation) such proposed alteration within ten (10) additional calendar days after delivery of such second notice, then such proposed alteration shall be deemed approved; provided that, if Landlord

deems it necessary to meet with the City Council with respect to any proposed alteration or modification and if the thirty (30) calendar day period described above (20 calendar day initial notice, and 10 calendar day additional notice) did not allow the opportunity to Landlord to do so because of the absence of any Council meeting within that period, then Landlord shall have up to fifteen (15) additional calendar days to schedule such matter for review by the City Council. Any such structural alteration or modification that Tenant desires to make and which requires the prior consent of Landlord shall be presented to Landlord in written form with the proposed detailed plans. Any dispute between Landlord and Tenant as to whether Landlord unreasonably withheld its consent shall be subject to the arbitration provisions set forth in Section 17.4 of this Lease. All consents given by Landlord shall be conditioned upon (i) Tenant acquiring all applicable permits required by governmental authorities, (ii) the furnishing of copies of such permits prior to the commencement of any work, together with a copy of the plans and specifications for the alteration, to Landlord (except to the extent that, with respect to any permits, Tenant is not aware of such requirement prior to commencement of the work), and (iii) the compliance by Tenant with all conditions of said permits in a prompt and expeditious manner. Any alteration by Tenant during the Term shall be done in a good and workmanlike manner, with good and sufficient materials, and in compliance with all Laws. Tenant shall promptly upon completion thereof furnish Landlord with as-built plans and specifications therefor.

## **8.2 Repairs and Rebuilding.**

(a) If the Premises are damaged or destroyed during the Term, and such damage or destruction is an Insured Loss, then, except as provided in subsection (c) below, Tenant shall, at its sole cost and expense, restore the Premises to substantially the same condition they were in (subject to then applicable Laws) immediately prior to such damage or destruction. In the event of such an Insured Loss, Tenant shall be entitled to a proportionate reduction in Base Rent from the date of said destruction and continuing until the completion of such repair, construction, reconstruction or restoration. Such proportionate reduction shall be based upon the extent to which the making of such repair, construction, reconstruction or restoration shall interfere with the business conducted by Tenant on the Premises.

(b) If the Premises are damaged or destroyed during the Term, and such damage or destruction is not an Insured Loss, and the cost of restoration is One Million Dollars (\$1,000,000) or less, then Tenant shall, at its sole cost and expense, restore the Premises to substantially the same condition they were in (subject to then applicable Laws) immediately prior to such damage or destruction.

(c) If the Premises are damaged or destroyed during the Term, and (i) such damage or destruction is not an Insured Loss, and the cost of restoration is more than One Million Dollars (\$1,000,000) or (ii) such damage or destruction is an Insured Loss but the proceeds available for reconstruction (which are not applied by a Mortgagee to repayment of its loan) are insufficient to fund the costs of reconstructing the improvements and such shortfall is greater than One Million Dollars (\$1,000,000) or (iii) such damage or destruction, regardless of whether or not it is an Insured Loss, occurs during the last ten years of the then existing Term of this Lease, then Tenant may, on written notice to Landlord within ninety (90) calendar days following the date of such damage or destruction, elect to (i) at its sole cost and expense, restore

the Premises to substantially the same condition they were in immediately prior to such damage or destruction (subject to then applicable Laws), or (ii) terminate this Lease and, as and to the extent directed by Landlord, demolish and remove all Improvements, Fixtures and personal property from the Leased Land. Tenant's obligations to so restore the Leased Land shall survive any termination of this Lease.

The completed work of repair, restoration or replacement shall be at least equal in value and quality to the condition of the Improvements or Premises, as the case may be, before the event giving rise to the work. Landlord shall not be required to furnish any services or facilities or to make any repairs of any kind to the Improvements or Premises. The election by Landlord to perform any obligation of Tenant under this Section 8.2 on Tenant's failure or refusal to do so shall not constitute a waiver of any right or remedy for Tenant's breach, and Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of ten percent (10%) per annum, or the maximum rate permitted by law, whichever rate is lower, from the date of incurrence by Landlord to the date of repayment by Tenant.

**8.3 Indemnity.** Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. Tenant shall give Landlord not less than ten (10) calendar days' notice prior to the commencement of any work in excess of One Hundred Thousand Dollars (\$100,000) in, on or about the Premises, and Landlord shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole cost and expense, indemnify, defend and hold Landlord and the Premises harmless from and against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises.

## **ARTICLE 9**

### **INSURANCE, EXONERATION AND INDEMNITY**

**9.1 Liability Insurance.** At all times during the Term, and during any period of continued occupancy of the Premises by Tenant after the Term, Tenant shall, at its sole cost and expense, provide and keep in force (i) workers' compensation insurance policies as required by Law and (ii) commercial general liability insurance policies, in standard form, protecting Landlord, Tenant, Senior Mortgagee and any Mortgagee (and naming Landlord and, if requested by Landlord, Senior Mortgagee and any Mortgagee, as additional insureds) against liability for injury to or death of any person or persons arising out of the ownership, use, occupancy or maintenance of the Premises by Tenant, any subtenant, and their respective employees, agents, contractors, invitees and customers. Such liability insurance shall: be in the amount of not less than Two Million Dollars (\$2,000,000) for injury or death of one person in any accident or occurrence and in the amount of not less than Five Million Dollars (\$5,000,000) for injury to or death of more than one person in any one accident or occurrence; not allow or provide for a "deductible" in excess of Twenty-Five Thousand Dollars (\$25,000), or such greater amount as

Landlord shall approve, such approval not to be unreasonably withheld; and be endorsed to extend coverage to:

- (a) Completed Operations and Products Hazard;
- (b) Explosion, collapse and Underground Property Coverages;
- (c) Blanket Contractual Liability Coverage;
- (d) Broad Form Property Damage;
- (e) Fire Legal Liability Coverage;
- (f) Premises Medical Payments Coverage (in an amount not less than \$10,000 per accident);
- (g) Extended Bodily Injury Coverage (liability from the use of reasonable force for the purpose of protecting persons or property); and
- (h) Personal Injury and Advertising Injury Liability Coverage.

**9.2 Fire and Extended Coverage Insurance.** At all times during the Term, Tenant shall, at its sole cost and expense, provide and keep in force insurance policies, against loss or damage to the Premises, including any alterations and additions made thereto, together with all fixtures, equipment and personal property of Tenant therein, in an amount reasonably estimated to be equal to the full replacement value thereof (without deduction or depreciation and, in any event, in an amount sufficient to prevent Tenant from becoming a coinsurer of any partial loss thereunder, except that a deductible not to exceed Twenty-Five Thousand Dollars (\$25,000), or such greater amount as Landlord shall approve, such approval not to be unreasonably withheld, may be provided), and providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risk) insurance. The full replacement value of such improvements, alterations, additions, fixtures, equipment and personal property shall be determined and evidenced by the certificate of the insurance company or companies issuing such insurance at the time the policy or policies are initially obtained and shall be redetermined once every three (3) years thereafter by the respective issuers of the insurance policies in effect from time to time.

Subject to the rights of the Senior Mortgagee and any Mortgagee, all proceeds of Tenant's fire and extended coverage insurance in excess of \$250,000 shall be held by the insurance carriers or, at Tenant's option exercised by written notice to such insurance carriers and to Landlord, by a trust company, escrow or other institutional intermediary or lender selected by Tenant, and reasonably approved by Landlord, and shall be disbursed by such insurance carriers or trust company or lender in progress payments in reimbursement or payment of the costs incurred in repairing or restoring the Premises. Any excess proceeds shall be disbursed to Tenant. Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that the provisions regarding disbursement of proceeds set forth in this Section 9.2 shall be subject and

subordinate to the provisions regarding disbursement of proceeds set forth in the Senior Mortgage and any Mortgage.

**9.3 Insurance Policies.** All policies of insurance provided for herein shall be issued by financially responsible insurance companies qualified to do business in California (unless approved by Landlord's City Manager, which approval shall not be unreasonably withheld or delayed), with a general policy holder's rating of not less than A, and financial ratings of not less than Class VIII, as rated in the most current available "Best's" Insurance Reports, and shall name Landlord as an additional insured under Section 9.1. Such policies shall further provide that they may not be cancelled by the insurer until at least thirty (30) calendar days after delivery by mail of notice of the proposed cancellation or modification upon all parties named in such policies as insured, unless such cancellation is due to the non-payment of premiums, in which event only ten (10) calendar days' notice shall be required. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with any other coverage which Landlord or Tenant may carry. Tenant may provide all or any portion of the coverage required herein by blanket or umbrella policy so long as such policy (together with any underlying policy) provides at least the minimum coverages required herein. Tenant shall deliver to Landlord copies of the policies for all the insurance required to be carried by Tenant, or certificates evidencing the existence and the amounts of such insurance, or renewals thereof or binders thereto, if applicable, (a) at least ten (10) calendar days prior to the date Tenant is first required to obtain such insurance, (b) at least ten (10) calendar days prior to the expiration of any such policies, and (c) as soon as reasonably possible following any change in the policy limits or coverage of any such policies (but in no event longer than 60 days after Tenant's receipt of written notification of such change and the terms thereof). Tenant shall permit Landlord to inspect the policies of insurance required by this Lease at all reasonable times, and, upon request, Tenant shall provide Landlord with satisfactory evidence that such policies are in full force. All insurance policy limits shall be adjusted every ten (10) years upon Landlord's request on at least one hundred twenty (120) calendar days' prior written notice to Tenant. Any such adjustment shall be commercially reasonable, lawful, consistent with the insurance coverages readily available on commercially reasonable terms and then being customarily obtained on properties of similar size and nature, and shall take effect at the next policy renewal period.

**9.4 Waiver of Subrogation.** To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waives any right to recover against one of the others for (a) damages for injury to or death of persons, (b) damages to property, (c) damage to the Premises or any part thereof, and (d) claims arising by reason of any of the foregoing, but only to the extent that any of the foregoing damages and/or claims are covered (and then only to extent of such coverage) by insurance actually carried by Landlord or Tenant. This provision is intended to waive fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation in any insurer. Each party shall cause each insurance policy obtained by it to permit such waiver of subrogation or to prove that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by such policy. If any insurance policy cannot be obtained permitting or providing for a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurers issuing policies not permitting or providing for a waiver of subrogation, the party undertaking to obtain such insurance shall notify the other party of this fact. The other party shall have a period of

thirty (30) calendar days after receiving the notice either to place the insurance with an insurer that is reasonably satisfactory to the other party and that will carry the insurance permitting or providing for a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If such insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party shall be relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved during the policy period of such insurance (and both parties shall then be relieved from any waiver of rights to recover from each other), but such obligation shall revive (subject to the provisions of this Section) upon the expiration of such policy period.

**9.5 Exoneration and Indemnity.** Tenant agrees, as a material part of the consideration to Landlord under this Lease, that Tenant shall be responsible for events occurring in, upon or about the Premises from the Lease Commencement Date through the expiration or earlier termination of the Term. Except to the extent of Landlord's or its representatives', agents', employees' or officials' negligence or willful misconduct or as otherwise expressly provided in this Lease, Tenant shall indemnify, defend and hold the Landlord Indemnified Parties harmless from and against any and all third-party Claims arising out of, or related to (or allegedly arising out of or related to): (i) the use or occupancy of the Premises by Tenant or any subtenants; (ii) any activity or event occurring in, upon or about the Premises during the Term; (iii) any failure by Tenant to perform any obligation to be performed by Tenant under the terms of this Lease; or (iv) any act, omission, negligence or misconduct of Tenant or any subtenant or any of their employees, agents, contractors, invitees or customers. If any action or proceeding is brought against Landlord by reason of any such Claim, Tenant, upon request of Landlord, shall defend the same by counsel reasonably satisfactory to Landlord at Tenant's sole cost and expense. Except to the extent of Tenant's or any Subtenant's, or any of their respective employees' representatives', agents', contractors', invitees', or customers' negligence or willful misconduct or as otherwise expressly provided in this Lease, Landlord shall indemnify, defend and hold the Tenant Indemnified Parties harmless from and against any and all third-party Claims arising out of, or related to (or allegedly arising out of or related to) any negligent acts or omission or willful misconduct of Landlord or any of its employees, agents, contractors, or representatives. If any action or proceeding is brought against Tenant by reason of any such Claim, Landlord, upon request of Tenant, shall defend the same by counsel reasonably satisfactory to Tenant at Landlord's sole cost and expense.

Tenant, as a material part of the consideration to Landlord under this Lease, hereby assumes all risk of damage or destruction to property or injury to or the death of persons in, upon or about the Premises from any act, omission or negligence of any other tenant or occupant of the Premises, or any invitee of or visitor to the Premises, or any such person's employees, agents, contractors, invitees or customers. The preceding sentence is not and should not be construed as a waiver by Tenant of any of Tenant's rights of termination under Articles 8 and 11.

## ARTICLE 10 ASSIGNMENT AND SUBLETTING

### 10.1 Restriction on Assignment.

(a) Except as otherwise permitted pursuant to this Article 10 and Article 15 of this Lease, Tenant shall not assign, transfer, convey or otherwise sell this Lease, or Tenant's Leasehold Estate, without the prior written consent of Landlord. Landlord shall act reasonably in reviewing and granting or denying its approval of any such assignment. Any such assignment without Landlord's prior written consent shall be void and, at the option of Landlord and upon delivery of written notice to Tenant, shall constitute a Default under this Lease. Upon receipt of such notice from Landlord and subject to Tenant's right to bring an arbitration under Section 12.1(b) to determine whether any Default has in fact occurred, Tenant shall either cancel, reverse or rescind such assignment or satisfy the requirements of any conditional approval Landlord may elect to grant in its sole and absolute discretion within ninety (90) calendar days following such written notice of Default. Subject to Tenant's rights under Section 12.1(b), Tenant's failure to cure any Default under this Section 10.1(a) within such ninety (90) day period shall automatically be deemed an Uncured Default under this Lease. In order to obtain approval of an assignment:

(i) Tenant shall give Landlord reasonable advance written notice of the proposed assignment (the "**Transfer Notice**"), providing appropriate documentation to Landlord, as Landlord may reasonably require, evidencing that the proposed assignee has, among other reasonable qualifications, the experience, business background and financial capacity to reasonably ensure the continued and prompt performance of the obligations of Tenant under this Lease and the maintenance of the Premises after said assignment becomes effective; provided, however, the assignee need not be required to have such qualifications with respect to the operations of the Premises so long as such assignee engages and retains a third party to operate the Premises who has such qualifications. In the event such assignee engages a third party (and thereafter retains such third party or a successor with similar qualifications at all times) to operate the Premises, Landlord reserves the right to approve such third party which approval shall not be unreasonably withheld or delayed. The Transfer Notice shall give: (a) the proposed effective date of the assignment; (b) the identity of the proposed assignee; (c) all other material terms of the proposed assignment; (d) in detail the type of business operation the proposed assignee intends to conduct on the Premises; and (e) Tenant's warranty and representation that Tenant is not in breach or violation of any of its obligations or duties under this Lease beyond any applicable grace period under this Lease (or, if there is such a breach or violation, a statement identifying such breach or violation). The Transfer Notice shall be accompanied by a copy of the proposed agreement documenting the proposed assignment, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents sufficient to describe the terms pertaining to the proposed assignment and provide the Landlord with the information relevant to exercise of its approval right relating to such proposed assignment. If only preliminary, draft or summary documents are available to Landlord in connection with its review of a proposed assignment, Tenant shall deliver to Landlord complete copies of the final form of the assignment documents as soon as they are available. Landlord shall approve or disapprove such assignment within sixty (60) calendar days after Tenant has furnished Landlord with all required and reasonably requested information and, in connection

with any disapproval, shall specify the reasons therefor. Within thirty (30) days after receipt of a request from Tenant for approval of such an assignment, Landlord shall notify Tenant in writing of any additional information or materials, if any, required by Landlord to act upon Tenant's request for approval. If Landlord fails to approve or disapprove the proposed assignment within the 60-day period provided above, then Tenant may give Landlord a second written notice identifying the consent being requested from Landlord, and if Landlord still fails to approve or disapprove (with explanation) such request for consent within thirty (30) calendar days after delivery of such second notice, then such request for consent to the assignment shall be deemed to have been given and the proposed assignment shall be deemed approved. In the event Tenant terminates any operator of the Premises, Tenant shall give Landlord prompt written notice thereof and shall, subject to the foregoing, designate a new operator of the Premises within ninety (90) calendar days thereafter. The required experience to operate the Premises shall be deemed satisfied if the assignee or its parent (or a professional manager retained by such assignee) has at least five (5) years experience in operating similar Premises. Landlord may withhold consent to a proposed assignment only if, in Landlord's reasonable good faith business judgment, Landlord determines that any of the following is the case: (i) the proposed assignment will result in material deterioration in the quality of operation conducted in the Premises, as compared to the operation conducted by Tenant prior to the date of the Transfer Notice; (ii) the proposed assignee has failed to demonstrate to Landlord that the proposed assignee has sufficient relevant business experience; (iii) the proposed assignee fails to demonstrate to Landlord that it is creditworthy and has access to sufficient liquid resources with which to ensure prompt payment when due of all rent and other charges hereunder and the on-going performance of the operation of the Premises; (iv) the proposed assignee's proposed use of the Premises conflicts with use provisions and restrictions in Article 4 of this Lease; (v) the proposed assignee's use would breach any covenant of this Lease respecting the use of the Premises; or (vi) Tenant has committed a monetary Default or a non-monetary Uncured Default under this Lease which remains uncured and such breach or violation will not be cured or remedied concurrently with or as a result of such assignment.

(ii) The proposed assignee shall expressly assume, in writing, all obligations, covenants and conditions of this Lease which accrue from and after the date of such assignment.

(iii) If Tenant disputes Landlord's disapproval of any proposed assignment, then the issue, at Tenant's election, made promptly after Tenant receives Landlord's notice of objection, shall be submitted to Arbitration as provided in Section 17.4.

(b) If Tenant is a limited liability company, corporation, or an unincorporated association or partnership of any kind, the sale of any stock or interest in said corporation, association or partnership pursuant to any transaction (or series of transactions cumulatively occurring since the date of the last previous assignment which required Landlord's approval) which in the aggregate equals or exceeds fifty percent (50%) of the overall stock or interest shall be deemed an assignment within the meaning of this Article 10. Notwithstanding anything to the contrary in this Article 10, the following shall not constitute an assignment or transfer subject to this Article 10:



(i) a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(ii) a transfer for estate planning purposes of ownership interests in Tenant or in constituent entities or members of Tenant to a member of the family of the transferor, or to a trust or other entity for the benefit of a member of the family of the transferor, whether such transfer is the result of gift, devise, intestate succession or operation of law;

(iii) a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market;

(iv) a mere change in the form, method or status of ownership (e.g. trust interest to limited liability company);

(v) any transfer resulting from a Condemnation by Landlord.

(vi) any granting of a security interest in connection with a financing upon the Premises or any transfer resulting from the foreclosure thereof.

(c) It is further agreed that any consent given by Landlord to Tenant to assign this Lease shall not be construed as a consent to or as a waiver of Landlord's right to object to any other assignment to which its consent in writing has not been obtained and for which its consent is necessary.

(d) Notwithstanding anything to the contrary contained or implied in this Article 10, in the event Tenant desires to sell or assign its entire leasehold interest (the "**Leasehold Estate**") during the term of this Lease it shall notify Landlord of such election (the "**ROFO Notice**") and Landlord shall have the first right to offer to purchase the Leasehold Estate upon the terms set forth below. Following Tenant's delivery of the ROFO Notice to Landlord, Landlord shall have the first right to offer to purchase such Leasehold Estate ("**ROFO**") by notifying Tenant within twenty-one (21) calendar days of its receipt of the ROFO Notice that Landlord is interested in acquiring such Leasehold Estate either upon the terms Tenant has established for the sale or marketing of the Leasehold Estate or upon such alternate terms as Landlord shall specify to Tenant in writing within that twenty-one day period. If Landlord fails to notify Tenant in writing within such period that Landlord desires to purchase the Leasehold Estate upon the terms Tenant has established or upon such alternate terms as Landlord shall propose, or, if, notwithstanding such notification from Landlord, Landlord or Tenant fails to enter into the Purchase Agreement (as hereinafter defined) as provided below, then in either such case, Landlord shall be deemed to have waived its ROFO, and Landlord shall have no further rights with respect to acquiring the Leasehold Estate and Tenant shall have the

absolute right to assign or transfer the Leasehold Estate in its sole and absolute discretion, subject to the provisions of this Article 10; provided, that (i) if, but only if, Landlord did propose alternate terms of purchase within said twenty-one (21) day period which were unacceptable to Tenant (Tenant having the right to accept or reject such proposed alternate terms in Tenant's sole and absolute discretion), then Tenant shall not, within the following two (2) year period, enter into a purchase agreement for sale of the Leasehold Estate for an amount which is less than eighty percent (80%) of the rejected amount offered by the Landlord without first notifying Landlord of the revised terms of sale and offering Landlord a new opportunity to exercise the ROFO with respect to such revised terms in accordance with the ROFO notice, response and exercise provisions set forth above; (ii) regardless of whether Landlord has timely proposed alternate terms for purchase of the Leasehold Estate following receipt of the ROFO Notice, if Tenant has not entered into an agreement for sale of the Leasehold Estate within two (2) years after expiration of the ROFO Negotiation Period (as defined below) then Tenant shall not enter into a new agreement for sale of the Leasehold Estate following the expiration of such two (2) year period without first providing the Landlord a new ROFO Notice and complying again with the right of first offer provisions provided above; (iii) regardless of whether Landlord has timely proposed alternate terms for purchase of the Leasehold Estate following receipt of the ROFO Notice, if Tenant has entered into an agreement for sale of the Leasehold Estate within two (2) years after expiration of the ROFO Negotiation Period but such purchase agreement has not closed during that two (2) year period, Tenant shall not consent to assignment of the direct or indirect interest of the buyer under such agreement to a person or entity that is not affiliated (as defined below) with that proposed buyer following the expiration of such two (2) year period without first providing the Landlord a new ROFO notice and complying again with the right of first offer provisions provided above; and (iv) Tenant shall notify Landlord promptly upon opening of escrow by Tenant for sale of its interest in the Leasehold Estate, and upon Tenant's receipt of notification of an assignment by a buyer to a third party purchaser who is unaffiliated with the assigning buyer of the buyer's rights under an existing agreement to purchase the Leasehold Interest. For purposes of this subsection, a person or entity shall be deemed "affiliated" with another person or entity so long as the ultimate beneficial ownership interests of such person or entity (disregarding all higher tier intermediary corporations, partnerships, limited liability companies, trusts or other like entities) constitute at least fifty percent (50%) of the of the ultimate beneficial ownership interests of the related entity (disregarding all higher tier intermediary corporations, partnerships, limited liability companies, trusts or other like entities).

If Landlord exercises the ROFO as set forth above, Landlord and Tenant shall promptly meet to negotiate in good faith the terms of a proposed purchase and sale agreement and shall use their commercially reasonable efforts to enter into a definitive purchase and sale agreement (the "**Purchase Agreement**") within thirty (30) calendar days of the receipt by Tenant of Landlord's notice of Landlord's interest in acquiring the Leasehold Estate (the "**ROFO Negotiation Period**"); provided, that as set forth above, Tenant shall not have any obligation to accept any proposed offer by Landlord to purchase the Leasehold Estate for an amount which is less than that which is acceptable to Tenant, in its sole and absolute discretion. The Purchase Agreement shall be executed by both parties, if at all, within said thirty (30) calendar day period. If the parties negotiate in good faith but are unable to agree upon and execute such a definitive Purchase Agreement within said thirty (30) calendar day period, the parties shall have no further obligation to negotiate or execute such a Purchase Agreement and, except as expressly provided

in the proviso at the end of the preceding paragraph, Tenant may proceed with assignment of this Lease and Tenant's Interest free of such ROFO, and Tenant shall have no liability to Landlord based upon the failure of Tenant and Landlord to execute a mutually agreeable purchase and sale agreement. The parties acknowledge and agree that there shall be no right to interfere with a sale of the Leasehold Estate by bringing a specific performance action with respect to the ROFO in the event a Purchase Agreement is not timely executed and the parties expressly waive any right to seek specific performance of such ROFO provision or to enjoin, restrain or otherwise interfere with a sale of the Leasehold Interest by Tenant. The parties agree that, in the event of a claim for breach of the ROFO procedure or the obligation to negotiate in good faith for a period of thirty (30) calendar days as set forth above, the sole remedy shall be to recover any damages suffered or incurred as a result of such breach.

(e) Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies with respect to any Default by Tenant.

(f) Regardless of Landlord's consent, no assignment shall: (i) be effective without the express written assumption by such assignee of the obligations of Tenant under this Lease arising from and after the effective date of such assignment; (ii) release Tenant of any obligations hereunder which arose prior to the effective date of such assignment; or (iii) alter the primary liability of Tenant for the payment of Rent or for the performance of any other obligations to be performed by Tenant prior to the date of such assignment. Following the effective date of an assignment of this Lease with the Landlord's consent or authorization, the assignor shall be released from any further liability with respect to any obligations accruing under this Lease from and after the effective date of such assignment.

**10.2 Assignment Pursuant to the Bankruptcy Code.** The restrictions on assignment of this Lease and other terms and conditions set forth in this Article 10 shall, to the extent allowed by law, apply to any assignment, transfer, conveyance or sale of this Lease, or any interest of Tenant under this Lease, pursuant to the Bankruptcy Code, or by operation of law. In addition, the following additional restrictions shall apply to any assignment made pursuant to the Bankruptcy Code.

(a) Any person or entity to which the Lease, or any interest herein, is so assigned, transferred, conveyed or sold, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand of Landlord, execute and deliver to Landlord a written document confirming such assumption.

(b) Such assignee shall provide Landlord with a cash deposit, appropriate bond or bonds, or other form of security acceptable to Landlord, to ensure the future performance of the obligation of Tenant remaining to be performed under this Lease, provided such cash, bond or security is reasonable in amount.

(c) To the extent of any delinquency in the Rent payable to Landlord under this Lease, any and all monies, cash equivalents, or other considerations payable or otherwise to be delivered in connection with each assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord.

**10.3 Subleases and Subletting.** Landlord and Tenant contemplate that Tenant will enter into Subleases for portions of the Premises to be occupied by Subtenants who will operate their businesses in the Premises. Such subletting is expressly permitted only with the written consent of Landlord, which will not be unreasonably withheld or delayed, as hereinafter provided, but such consent will not relieve Tenant of its obligations under this Lease. Landlord shall act reasonably in reviewing and granting or denying its approval of any such Sublease. If requested by Tenant, Landlord shall execute nondisturbance agreements in form and substance mutually and reasonably acceptable to Landlord, Tenant and such Subtenant. Landlord need not grant approval of a proposed Sublease or enter into a nondisturbance agreement with respect to any Sublease unless the following criteria are satisfied prior to Landlord granting its approval to such Sublease or agreeing to enter into a nondisturbance agreement:

(a) Tenant shall give Landlord reasonable advance written notice of the proposed Sublease, providing appropriate documentation to Landlord as Landlord may reasonably require evidencing that the proposed Subtenant has the experience, business background and financial capacity to perform its obligations under the proposed Sublease.

(b) No Sublease term shall exceed or extend beyond the Term of this Lease without Landlord's consent.

(c) The Subtenant must agree to waive all claims against Landlord for damages to goods, wares, merchandise, buildings, installations or other improvements in, upon, or about the subject portion of the Premises unless caused by the negligence or willful misconduct of Landlord, its officers, agents or its contractors. The Subtenant must also confirm in writing that this Lease has been made available to it for its review and that its Sublease is subject and subordinate to this Lease.

(d) Subtenant must agree not to discriminate against any person or class of persons by reason of sex, race, color, creed, ancestry, national origin, age, physical handicap or medical condition, and shall make its accommodations and services available to all persons on a nondiscriminatory basis.

(e) Subtenant shall indemnify Landlord with respect to third-party claims arising from the Subtenant's use or occupancy of the Premises or otherwise arising from its negligent acts or omissions or its willful misconduct.

(f) The execution of or operation under the proposed Sublease shall not result in the violation of any Laws.

In the event of a nondisturbance agreement, termination of this Lease prior to expiration of any Sublease term shall not serve to cancel any Sublease, but shall operate as an assignment to Landlord of such Sublease and all rights of Tenant thereunder shall terminate and shall pass to Landlord. In such case Landlord agrees to be bound by the terms of any such Sublease so long as such subtenant is not in default in the performance of any obligations under the applicable Sublease beyond any applicable grace period. Landlord may, at its option, transfer its interest in any such Sublease to a new Tenant or otherwise, as Landlord deems fit. Any request by Tenant for Landlord approval of a Sublease and Subtenant shall be in writing and accompanied by a copy of the proposed Sublease and such other information concerning the proposed Subtenant as Landlord may reasonably request. Landlord shall respond to Tenant's request within thirty (30) calendar days after receipt and, in the event of any disapproval, shall set forth in reasonable detail the reasons therefor. If Landlord fails to approve or disapprove such Sublease or Subtenant within such thirty (30) calendar day period, then Tenant may deliver a second notice to Landlord requesting such approval and if Landlord fails to approve or disapprove (with explanation) such Sublease and Subtenant within fifteen (15) calendar days thereafter, then such Sublease and Subtenant shall be deemed approved.

## **ARTICLE 11 EMINENT DOMAIN**

**11.1 Rights Governed by this Lease.** In the event of any "**Taking**" (as hereinafter defined) of the Premises, the rights of Landlord and Tenant shall be as specified in this Article 11.

**11.2 Definitions.** As used herein, the following terms shall have the following meanings:

(a) "**Taking**" shall mean any taking or damage to the Premises or any portion thereof or interest therein, including severance damage, under the power of eminent domain, or by inverse condemnation or for any public or quasi-public use. A "**Taking**" shall include any voluntary conveyance or transfer in lieu of the exercise of the power of eminent domain or while eminent domain proceedings are pending. A Taking shall be deemed to occur as of the date the condemning authority takes title or physical possession, whichever shall first occur.

(b) "**Total Taking**" shall mean the Taking of all of the Premises or if Tenant makes the election specified in either Section 11.6(a) or (b) below.

(c) "**Partial Taking**" shall mean Taking which is not a Total Taking.

(d) "**Award**" shall mean all compensation paid or payable by reason of a Taking, whether pursuant to a judgment, agreement or otherwise.

### **11.3 Intended Taking; Negotiation.**

(a) Each of Landlord and Tenant shall promptly give written notice to the other upon learning that any person, entity or authority has commenced condemnation proceedings with respect to the Premises or any portion thereof or any interest therein, or has threatened or indicated an intention to commence such proceedings.

(b) Landlord, Tenant, Senior Mortgagee and each Mortgagee shall each have the right to represent its respective interests in each proceeding and negotiation with respect to any Taking or threatened or intended Taking and to make proof of their claims. No agreements or settlements with, or transfers to, any condemning authority shall be made without the prior written consent of Tenant, Landlord, Senior Mortgagee and all Mortgagees. Each party shall bear its own attorneys' fees and expenses in connection with such proceedings and negotiations.

### **11.4 Partial Taking; Continuation of Lease; Award.**

(a) In the event of Partial Taking, this Lease shall remain in effect as to the portion of the Premises not taken, except that the Base Rent otherwise payable hereunder shall be reduced in the same ratio as the value of the portion of the premises taken bears to the value of the total Premises immediately prior to such Partial Taking. Promptly after any Partial Taking and regardless of the amount of the Award, Tenant shall, at its sole cost and expense and in the manner specified in the provisions of this Lease, restore and repair (and, if necessary, reconfigure) any remaining affected Improvements so that the Premises may continue to be operated as a usable whole for the purposes for which they were leased.

(b) In the event of a Partial Taking, subject to the rights of Senior Mortgagee and any Mortgagee, any Award payable to Landlord and/or Tenant shall be payable as follows:

(i) First, to the payment of any Taxes, Assessments and other impositions constituting a lien on the portion of the Premises taken;

(ii) Second, to pay the costs of repairing, restoring or reconfiguring the Premises after the Partial Taking in order to restore it to an operable whole; and

(iii) The balance of the Award shall be divided between Landlord and Tenant based on the following:

(A) Tenant shall receive an amount equal to the fair market value of the portion of Tenant's Interest which has been taken; and

(B) Landlord shall receive an amount equal to the balance of the Award.

(c) If the Landlord and Tenant are unable to agree upon the fair market value of Tenant's Interest, fair market value of Tenant's Interest shall be determined by appraisal in accordance with the following procedures:

If, at any time after the commencement of good faith negotiations to agree upon the fair market value of Tenant's Interest, either Landlord or Tenant concludes that such negotiations will not be successful, such party shall give written notice (an "**Appraisal Notice**") to the other party of its election to determine such fair market value by appraisal. Landlord and Tenant shall then attempt to agree upon a single independent appraiser to make such determination. Such appraiser shall be a member of the American Institute of Real Estate Appraisers, or of another recognized professional association of real estate appraisers which has adopted rules and regulations requiring independent appraisals of its members without bias to any party or any results, and shall have no less than ten (10) years of experience appraising commercial properties located in Southern California (a "**Qualified Appraiser**"). If Landlord and Tenant are unable to agree upon a Qualified Appraiser within thirty (30) calendar days after receipt of the Appraisal Notice, Landlord and Tenant shall each select a Qualified Appraiser within ten (10) calendar days after expiration of such thirty (30) day period and both such Qualified Appraisers shall select a third neutral Qualified Appraiser within ten (10) calendar days after the date on which the second Qualified Appraiser is appointed. If the two Qualified Appraisers selected by the parties cannot agree upon a third Qualified Appraiser within such ten (10) calendar day period, either party shall have the right to apply to the Presiding Judge of the Superior Court for Los Angeles County, California, to select the third Qualified Appraiser. Each of the three (3) Qualified Appraisers shall appraise the fair market value of Tenant's Interest within forty-five (45) calendar days after the selection of the third Qualified Appraiser. The fair market value of Tenant's Interest shall be conclusively determined for all purposes by taking the average of the two appraisals which are closest in amount and by disregarding the third appraisal, unless the highest and the lowest appraisals are equidistant from the middle appraisal, in which case the middle appraisal shall be deemed to be the fair market value of Tenant's Interest. Each party shall pay the fees and expenses of the appraiser selected by such party, and the parties shall share equally the fees and expenses of third appraiser. In connection with valuation of the Tenant's Interest which has been taken, the Qualified Appraiser(s) shall consider and account for all of the following: (aa) any excess of the present value at the Taking Date of the fair rental value of the Leased Premises, exclusive of Tenant's Improvements or alterations for which Tenant is compensated under clause (bb) below, for the remainder of the Term (i.e., the so-called "bonus value"), over the present value at the Taking Date of the rent payable for the remainder of the Term; and (bb) the value at the Taking Date of its interest for the balance of the Term in all Improvements or alterations made to the Leased Premises by Tenant; and (cc) the portion of the Award, if any, allocated to relocation and removal costs of Tenant, if any; and (dd) the portion of the Award, if any, attributable to loss of goodwill or lost profits or damages because of detriment to Tenant's business, if any. If no portion of the Award is attributable to the items contained in clauses (cc) and (dd) above, Tenant shall have the absolute right (i) to pursue Tenant's own claim for such damages as permitted by law and (ii) to receive and keep all such proceeds free from any claim of Landlord.

### **11.5 Total Taking.**

(a) In the event of a Total Taking, this Lease shall terminate as of the date of the Taking or, if later, the date of Tenant's election pursuant to Section 11.6(b) below; provided, however, that such termination shall not prevent Tenant from making all claims against the condemning authority as though this Lease had not terminated, and Tenant shall have the same

rights against such condemning authority as though this Lease had not been terminated. All Rents and other amounts payable hereunder shall be prorated to the date of termination.

(b) In the event of a Total Taking, any Award shall be payable as follows:

(i) First, to the payment of any Taxes and Assessments constituting a lien on the Premises;

(ii) Second, to the repayment of the Senior Loan; and

(iii) The balance of the Award shall be divided between Landlord and Tenant based on the following:

(A) Tenant shall receive an amount equal to the fair market value of Tenant's Interest, as determined according to the procedures set forth in Section 11.4(c) above; and

(B) Landlord shall receive an amount equal to the balance of the Award.

#### **11.6 Tenant's Elections.**

(a) If a Partial Taking occurs and the cost to repair, restore and/or reconfigure the Improvements would, in Tenant's reasonable judgment, exceed One Million Dollars (\$1,000,000), Tenant may, by written notice to Landlord within ninety (90) calendar days after such Taking, elect to treat such Taking as a Total Taking.

(b) In the event that less than the entire Premises is taken, but the remainder is, in the Tenant's reasonable judgment, commercially unsuitable for Tenant's continued use, Tenant may, by written notice to landlord within ninety (90) calendar days after such Taking, elect to treat such Taking as a Total Taking.

(c) If Tenant elects to treat any Taking as a Total Taking pursuant to this Section 11.6, then, Tenant shall, at its sole cost and expense, if and as directed by Landlord, demolish and remove all Improvements, Fixtures and Tenant's personal property (or portion thereof as directed by Landlord) from the leased land.

#### **11.7 Award Pending Disbursement; Arbitration.**

(a) Until final determination of the parties' respective entitlements to any Award hereunder, such Award shall be held in trust by a California or federally chartered bank or trust company in California designated by Landlord, subject to approval by Senior Mortgagee and all Mortgagees and Tenant, having a combined capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) as of the date of its most recent financial statement. When the final determination of the respective entitlements of all parties claiming an interest in such Award has been determined, such amounts, together with all interest earned thereon from



the date of deposit with such trustee, and less any costs and charges, shall be paid by such trustee to the person or persons entitled thereto.

(b) Any disputes arising under this Article 11 shall be resolved by arbitration under Section 17.4.

**11.7 Taking for Temporary Use.** If there is a Taking of the Premises for temporary use for a period equal to or less than one (1) year, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease, neither the Term nor the Rent shall be reduced or affected in any way, but shall continue at the level of the last annual rental (regardless of whether computed on a fixed or percentage basis) paid prior to the Taking (including any subsequent increases in such annual rental provided for under this Lease), and Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such one (1) year period, the Taking shall be treated under the foregoing provisions for Total and Partial Takings, as appropriate.

**11.8 Waiver of Code of Civil Procedure Section 1265.130.** Each party waives the provision of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate the Lease in the event of a Partial Taking of the Premises. The rights of the parties in the event of a Partial Taking shall be governed by the terms of this Lease set forth above.

## **ARTICLE 12 TENANT'S BREACH; LANDLORD'S REMEDIES**

### **12.1 Tenant's Breach.**

(a) The occurrence of any of the following events shall be considered an Uncured Default hereunder and a breach of this Lease by Tenant.

(i) The failure of Tenant to pay Rent or any other charges or payments due hereunder, which failure continues for ten (10) calendar days after written notice thereof by Landlord to Tenant;

(ii) The failure of Tenant to observe or perform any of its other covenants or obligations hereunder which can be cured, which failure continues for thirty (30) calendar days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such covenants or obligations is such that more than thirty (30) calendar days are required to effect a cure, then Tenant shall not be deemed to be in breach of this Lease if it shall commence such cure within such thirty (30) day period and shall thereafter diligently pursue such cure to completion as quickly as reasonably possible;

(iii) The occurrence of any of the following events: (i) the making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) calendar days);

(iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) calendar days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's Interest in this Lease, where such seizure is not discharged within thirty (30) calendar days; provided, however, in the event that any provision of this subparagraph (a)(iii) is contrary to any applicable law, such provision shall be of no force or effect, and shall not affect the validity of the remaining provisions; and

(b) Notwithstanding anything in this Lease to the contrary, if, within thirty (30) calendar days of Tenant's receipt of a notice of Default with respect to a non-monetary breach by Tenant, Tenant notifies Landlord in writing that it disputes the existence of such non-monetary Default and that it requests a determination of the existence or non-existence of such non-monetary Default by an arbitration conducted in accordance with Section 17.4, then Landlord may not exercise its right to terminate this Lease pursuant to the terms hereof on account of such non-monetary Default of Tenant until the expiration of the applicable cure period (with no cure having been effected) measured as if such cure period commenced upon the date of the determination by such arbitrator that such non-monetary Default in fact exists. In addition, in the event Tenant contests any claimed monetary Default under this Lease, Tenant shall have the right to pay such amount under protest and to reserve its right to contest and seek recovery of such amount and Tenant shall not be in Default under this Lease because such payment has been made "under protest", or with a reservation of rights. If any amount paid under protest is thereafter required to be returned to Tenant, Landlord shall also pay to Tenant interest on such amount at the rate of ten percent (10%) per annum from the date such amount was paid by Tenant to Landlord until the date returned. If Landlord fails to promptly pay to Tenant all amounts determined to be payable to Tenant pursuant to such arbitration proceeding, Tenant shall have the right to offset such amounts against the next Rents payable hereunder.

**12.2 Landlord's Remedies.** In the event of any Uncured Default of this Lease by Tenant, Landlord, in addition to any other rights or remedies it may have at law, in equity or otherwise, shall have the following rights:

(a) Intentionally omitted.

(b) Landlord shall have the right to terminate this Lease by giving written notice of termination to Tenant. Upon the giving of such notice, this Lease and Tenant's Interest shall terminate, and Tenant shall surrender the Premises to Landlord. Landlord's termination of this Lease for Tenant's Uncured Default shall not relieve Tenant from the obligation to pay any sum then due Landlord or from any claim for damages previously accrued or then accruing.

(c) Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby agree that, in the event of any damage claim against Tenant arising hereunder, Landlord shall offset against such claim, and Tenant shall have the right to require the offset against such claim, of the value of Tenant's interest in the Leasehold Estate reverting to Landlord as a result of the early termination of this Lease, and Landlord shall not recover any such damages from Tenant except to the extent they exceed the value of said Leasehold Estate.

**12.3 Right of Re-Entry.** Except as otherwise provided in any nondisturbance agreement executed by Landlord in favor of a subtenant, in the event of any Uncured Default by Tenant, Landlord shall also have the right in accordance with applicable Law at the time, and, with or without termination of this Lease, to re-enter the Premises and remove all property and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant.

**12.4 Lease Not Terminated.** Subject to the limitations of Section 12.2(c) above, if Landlord shall elect to re-enter as above provided, or shall take possession of the Premises pursuant to legal proceedings or pursuant to any notice or other remedy provided by law or in equity, whether or not the Lease is terminated, Landlord may either recover all rental as it becomes due or relet the Premises or any part or parts thereof for such term or terms and upon such provisions as Landlord, in its sole judgment, may deem advisable, and Landlord shall have the right to make repairs to and alterations to the Premises. No re-entry or taking possession of the Premises by Landlord under this Section shall be construed as an election to terminate this Lease unless a written notice of such termination be given to Tenant or unless the termination thereof be adjudged by a court of competent jurisdiction.

**12.5 Right to Cure Tenant's Default.** Landlord, at any time after Tenant fails to perform an obligation or covenant required to be performed by it under this Lease, and to cure such failure within any allocable cure period, may, at its sole option, and upon written notice to Tenant (except in the event of an emergency in which case no prior notice shall be required, but notice shall be provided as soon as practicable), cure such failure. If, in effecting such cure, Landlord incurs any cost or expense or pays any sum, or does any act that requires the payment of any sum, then, subject to the limitations of Section 12.2(c), all sums, expenses and costs so paid or incurred by Landlord shall be due from Tenant to Landlord immediately upon demand therefor by Landlord, and if paid by Tenant at a later date, shall bear interest at the rate of ten percent (10%) per annum, or the maximum rate then permitted by law, whichever rate is lower, from the date of any payment by Landlord to the date of repayment by Tenant.

**12.6 Late Charges; Interest.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) calendar days after such amount shall be due, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to four percent (4%) of such overdue amount; provided, that, with respect to the first late payment of Rent during any calendar year, a late charge shall not be payable so long as Tenant pays the Rent due within three (3) business days after written notice from Landlord to Tenant of the amount due. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's breach with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. Unless otherwise stated in this Lease, in addition to any late charges provided above, any amounts payable by one party to another hereunder which remain overdue beyond a period of ten (10)

calendar days shall bear interest at the rate of ten percent (10%) per annum, or the maximum rate then permitted by law, whichever rate is lower, from the expiration of such ten (10) day period until the date such payment is made.

**12.7 Remedies Not Exclusive.** Subject to the limitations of Section 12.2(c) above, the several rights and remedies granted to Landlord herein shall be cumulative and in addition to any other remedies to which Landlord may be entitled at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies Landlord may have, and shall not be deemed a waiver of any of Landlord's rights or remedies, or an election of remedies, or to be a release of Tenant from any of Tenant's obligations, unless such waiver, election or release is expressed in writing and signed by Landlord.

### **ARTICLE 13**

#### **LANDLORD'S DEFAULT; TENANT'S REMEDIES**

**13.1 Landlord's Default.** Landlord shall be in breach of this Lease if it has failed to perform any obligation or covenant to be performed by it hereunder within thirty (30) calendar days after written notice by Tenant to Landlord specifying the nature of Landlord's failure; provided, however, that if the nature of the obligation is such that more than thirty (30) calendar days are required for its performance, then Landlord shall not be deemed to have committed an Uncured Default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion within sixty (90) calendar days.

**13.2 Tenant's Remedies.** Tenant shall be entitled, upon any Default by Landlord, hereunder to any and all rights and remedies available to it at law and in equity; provided, however, that Tenant may not terminate this Lease for Landlord's breach without the written consent of each and every lender who has been granted a security interest in either Landlord's Interest or Tenant's Interest or both. All rights and remedies of Tenant shall be cumulative.

**13.3 Delays in Performance.** The time within which the Parties hereto shall be required to perform any act under this Lease which cannot be discharged solely by the payment of money shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, fire, earthquake, flood, explosion, war, terrorism, invasion, insurrection, riot, mob violence, acts of the public enemy, epidemics, quarantine restrictions, or other events which are beyond a party's reasonable control (the foregoing events are referred to herein as "**Force Majeure**" events). The additional grace period or extension of time provided above shall be equal to the period of delay caused by the above-described event, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause; provided that, as set forth in Sections 2.1 and 2.10 above, the extensions due to Force Majeure events under those provisions shall not exceed two (2) years.

## **ARTICLE 14**

### **LIENS AND ENCUMBRANCES**

Tenant shall not, and shall have no right to, encumber Landlord's Interest, and Tenant covenants to keep Landlord's Interest at all times free and clear of any and all liens and encumbrances of any kind whatsoever arising out of Tenant's performance of this Lease. Except as otherwise specifically provided in this Lease, should Tenant fail to discharge or cause to be discharged any claim of lien affecting, or purporting to affect, Landlord's Interest, within thirty (30) calendar days after service on Tenant, then, on written notice from Landlord, Landlord may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and manner as Landlord may reasonably deem appropriate. In such event, Tenant shall immediately reimburse Landlord for the full amount paid by Landlord in connection with such lien or claim of lien, including any attorneys' fees or costs, or other costs expended by Landlord, together with interest at the rate of ten percent (10%) per annum, or the maximum rate permitted by law, whichever rate is lower, from the date of payment by Landlord to date of repayment by Tenant. Notwithstanding the preceding sentences, Tenant may contest any and all such liens and encumbrances, provided that Tenant shall first deposit with Landlord a bond or other security, in form and amount reasonably acceptable to Landlord, to secure the payment and removal of any such lien or encumbrance (plus any fees, interests and penalties).

## **ARTICLE 15**

### **HYPOTHECATION**

**15.1 Lease as Security.** Tenant shall have the right, subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld or conditioned, to subject all or any part of Tenant's Interest to any deed of trust or mortgage. In the event of any dispute between Landlord and Tenant concerning whether such consent has been unreasonably withheld or conditioned, such dispute shall be resolved by an arbitration proceeding in accordance with Section 17.4 below. Landlord shall have ten (10) business days to respond to Tenant's request for approval of any financing. Any disapproval shall be accompanied by a reasonable detailed description of the reasons therefor. If Landlord fails to approve or disapprove (with explanation) the proposed financing within such ten (10) business day period, Tenant may deliver a second written notice requesting such approval, and if Landlord fails to approve or disapprove (with explanation) such financing within five (5) business days thereafter, such financing shall be deemed approved; provided that, if Landlord deems it necessary to meet with the City Council with respect to approval of any proposed financing and if the fifteen (15) business day period described above (10 days initial notice, 5 day additional notice) did not allow the opportunity to Landlord to do so because of the absence of any Council meeting within that period, then Landlord shall have up to fifteen (15) additional calendar days to schedule such matter for review by the City Council. Notwithstanding anything herein to the contrary, Landlord shall approve and consent to a proposed leasehold mortgage meeting all of the following requirements: (i) such leasehold mortgage encumbers only the Tenant's Interest in the Premises and is not a lien upon the Landlord's fee interest in the Property; (ii) the leasehold mortgage is being made by a state or federal bank, savings and loan, pension fund, life insurance company or other like institutional lender; (iii) the loan to value ratio of such leasehold mortgage does not exceed eighty percent (80%) of the value of the Premises; and (iv) the leasehold mortgage does

not permit or authorize the lender to devote the Leasehold Estate to any uses, or to construct any improvements thereon, other than those uses and improvements permitted by this Lease.

**15.2 Loan Obligations.** Nothing contained in this Lease shall relieve Tenant of its obligations and responsibilities to any Mortgagee to operate the Premises as set forth in this Lease.

**15.3 Rights of Mortgagees.**

(a) In the event of any Default under this Lease by Tenant, written notice to that effect shall be sent by Landlord to each Mortgagee, and no termination of this Lease, or of Tenant's right to possession of the Premises or any reletting of the Premises by Landlord shall be effective unless Landlord gives to each Mortgagee written notice, or a copy of its notice to Tenant, of such Default and further notice of termination at the time of service of each of such notices upon Tenant. Any notice of termination between Landlord and such Mortgagee shall be mailed by certified or registered mail, postage prepaid, return receipt requested.

(b) In the event of any Default by Tenant under any of the provisions of this Lease, such Mortgagee will have the same grace period as is given Tenant for remedying such Default or causing it to be remedied, if any, plus, (i) in the case of a monetary Default, an additional period of thirty (30) calendar days after the expiration thereof, and (ii) in the case of a nonmonetary Default, an additional period as described in Section 15.3(d) below, but not, in any event, less than sixty (60) calendar days after the expiration thereof.

(c) In the event Tenant breaches any of the provisions of this Lease, irrespective of whether the same consists of a failure to pay Rent or a failure to do any other thing which Tenant is required to do hereunder, such Mortgagee without prejudice to any of its rights against Tenant, shall have the right to cure such Default hereunder within the applicable grace period provided for in the preceding subparagraph (b), and Landlord shall accept such performance on the part of such Mortgagee as though the same had been performed by Tenant; and for such purpose Landlord and Tenant hereby authorize such Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and powers under this Lease that are reasonably required to cure such Default.

(d) The term "**Incurable Default**" as used herein means a Default which cannot reasonably be cured by a Mortgagee by the payment of money or within the time period allowed for the cure of such Default. The term "**Curable Default**" means any Default under this Lease which is not an Incurable Default. In the event of any Curable Default by Tenant under any of the provisions of this Lease and if prior to the expiration of the applicable grace period applicable to such Mortgagee under Section 15.3(b) above, such Mortgagee shall give Landlord written notice that it intends to undertake the curing of such Default, or to cause the same to be cured, or to exercise its right to acquire the Tenant's Interest by foreclosure or otherwise, and such Mortgagee shall thereafter promptly commence and then proceed with all due diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease or by entry on the Premises by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Premises or otherwise enforce performance of this Lease so long as such Mortgagee is with all due diligence and in good faith engaged in effecting such foreclosure or in curing such Curable Default. So long as any Curable Defaults are cured by such Mortgagee and Tenant or the Mortgagee

continues to fulfill any obligations of Tenant thereafter arising hereunder within the time periods provided to Tenant hereunder, provided that such Mortgagee shall not be required to cure or commence to cure any lien, charge or encumbrance against Tenant's Interest which is junior in priority to lien of the Mortgage, then such Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings after such Default is cured and this Lease shall thereupon continue in full force and effect as though Tenant had not Defaulted. In the event the nature of any Curable Default is such that such Mortgagee must take possession of the Premises in order to cure such Default, the running of all applicable grace periods shall be tolled so long as such Mortgagee is diligently attempting to obtain such possession. Nothing herein shall preclude Landlord from terminating this Lease with respect to any additional Default which may occur during the aforesaid period of forbearance and is not remedied within the period of grace, if any, applicable to any such additional Default, except that such Mortgagee shall have the same rights specified in this paragraph with respect to any such additional Defaults. Notwithstanding anything herein to the contrary, (i) a Mortgagee shall not be obligated to pursue the cure of any Curable Default which is non-monetary in nature until it has obtained possession of the Premises, and (ii) nothing herein shall require a Mortgagee who has acquired Tenant's Leasehold Estate and has taken possession of the Premises to cure any Incurable Default, and such Incurable Default shall be deemed to be waived following Mortgagee's acquisition of Tenant's Leasehold Estate and such Mortgagee's cure of all Curable Defaults.

(e) In the event of termination of this Lease by reason of either an Incurable Default or a Curable Default or in the event Tenant's Interest shall be sold, assigned or transferred pursuant to the exercise of any remedy of a Mortgagee, or pursuant to judicial proceedings, or in the event of the rejection of this Lease by Tenant or any trustee under Section 365 of the Bankruptcy Code or any similar section and in the event that within thirty (30) calendar days after Landlord's notification to Mortgagee of the occurrence of such event such Mortgagee shall have cured, or arranged to the reasonable satisfaction of Landlord to cure any Curable Default of Tenant under this Lease which is monetary in nature, then Landlord, within thirty (30) calendar days after receiving a written request therefore from such Mortgagee, which shall be given by Mortgagee within the thirty (30) day cure period set forth above applicable to cure of monetary Defaults by Mortgagee, and upon payment to Landlord of all expenses, including reasonable attorneys' fees, incident to such new lease (less the net income collected by Landlord from the date of termination to the date of commencement of the term of the new lease), will execute and deliver to such Mortgagee or its nominee or to the purchaser, assignee or transferee, as the case may be, a new lease of the Premises. Such new lease shall be for a term equal to the remainder of the term of this Lease before giving effect to such termination, shall contain the same covenants, agreements, provisions, conditions and limitations as this Lease, shall be superior to all rights, liens and interest intervening between the date of this Lease and the date of such new lease, and shall be free of any and all rights of Tenant under this Lease. Upon the execution and delivery of such new lease, the new tenant, in its own name or in the name of Landlord, may take all appropriate steps as may be necessary to remove Tenant from the Premises, but Landlord shall not be subject to any liability for the payment of any fees (including attorneys' fees), costs or expenses in connection therewith. The new tenant shall pay all such fees, including reasonable attorneys' fees, costs and expenses or, on demand, make reimbursement therefore to Landlord. It is the intention of the parties hereto that such new lease shall have the same priority relative to other rights or interests to or in the Premises as this Lease, and Landlord covenants to discharge or cause to be subordinated to such new lease any lien or

encumbrance which was subject to this Lease at the time of such termination. If more than one Mortgagee shall make written request upon Landlord for a new lease in accordance with the provisions of this Section 15.3(e), then such new lease shall be entered into pursuant to the request of the Mortgagee whose Mortgage shall be junior in lien provided: (a) all Mortgagees senior in lien shall have been paid all installments of interest and amortization of principal then due and owing to such Mortgagees plus all expenses, including reasonable attorneys' fees, incurred by such senior Mortgagees in connection with the termination of this Lease and with the execution and delivery of such new lease; (b) the new lessee will assume, in writing, all of the covenants, agreements and obligations on the part of the mortgagor under such senior Mortgages to be kept, observed and performed on the part of such mortgagor; (c) such new lease shall contain all of the same provisions and rights in favor of and for the benefit of Mortgagees holding leasehold mortgages thereon as are contained in this Lease, including but not limited to the right to obtain a new lease in the event of the termination of said lease, and the right to receive notices of Default, and to cure the same, in the same manner as provided in this Lease; and (d) the senior Mortgagees shall have received from the respective title insurance companies insuring the respective senior Mortgages assurances satisfactory to such senior Mortgagees that said senior Mortgages and any assignment of rents and other security instruments executed in connection therewith will continue, with respect to such new lease, in the same manner and order of priority of lien as was in existence with respect to this Lease; and thereupon the leasehold estate of the new lessee created by such new lease shall be subject to the lien of the senior Mortgages in the same manner and order of priority of lien as was in existence with respect to this Lease. In the event not all of the foregoing provisos shall have been satisfied by or with respect to any such junior Mortgagee, the Mortgagee immediately senior in lien to such junior Mortgage shall have paramount rights to the benefits set forth in Section 15.3(e) above, subject nevertheless to the provisions hereof respecting the senior Mortgagees, if any. In the event of any dispute as to the respective senior and junior priorities of any such Mortgages, the certification of such priorities by a title company doing business in California, satisfactory to Landlord, shall be conclusively binding on all parties concerned. Should there be a dispute among Mortgagees as to compliance with the foregoing provisions, Landlord may rely on the affidavit of the most senior Mortgagee as to compliance by any junior Mortgagee. Landlord's obligation to enter into a new lease with any junior Mortgagee shall be subject to the receipt by Landlord of evidence reasonably satisfactory to it that the conditions of (a), (b) and (d) above have been satisfied with respect to each senior Mortgagee. The right of a senior Mortgagee under this Section 15.3(e) to request a new lease may, notwithstanding any limitation of time set forth in this Lease, be exercised by the senior Mortgagee within twenty (20) calendar days following the failure of the junior Mortgagee to have exercised such right within the time provided by this Section, and, if a junior Mortgagee shall fail or refuse to exercise the rights set forth in this Section, said senior Mortgagees, in the inverse order of the seniority of their respective liens, shall have the right to exercise such rights subject to the provisions of this Lease.

(f) In the event a breach under the Mortgage executed by Tenant for the benefit of such Mortgagee shall have occurred, such Mortgagee may exercise with respect to the Premises any right, power or remedy under said Mortgage which is not in conflict with any of the provisions of this Lease.



(g) There shall be no merger of the Leasehold Estate created under this Lease with the fee estate in the Premises by reason of the fact that the Leasehold Estate may be held directly or indirectly by or for the account of any person who shall also hold the fee estate, or any interest in such fee estate nor shall there be any such merger by reason of the fact that all or any part of the Leasehold Estate may be conveyed or mortgaged to a Mortgagee who shall also hold the fee estate, or any part thereof, or any interest of Landlord or Tenant under this Lease, unless such merger results from a Default by Tenant, where such Mortgagee has been given an opportunity to cure as provided by this Lease above and has failed to do so.

(h) No acceptance by Landlord of a voluntary surrender of this Lease or any amendment or modification of the terms of this Lease shall be effective or binding unless the written consent of any Mortgagee is first obtained. The exercise by Landlord of any right of termination pursuant and subject to the terms of this Lease, however, shall not be deemed a "voluntary surrender," nor shall anything herein require the Landlord obtain the consent of any Mortgagee before commencing any action or proceeding based upon a Default hereunder by Tenant provided that Landlord shall have given all notices required to be given by Landlord hereunder to Tenant and to such Mortgagee and has provided such Mortgagee with the cure rights herein provided.

(i) This Lease may be assigned by an assignment in lieu of foreclosure of the Mortgage executed by Tenant for the benefit of such Mortgagee or pursuant to a foreclosure sale or sale pursuant to power of sale under said Mortgage and may be further assigned by the assignee or purchaser without the prior written consent of Landlord provided the assignee assumes Tenant's obligations under this Lease and an executed counterpart of such assumption is delivered to Landlord. Notwithstanding any other provision of this Lease, any bonafide sale of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Mortgage or a bonafide assignment or transfer of this Lease and of the Leasehold Estate hereby created in lieu of foreclosure of a Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the Leasehold Estate hereby created.

**15.4 Personal Liability of Mortgagee.** No Mortgagee shall become personally liable for the performance or observance of any covenants or conditions to be performed or observed by Tenant unless and until such Mortgagee becomes the owner of Tenant's Interest upon the exercise of any remedy provided for in the subject Mortgage or until such Mortgagee enters into a new lease with Landlord pursuant to Section 15.3(e) above. Thereafter, such Mortgagee shall be liable for the performance and observance of such covenants and conditions only so long as such Mortgagee owns such interest or is lessee under such new lease.

**15.5 Names and Addresses of Mortgagees.** Anything in this Article 15 to the contrary notwithstanding, Landlord shall not be obligated to send or deliver any notices or grant any cure rights to any Mortgagee unless the name and address of such Mortgagee has been delivered to Landlord by Tenant or such Mortgagee together with a certificate of an officer of Tenant or such Mortgagee certifying that such Mortgagee is the Mortgagee under a Mortgage on or against the Premises.

**15.6 Sublease and Rents.** After termination of this Lease and during the period thereafter during which any Mortgagee is entitled to enter into a new lease of the Premises, Landlord will not voluntarily terminate any Sublease or the rights of the Subtenant thereunder

unless such Subtenant is in default under such Sublease and has failed to cure same within the cure period provided under such Sublease. During such periods Landlord shall be entitled to receive all rent and other payments due from Subtenants, including Subtenants whose attornment it shall have agreed to accept, as agent of such Mortgagee and shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Landlord such sums as are accrued or were required to be paid to Landlord under this Lease, at the time and in the amounts due hereunder, and may withdraw and expend such additional amounts as are necessary for the maintenance, operation, and management of the Premises in accordance with the requirements of this Lease (including reimbursement of Landlord's reasonable costs associated with collection of rents from Subtenants); and, upon the execution and delivery of such new lease, Landlord shall account to the lessee under the said new lease for the balance, if any (after application as aforesaid), of the rent and other payments made under said Subleases. The collection of rent by Landlord acting as an agent pursuant to this Section shall not be deemed an acceptance by Landlord for its own account of the attornment of any Subtenant unless Landlord shall have agreed in writing with such Subtenant that its tenancy shall be continued following the expiration of any period during which a Mortgagee may be granted a new lease, in which case such attornment shall take place upon such expiration but not before. If the Mortgagee fails to exercise its right to enter into a new lease or fails to timely execute such new lease, all rents collected by Landlord on behalf of such Mortgagee shall inure to the benefit of the Landlord and such Mortgagee shall have no further rights with respect thereto.

**15.7 Arbitration and Legal Proceeding.** Landlord shall give each Mortgagee who has given written notice of its interest in the Leasehold Estate to Landlord prompt notice of any arbitration (pursuant to Section 17.4) or other legal proceedings between Landlord and Tenant involving obligations under this Lease. Such notice shall be sent to the address provided by such Mortgagee in conjunction with any prior notice of interest delivered to Landlord under this Section 15.7. Each said Mortgagee shall have the right to intervene in any such proceeding to protect its interest and be made a party thereto, and the parties hereto do hereby consent to such intervention. In the event that any such Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Mortgagees not intervening after receipt of notice of the arbitration or other legal proceeding.

**15.8 Amendment.** If, in connection with securing by Tenant of any Mortgage, the affected Mortgagee requests an amendment or modification of the terms of this Lease or the Mortgagee's lender protection rights set forth herein, Landlord agrees to reasonably consider its consent to any such proposed amendment or modification.

## **ARTICLE 16 [RESERVED]**

## ARTICLE 17 GENERAL PROVISIONS

**17.1 Estoppel Certificates.** Each party shall, without charge, at any time and from time to time, upon written request of the other party, deliver a written instrument, duly executed (and acknowledged, if requested), certifying to the requesting party, or any other person, firm or corporation reasonably specified by the requesting party:

(a) That this Lease is unmodified and in full force and effect, or if there has been any modification, that this Lease is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of the certifying party there are then existing any offsets or defenses in favor of the certifying party against the enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same, and also whether or not to the knowledge of the certifying party, the requesting party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and, if not, specifying the same;

(c) The dates to which Base Rent, Additional Rent, and all other payments and charges hereunder have been paid; and

(d) Any other matter, reasonably related to this Lease and the contractual relationship between Landlord and Tenant, that is reasonably requested by the requesting party.

**17.2 Landlord's Right of Entry.** Subject to the rights of Subtenants, Landlord and its agents shall have the right at reasonable times and upon not less than one (1) business day's notice:

(a) During the last twelve (12) months of the Term, to display the Premises. If Tenant vacates the Premises prior to the expiration of the Term, Landlord may from and after Tenant's vacation decorate, remodel, repair, alter and improve or otherwise prepare the Premises for reoccupancy.

(b) To inspect the Premises in order to determine whether to approve proposed construction or demolition.

(c) To enter the Premises to determine whether Tenant has complied or is complying with its obligations hereunder if a physical inspection is reasonably necessary to determine such compliance.

**17.3 Waiver.** No waiver by either party hereto of any breach by the other party of any covenant or condition herein contained shall be effective unless such waiver is in writing, signed by the non-breaching party and delivered to the breaching party. The waiver by the non-breaching party of any such breach or breaches, or the failure by the non-breaching party to exercise any right or remedy in respect of any such breach or breaches, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or of any subsequent breach of any such covenant or condition nor bar any right or remedy of the non-breaching party in respect of any such subsequent breach.

**17.4 Arbitration.** All disputes arising under or related to this Lease, including, but not limited to, all alleged breaches or Defaults, other than those disputes relating directly or indirectly to the payment of Rent hereunder, shall be submitted to arbitration as follows:

(a) Either party to a dispute may elect to submit the matter to arbitration by delivering written notice of such election to the other party. Such arbitration shall be conducted in accordance with the arbitration rules of the Judicial Arbitration and Mediation Service ("JAMS").

(b) Within ten (10) calendar days after receipt of the notice provided for above, 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 said ten (10) day period, then either may request JAMS to appoint such arbitrator. Unless the parties otherwise agree, the arbitrator shall be a retired judge of the courts of California or any federal court located within the State.

(c) The arbitrator so appointed shall promptly fix a convenient time and place in the County of Los Angeles for hearing the matter to be arbitrated and shall give written notice thereof to Landlord and Tenant at least five (5) calendar days prior to the date so fixed. Said arbitrator shall with reasonable diligence determine the matter to be arbitrated in accordance with the provisions hereof and of the statutes and judicial decisions of the State of California at the time applicable thereto, and shall execute and acknowledge its determination thereon in writing and cause a copy thereof to be delivered to Landlord and Tenant.

(d) The determination of said arbitrator shall determine the matter to be arbitrated, which determination shall be final and binding on both parties in the same manner as an award rendered under the California Code of Civil Procedure, §1280 *et seq.* If the arbitrator shall fail to reach a decision in the determination of the matter arbitrated, the same shall be decided by a new arbitrator, who shall be appointed and shall proceed in the same manner as hereinabove set forth, and said process shall be repeated until a decision is finally reached by the arbitrator selected.

(e) If any party fails to appear or present any documents or arguments, that party shall be deemed to have waived any right to be heard or to present any documents or arguments and shall be deemed to have consented to be bound by any determination rendered. The fees and costs of the arbitrator shall be divided equally between the parties.

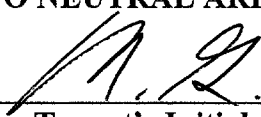
(f) A copy of any notice of election delivered by either party pursuant to Section 17.4(a) above shall also be delivered to each Mortgagee. In addition, each Mortgagee shall be entitled to participate in any arbitration proceeding conducted pursuant to this Section 17.4. Such participation shall be at such Mortgagee's sole cost and expense and shall be preceded by the delivery to Landlord and Tenant of a written notice from such Mortgagee regarding its intent to participate.

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE**

BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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

  
\_\_\_\_\_  
Landlord's Initials

  
\_\_\_\_\_  
Tenant's Initials

**17.5 [Reserved]**

**17.6 Notices.** Wherever in this Lease one party to this Lease is required or permitted to give or serve a notice, request or demand to or on the other, such notice, request or demand shall be given or served upon the party to whom it is directed in writing and shall be delivered personally or forwarded by registered or certified mail, postage prepaid, return receipt requested, or delivered by Federal Express, Express Mail, or another overnight delivery service, or sent by facsimile or electronic mail, provided that any notice sent by facsimile or electronic mail shall also be sent by one of the other modes of permissible delivery initiated not more than one (1) business day after such transmission by facsimile or electronic mail, addressed as follows:

If to Landlord: City of Redondo Beach  
415 Diamond Street  
Redondo Beach California 90277  
Attn: Assistant City Manager  
Facsimile: (310) 379-9268

If to Tenant: Robert Dale Resnick, as Trustee for the RDR Living Trust of 1996  
c/o RDR Properties  
1545 Sawtelle Blvd., Suite 21  
Los Angeles, California 90025  
Facsimile: (310) 459-4497

With a copy to: Brown Winfield Canzoneri Abram Inc.  
300 South Grand Avenue, Suite 1400  
Los Angeles, California 90071-3124  
Attn: Dennis S. Roy, Esq.  
Facsimile: (213) 687-2149

Either party may change its address for notice by written notice given to the other in the manner hereinabove provided. Any such notice, request or demand shall be deemed to have been duly

given or received on (i) the date of service if served personally on the Party to whom notice is to be given, (ii) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if sent by Federal Express, Express Mail or another like overnight delivery service, (iii) the date of delivery, if sent by fax or electronic mail; provided that, if such fax or electronic transmission is sent on a weekend or after 5:00 p.m. on a business day, then it shall be deemed sent on the next business day, and provided that any notice sent by fax or electronic mail shall also be sent by one of the other modes of permissible delivery, which alternate method of delivery shall be initiated not more than one (1) business day after such transmission by fax or electronic mail, or (iv) the date of actual delivery (or refusal) as shown by the addressee's registry or certification of receipt, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as shown above (or to such other address as either Party may from time to time direct by written notice given in the manner herein prescribed).

**17.7 Partial Invalidity; Construction.** If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. This Lease shall be governed by and construed under the laws of the State of California. When required by the context of this Lease, the singular shall include the plural, and the neuter shall include the masculine and feminine. Except as otherwise expressly provided herein, whenever the consent or approval of a party is required by the terms of this Lease to any proposed action or event, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Except as otherwise expressly provided herein, all references to days shall mean calendar days. Where this Lease refers to business days, it shall mean all days except Saturday, Sunday and state and national holidays.

**17.8 Captions.** The captions and headings in this Lease are inserted only as matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

**17.9 Short Form Lease.** Concurrently with the execution and delivery of this Lease, Landlord and Tenant shall join in the execution and delivery of a short form memorandum of this Lease in the form attached as Exhibit "G", and shall record such memorandum in the Official Records of Los Angeles County, California forthwith. The parties further agree, however, that the terms, covenants and conditions of this Lease shall govern and control over any such memorandum.

**17.10 Brokers' Commissions.** Each party represents to the other that it is not obligated to any broker, finder or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby. Each party hereto agrees to defend, indemnify and hold harmless the other party hereto from any claim, suit, liability or demand made upon the other party by any person, firm or corporation for brokerage or finder's fees or commissions or other similar compensation with respect to such transactions, or with respect to any lease or sublease for space in or on the Premises, resulting from (or allegedly resulting from) the actions of the indemnifying party.

**17.11 Attorneys' Fees.** In the event of any litigation or arbitration regarding this Lease, the losing party shall pay to the prevailing party its costs of litigation or arbitration including, without limitation, reasonable attorneys' fees.

**17.12 Counterparts.** This Lease may be executed in two or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

**17.13 Sole Agreement.** This Lease contains all of the agreements of the parties hereto with respect to Tenant's tenancy of the Premises, and all matters relating to such tenancy, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose.

**17.14 Successors and Assigns.** This Lease and all of its provisions and attached Exhibits shall inure to the benefit of, and shall be binding upon, Landlord, Tenant and their respective permitted successors and permitted assigns. This Lease supersedes the Existing Lease and is the sole agreement of the parties with respect to the subject matter hereof from and after the Lease Commencement Date; provided, that any dispute arising as to events, circumstances, obligations, or rights occurring or existing prior to the Lease Commencement Date shall continue to be governed by the Existing Lease in effect at the time of such events or circumstances.

**17.15 Time is of the Essence.** Time is of the essence with respect to the performance and observance of each of the obligations, covenants and agreements of the parties under this Lease.

**17.16 Survival of Covenants.** Except with respect to those conditions, covenants and agreements of this Lease which by their express terms are applicable only to, or which by their nature could only be applicable after, a certain date or time during the Term hereof, all of the conditions, covenants and agreements of this Lease shall be deemed to be effective as of the date of this Lease. Any obligation arising during the Term under any provision hereof, which by its nature would require Landlord and/or Tenant to take certain action after the expiration of the Term or other termination of this Lease, including any termination resulting from the breach of this Lease by Tenant, shall be deemed to survive the expiration of the Term or other termination of this Lease and, after the expiration of the Term or other termination hereof, the parties shall be required to perform any actions which are necessary to fully perform the obligations that arose prior to such expiration or termination.

**17.17 Landlord's Right to Encumber.** Landlord shall have the right, subject to the prior written consent of Tenant, which consent shall not be unreasonably withheld or delayed, to subject all or any part of Landlord's Interest to any deed of trust or mortgage.

**17.18 Amendments in Writing.** This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the party to be charged.

**17.19 Reasonableness Standard.** Except as otherwise expressly provided herein, whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Landlord and Tenant shall act reasonably of the Lease but which have not yet been discharged.

*[SIGNATURES FOLLOW ON NEXT PAGE]*



IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

**"LANDLORD"**

**CITY OF REDONDO BEACH**

By: 

Michael A. Gin

Mayor

**"TENANT"**

**RDR LIVING TRUST OF 1996**

By: 

Robert Dale Resnick, Trustee

**ATTEST:**

  
**CITY CLERK**

**APPROVED AS TO FORM:**

By: 

~~Michael Webb~~

City Attorney's Office

## EXHIBITS

Exhibit "A"	Tidelands Grant
Exhibit "B"	Description of Leased Land
Exhibit "C"	Tenant Development Plan
Exhibit "D"	Landlord Improvements
Exhibit "E"	Participation Rent
Exhibit "F"	Limitation of Uses
Exhibit "G"	Memorandum of Lease

**EXHIBIT "A"**  
**TIDELANDS GRANT**

**AN ACT GRANTING CERTAIN TIDELANDS AND SUBMERGED LANDS  
OF THE STATE OF CALIFORNIA TO THE CITY OF REDONDO BEACH  
UPON CERTAIN TRUSTS AND CONDITIONS**

The people of the State of California do enact as follows:

SECTION 1. There is hereby granted to the City of Redondo Beach, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, and to all the tidelands and submerged lands, within the present boundaries of said City, and situated below the line of mean high tide of the Pacific Ocean, to be forever held by said City, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit:

(a) Said lands shall be used by said City and by its successors, solely for the establishment, improvement and conduct of a harbor and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion or accommodation of commerce and navigation and the protection of the lands within said City, and said City, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatsoever; provided, that said City, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor;

(b) Said harbor shall be improved by said City without expense to the State, and shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad owned or operated by the State of California;

(c) In the management, conduct or operation of said harbor, or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls or charges, or to facilities, for any use or service in connection therewith shall ever be made, authorized or permitted by said City or by its successors. The absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose, is hereby reserved to the people of the State of California.

Approved April 12, 1915  
Stats 1915, p.62.

COMPLIMENTS OF  
ROBERT G. BEVERL  
Assemblyman, 46th District

RECEIVED

APR 24 1972

PROPERTY MANAGEMENT

Senate Bill No. 1461

# CHAPTER 1555

*An act to amend Section 1 of, and to add Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 to, Chapter 57 of the Statutes of 1915, relating to tidelands and submerged lands.*

[Approved by Governor November 17, 1971. Filed with Secretary of State November 19, 1971.]

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature makes the following findings and determinations:

(a) By Chapter 57 of the Statutes of 1915, the Legislature conveyed certain tide and submerged lands in trust to the City of Redondo Beach for the purposes therein stated, primarily for the promotion and accommodation of commerce, navigation, and fisheries.

(b) A portion of such tide and submerged lands has been filled and reclaimed in accordance with a master plan of improvement of said granted tide and submerged lands, including the development of a harbor facility.

(c) The City of Redondo Beach, through development of its harbor, has caused to be made available approximately 1,500 boat slips, boat fuel docks, boat service yards, boat hoists, boat rental facilities, and free fishing from three different piers, has constructed two breakwaters, is in the process of providing public parking facilities and will provide parking for in excess of 1,000 cars, and will provide numerous recreational amenities including, but not limited to, nautical museums, restaurants, motels, and other tourists facilities.

(d) The City of Redondo Beach has made available, by the development of access facilities and other recreational amenities, an additional three miles of shoreline providing access to the ocean for recreational, commercial, and navigational purposes.

(e) The City of Redondo Beach is currently undergoing a large scale redevelopment project which has revitalized the waterfront areas fronting the city.

(f) In accordance with the master plan of the City of Redondo Beach for the development of the tide and submerged lands granted to it in trust pursuant to Chapter 57 of the Statutes of 1915, Parcels 1 through 4, inclusive, as described in Section 5 of said act, being a relatively small portion of such granted tide and submerged lands, were filled, reclaimed, and

optioned for lease or leased, and are producing income to support the statutory trusts under which such tide and submerged lands are held by said city and, except for the production of income to support said trusts are, under such master plan, no longer required or needed for the promotion of said trusts.

(g) Said Parcels 1 through 4, inclusive, are no longer needed or required for purposes of navigation, commerce, and fisheries and should be freed of the public trust for navigation, commerce, and fisheries but should continue to be held in trust by the City of Redondo Beach subject to the terms and provisions of Chapter 57 of the Statutes of 1915, as amended and supplemented by this act, and to other laws applicable to the tide and submerged lands included in such grant to the City of Redondo Beach, but subject to no condition of use other than the uses set forth in the existing options to lease and leases of said Parcels 1 through 4, inclusive, and subject to the condition that the revenues derived from the leasing or administration of said Parcels 1 through 4, inclusive, shall be used in furtherance of the purposes of the trust under which other tide and submerged lands are held by the City of Redondo Beach as expressed in Chapter 57 of the Statutes of 1915, as amended and supplemented by this act.

(h) The release of said Parcels 1 through 4, inclusive, from the public trust for navigation, commerce, and fisheries to the extent expressed in subdivision (g) of this section is in the best interests of the people of the State of California.

SEC. 2. Section 1 of Chapter 57 of the Statutes of 1915 is amended to read:

Section 1. There is hereby granted and conveyed in trust to the City of Redondo Beach, hereinafter referred to as the "city," all of the right, title, and interest of the State of California, held by the state by virtue of its sovereignty in and to all of the tide and submerged lands within the present boundaries of the city and situated below the mean high tide line of the Pacific Ocean, which lands, except for the lands described in Section 5 of this act, are to be forever held by the city and its successors in trust for the uses and purposes and upon the express conditions following, to wit:

(a) For the establishment, improvement, and conduct of harbors, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation.

(b) For all marine-oriented commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of marine-oriented commercial and industrial buildings, plans, and facilities.

(c) For the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this section.

(d) For the construction, reconstruction, repair, maintenance, and operation of public parks, public playgrounds, public bathhouses, and public bathing facilities, public recreation and public fishing piers, including, but not limited to, all facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such marine-oriented uses in the statewide interest.

(e) For the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of such uses, including, but not limited to, snackbars, cafes, cocktail lounges, restaurants, motels, hotels, and other forms of transient living accommodations open to the public, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas, and other compatible commercial and recreational activities and uses.

(f) For the protection of wildlife habitats, the improvement, protection, and conservation of the wildlife and fish resources and the ecology of the area, the providing of open-space areas and areas for recreational use with open access to the public, the enhancement of the aesthetic appearance of the area, control of dredging or filling of the area, or both, and prevention of pollution of the area.

Sec. 3. Section 2 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 2. The city, or its successors, shall not at any time grant, convey, give, or alienate said lands, or any part thereof, to any individual, firm, or corporation for any purpose whatsoever; provided, that the city, or its successors, may grant franchises thereon for limited periods for those uses and purposes set forth in Section 1 of this act and may lease said lands, or any part thereof, for limited periods for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation.

SEC. 4. Section 3 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 3. The harbor established pursuant to subdivision (a) of Section 1 of this act shall be improved by the city without expense to the state, and shall always remain a public harbor for all purposes of commerce and navigation, and the state shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays, and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad owned or operated by the state.

SEC. 5. Section 4 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 4. In the management, conduct, or operation of said harbor, or of any of the utilities, structures, or appliances mentioned in subdivision (a) of Section 1 of this act, no discrimination in rates, tolls, charges, or in facilities for any use or service in connection therewith shall ever be made, authorized, or permitted by the city or by its successors. The absolute right to fish in the waters of said harbor, with the right of convenient access to such waters over said lands for such purpose, is hereby reserved to the people of the State of California.

SEC. 6. Section 5 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 5. The following four described parcels of land conveyed in trust to the city under the provisions of Section 1 of this act are freed of the public trust for navigation, commerce, and fisheries, but shall continue to be held in trust by the city subject to the terms and provisions of this act and to other laws applicable to tide and submerged lands included in such grant to the city, subject to no condition of use other than the uses set forth in the existing options to lease and leases of such parcels, and subject to the condition that the revenues derived from the leasing or administration of such parcels shall be used in furtherance of the purposes of the trust under which other tide and submerged lands are held by the city in accordance with this act:

~~Parcel 1~~ Parcel 1

That area of Tidelands and Submerged land lying within the City of Redondo Beach, County of Los Angeles, State of California, described as follows:

Beginning at a survey monument designated as '11-12' on Map of Record of Survey filed in Book 78, Page 100 of Record of Surveys of said County; thence S 86° 06' 15" W 58.33 ft. to the True Point of Beginning; thence S 32° 41' 53" W 180.15 ft.; thence N 57° 15' 05" W 53.75 ft.; thence N. 32°



41' 55" E 180.15 ft.; thence S 57° 15' 03" E 53.75 ft. to the True Point of Beginning.  
Containing 0.222 acres.

Parcel 2

That area of Tidelands and Submerged land lying within the City of Redondo Beach, County of Los Angeles, State of California, described as follows:

Beginning at a survey monument designated as 'II-16' on Map of Record of Survey filed in Book 78, Page 100 of Record of Surveys of said County, thence along a line extending from said monument to survey monument 'II-17' as shown on said map, S 67° 06' 03" W 155.69 ft. to a point in the Mean High Tide Line as shown on map of the Grant to the City of Redondo Beach by the State Lands Commission and recorded as O.R.M. 2259, Page 111 and filed with the County Recorder of said County as P-1916; thence along said line N 20° 24' 43" W 188.39 ft. to the True Point of Beginning; thence continuing along said line N 20° 24' 43" W 293.84 ft. to a point in the northerly boundary line of said City of Redondo Beach; thence along said line S 68° 42' 41" W 303.57 ft.; thence S 21° 18' 03" E 293.88 ft.; thence N 68° 41' 57" E 298.98 ft. to the True Point of Beginning.  
Containing 2.016 acres.

Parcel 3

That area of Tidelands and Submerged land lying within the City of Redondo Beach, County of Los Angeles, State of California, described as follows:

Beginning at a survey monument designated as 'II-15' on Map of Record of Survey filed in Book 78, Page 100 of Record of Surveys of said County, thence along a line extending from said monument to survey monument 'II-14' as shown on said map, S 73° 21' 28" W 148.10 ft.; thence N 16° 38' 32" W 88.00 ft. to the True Point of Beginning; thence S 73° 21' 28" W 621.27 ft.; thence S 16° 38' 32" E 23.00 ft.; thence S 73° 21' 28" W 161.35 ft. to the beginning of a tangent curve concave southeasterly having a radius of 60.27 ft.; thence southwesterly along the arc of said curve 110.56 ft.; thence tangent to said curve, S 31° 44' 59" E 451.46 ft. to the beginning of a tangent curve concave northerly having a radius of 59.08 ft.; thence southerly and easterly along the arc of said curve 110.62 ft. to a point to which a radial line bears S 55° 51' 29" E; thence along a non-tangent line N 73° 21' 28" E 45.11 ft.; thence N 16° 42' 30" W 392.59 ft.; thence N 73° 21' 28" E 587.83 ft.; thence N 16° 38' 32" W 176.00 ft. to the True Point of Beginning.  
Containing 4.949 acres.

Parcel 4

That area of Tidelands and Submerged land lying within the City of Redondo Beach, County of Los Angeles, State of California, described as follows:

Beginning at a survey monument designated as '11-16' on Map of Record of Survey filed in Book 78, Page 100 of Record of Surveys of said County, thence along a line extending from said monument to survey monument '11-17' as shown on said map, S 67° 06' 03" W 155.69 ft. to a point in the Mean High Tide Line as shown in map of the Grant to the City of Redondo Beach by the State Lands Commission, and recorded as O.R.M. 2259, Page 111 and filed with the County Recorder of said County as F-1916; thence along said line N 20° 24' 43" W 23.82 ft. to the True Point of Beginning; thence continuing along said line N 20° 24' 43" W 90.09 ft.; thence S 67° 06' 03" W 386.83 ft.; thence S 22° 53' 57" E 90.00 ft.; thence N 67° 06' 03" E 382.92 ft. to the True Point of Beginning.

Containing 0.793 acres.

Sec. 7. Section 6 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 6. The city shall maintain records identifying all revenues from all lands granted pursuant to this act and shall file annual reports of such revenues with the State Lands Commission.

Sec. 8. Section 7 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 7. For purposes of this act, the retirement of bonds issued by the city for the construction of said harbor facilities constitutes the use of revenues in accordance with the terms of said trusts.

Sec. 9. Section 8 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 8. The city shall establish a separate trust fund or funds on or before December 31, 1972, for deposit of all of the following:

(a) All moneys or proceeds derived from the granted tide and submerged lands in the city, including all net income and revenues derived from the production or sale of oil, gas, or other hydrocarbon substances derived from the granted tide and submerged lands.

(b) All revenues derived from those certain lands of the city, hereafter referred to as "uplands," and described as follows:

Those certain uplands in the City of Redondo Beach, County of Los Angeles, State of California, more particularly described as follows:

Beginning at a point, said point being on the mean high tide line of October 1933 as established by the State of California and shown on map of the grant to the City of Redondo Beach recorded on June 17, 1966 and filed as Instrument No. 2886, Book F1916 in the Office of the Los Angeles County Recorder, said point being also the westerly terminus of a line shown on the map of record of survey filed in Book 81, Page 36 through 39 inclusive in the Office of the Los Angeles County Recorder, said line having a bearing of North 66°, 29 minutes, 26 seconds East and a length of 154.29 feet, said line being a course in the westerly boundary of said record of survey, thence easterly along said line and northerly along said westerly boundary of record of survey on its various courses to its intersection with the westerly line of Harbor Drive, thence northerly along said westerly line of Harbor Drive on its various courses to its intersection with the northerly boundary of the City of Redondo Beach, thence westerly on said city boundary to its intersection with said mean high tideline, thence southerly along said mean high tideline on its various courses to the point of beginning.

Commencing on September 30, 1974, a statement of financial condition and operation shall be submitted by the city to the Auditor General annually on or before September 30 of each year for the preceding fiscal year.

Sec. 10. Section 9 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 9. Notwithstanding any other provision of law, the city, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted tidelands and submerged lands for any or all of the following purposes; provided, that they comply with the terms of the trust and are matters of statewide, as distinguished from local or purely private, interest and benefit:

(a) For the establishment, improvement, and conduct of harbors, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation.

(b) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities.

(c) For the establishment, improvement, and conduct of airport and heliport or aviation facilities, including, but not limited to, approach, takeoff, and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance, and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other

works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of air commerce and air navigation.

(d) For the construction, reconstruction, repair, and maintenance of highways, streets, roadways, bridges, beltline railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary, or convenient for the promotion and accommodation of any of the uses set forth in this act.

(e) For the construction, reconstruction, repair, maintenance, and operation of public buildings, public assembly and meeting places, convention centers, public parks, public playgrounds, public bathhouses and public bathing facilities, public recreation and fishing piers, public recreation facilities including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(f) For the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities, and for the construction, reconstruction, repair, maintenance and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of such uses including, but not limited to, snackbars, cafes, cocktail lounges, restaurants, motels, hotels, and other forms of transient living accommodations open to the public, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas, and other compatible commercial and recreational activities and uses.

(g) For the protection of wildlife habitats, the improvement, protection, and conservation of the wildlife and fish resources and the ecology of the area, the providing of open-space areas and areas for recreational use with open access to the public, the enhancement of the aesthetic appearance of the area, control of dredging or filling of the area, or both, and prevention of pollution of the area.

(h) For the promotion, by advertising and such other means as may be reasonable and appropriate, of maximum public use of such granted tidelands and submerged lands or to encourage private investment in development of such granted tidelands or submerged lands for the highest and best use in the public interest.

(i) For any other uses or purposes of statewide, as distinguished from purely local or private, interest and benefit which are in fulfillment of those trust uses and purposes described in this act.

(j) For the acquisition of property and the rendition of services reasonably necessary to the carrying out of the uses and purposes described in this section, including the amortization or debt service of any capital improvement funding program which is consistent with the terms and conditions set forth in this act.

Sec. 11. Section 10 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 10. Such revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

Sec. 12. Section 11 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 11. As to the accumulation and expenditure of revenues for any single capital improvement on the granted tidelands and submerged lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the city shall file with the State Lands Commission a detailed description of such capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith, excepting preliminary planning. The State Lands Commission may, within 90 days after the time of such filing, determine and notify the city that such capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of Sections 1 and 9 of this act. The State Lands Commission may request the opinion of the Attorney General on the matter, and if it does so, a copy of such opinion shall be delivered to the city with the notice of its determination. In the event the State Lands Commission notifies the city that such capital improvement is not authorized, the city shall not disburse any revenue for, or in connection with, such capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service shall be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. Each party shall bear its own costs of suit and no such costs shall be recovered from the other party.

Sec. 13. Section 12 is added to Chapter 57 of the Statutes of 1915, to read:

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Sec. 12. At the end of each fiscal year, beginning September 30, 1976, that portion of trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or the maintenance of beaches, harbors, and other tidelands trust activities have been paid, shall be deemed excess revenue; provided, that any funds deposited in a reserve fund for future capital expenditures, or any funds required to service or retire general obligation or revenue bond issues, or special funds required to be maintained for the payment of contractual obligations owing to the state on account of harbor improvements authorized by the provisions of Article 3 (commencing with Section 70) of Chapter 2 of Division 1 of the Harbors and Navigation Code, the moneys from which have been, or will be, used for purposes authorized by law, shall not be deemed excess revenue. Amortization payments made subsequent to the effective date of the enactment of this section at the 1971 Regular Session of the Legislature for capital improvements of the granted tidelands and submerged lands for purposes authorized by the terms of the grant may be considered as expenditures for the purpose of determining net revenues. The excess revenue, as determined pursuant to this section, shall be divided as follows: 85 percent to the General Fund in the State Treasury, and 15 percent to the city to be deposited in the city's trust fund and used for any purpose authorized by Sections 1 and 9 of this act.

Sec. 14. Section 13 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 13. The State Lands Commission, at the request of the city, shall grant an extension of time for filing any report or statement required by this act which was not filed due to mistake or inadvertence not to exceed 30 calendar days after service upon the city by the State Lands Commission of written notice of violation.

Sec. 15. Section 14 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 14. In the event that the city fails or refuses to file with the State Lands Commission or with the Auditor General any report, statement, or document required by any provision of this act within the time period specified by this act, or any extension period granted pursuant to this act, within 30 days after written notice to the city, or fails or refuses to carry out the terms of the grant within 30 days after written notice to the city, the State Lands Commission or the Auditor General shall within 60 days notify the Chief Clerk of the Assembly and the Secretary of the Senate.

The Attorney General shall, upon request of the State Lands Commission, after the city has been given such notice and

after such failure or refusal by the city bring such judicial proceedings for correction and enforcement as are appropriate, and shall act to protect any properties or assets situated on the granted tidelands or derived therefrom.

Sec. 16. Section 15 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 15. The State Lands Commission may from time to time at the request of the Legislature, institute a formal inquiry to determine that the terms and conditions of the grant and amendments and supplements thereto have been complied with, and that all other applicable provisions of law concerning these specific granted tidelands and submerged lands are being complied with in good faith.

Sec. 17. Section 16 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 16. The Auditor General shall, on or before March 30 of each year, commencing on March 30 1975, report to the Chief Clerk of the Assembly, to the Secretary of the Senate, and to the State Lands Commission, the full details of any transaction or condition reported to him pursuant to this act which he deems in probable conflict with the requirements of this act, or with any other applicable provision of law concerning these specific granted tidelands and submerged lands.

Sec. 18. Section 17 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 17. The Attorney General shall bring an action in the Superior Court of the County of Los Angeles to declare that the grant under which the city holds such tidelands and submerged lands is revoked for gross and willful violation of the terms of the grant or other applicable provisions of law concerning these specific granted tidelands and submerged lands, or to compel compliance with the terms and conditions of the grant, or the provisions of such other applicable law, upon request by concurrent resolution of either house of the Legislature or upon formal request of the State Lands Commission. Such request shall be made only after a finding that the city has grossly and willfully violated the terms of the grant or other applicable provisions of law concerning these specific granted tidelands and submerged lands.

Such finding shall be supported by substantial evidence and shall be made only at the conclusion of a noticed public hearing at which the city has been given an opportunity to present evidence to fully describe conditions and extenuating circumstances and to present facts to disprove the alleged violation.

Sec. 19. Section 18 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 18. In the event the grant of tidelands and submerged lands in trust to the city is revoked pursuant to Section 17

of this act, such revocation shall not impair or affect the security of leases or the rights or obligations of third parties, including lessees, lenders for value, or others who are parties to contracts which, except for such revocation, would be lawful and binding contracts.

Sec. 20. Section 19 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 19. The provisions of Sections 8 through 13 of this act relating to the deposit, accounting, and use of revenues derived from the uplands described in subdivision (b) of Section 8 of this act shall no longer be of any force and effect as to such uplands upon the payment of the bonded debt incurred by the city in connection with the development of the Redondo Beach King Harbor or the payment of any refinancing thereof, up to a maximum sum of ten million dollars (\$10,000,000), whichever occurs last. Upon the happening of the latter of such events, all revenues derived from the uplands may be utilized by the city for any lawful municipal purpose.

Sec. 21. Section 20 is added to Chapter 57 of the Statutes of 1915, to read:

Sec. 20. Nothing contained in this act shall in any way impair or affect the rights or obligations of third parties, including, but not limited to, optionees, lessees, lenders for value, and holders of contracts conferring the right to the use and occupation of, or the right to conduct operations upon, lands described in this act arising from options, leases, contracts, or other instruments entered into by the city in good faith prior to the effective date of this section enacted at the 1971 Regular Session of the Legislature.



## **EXHIBIT "B"**

### **DESCRIPTION OF LEASED LAND**

#### **REDONDO PIER APPROACH**

Those certain tidelands and submerged lands in the City of Redondo Beach, County of Los Angeles, State of California, more particularly described as follows:

Beginning at a point on the southerly line of Coral Way (formerly known as Pier Avenue) produced westerly, which bears south  $74^{\circ}-42'-35''$  west, a distance of 66.12 feet from the northwest corner of Lot B, Tract 5322, as recorded in Map Book 56, pages 91 and 92, records of said County in said State, to the westerly line of Harbor Drive; thence south  $74^{\circ}-42'-35''$  west a distance of 192.15 feet, thence north  $15^{\circ}-17'-25''$  west a distance of 9.00 feet, thence south  $74^{\circ}-42'-35''$  west a distance of 24.85 feet, thence south  $15^{\circ}-17'-25''$  east a distance of 22.00 feet, thence south  $74^{\circ}-42'-35''$  west a distance of 23.79 feet, thence south  $15^{\circ}-17'-25''$  east a distance of 67.79 feet, thence north  $74^{\circ}-42'-35''$  east a distance of 0.79 feet, thence north  $15^{\circ}-17'-25''$  west a distance of 0.79 feet, thence north  $74^{\circ}-42'-35''$  east a distance of 240.28 feet, thence north  $15^{\circ}-29'-25''$  west along the westerly line of said Harbor Drive a distance of 80.00 feet to the Point of Beginning

Containing therein approximately 11,604 square feet.

## EXHIBIT "C"

### TENANT DEVELOPMENT PLAN

- A. **Upper Roofs.** Makeover of upper roof façade at 100"H". The appearance of the pagoda roof structure over the landing on the stairway up to El Torito's will be redesigned.
- B. **Redesigned Pier Level Storefronts.** Redesign, demolition, and redevelopment of all Pier level storefronts. Possible expansion of some or all of the Pier facing storefronts on the northern side of the leasehold by extending them to the northern edge of the existing ceiling soffit;
- C. **New Ocean Facing Beachside Plaza.** Removal of south stairway from Pier level to upper level, relocation and reconstruction of new stairway from basement level to Pier level, construction of new architectural decking, and redevelopment of "back of the building" façades into south facing retail storefronts. This element is subject to receipt of all approvals, including Redondo Beach Fire Department.
- D. **North – South Pedestrian Walkway.** Construction of a north-south pedestrian walkway through the building, giving Pier visitors direct access from the Pier to the beach. New storefronts inside the walkway will allow visitors to view stores and shop in the stores on either side of the walkway. The walkway itself will be made into an attraction, possibly with murals of Redondo Beach to entertain and educate visitors;
- E. **Outdoor Patio Dining.** The upper level patio to the west of 100"H" will be extended southward over the sand and wrapped around the building eastward to the southeast corner of the building. A dining patio also will be created in front of Oceanside Seafood on the Pier level. This element is subject to receipt of all approvals, including City of Redondo Beach and L.A. County Beaches Dept.
- F. **Renovation of Retail Interiors.** Upgrades to Pier level retail stores.
- G. **Pier Level Decking.** New Pier level exterior decking.
- H. **Railings; Awnings.** All of the wooden railings will be removed and replaced with a new railing system. Awnings may be placed over selected storefronts.
- I. **Banner Program.** A banner program will be added to the building.
- J. **Exterior Lighting Program.** A new exterior building lighting system will be installed around the building.
- K. **New Architectural Signage Program.** Pier level exterior retail signage will be removed and replaced with new, themed and architecturally consistent signage.
- L. **Landscaping.** Planters will be strategically located around the building.

## **EXHIBIT "D"**

### **LANDLORD IMPROVEMENTS**

- A. Decking.** Replacement of the pavers on the Pier deck.
- B. Architectural Lighting.** New lampposts, sconces, or other architectural lighting.
- C. Landscaping.** New planter boxes with enhanced landscaping.
- D. Outdoor Furniture; Accessories.** New benches, and trash receptacles, following a seaside architectural theme.
- E. Signage.** New architectural public signage.
- F. Beachside Decking.** Temporary extension of the City's Pier level decking to the south of the Premises (subject to Landlord's receipt of all applicable approvals and Landlord's best efforts to obtain same).

**EXHIBIT "E"**  
**PARTICIPATION RENT**

**A. Definitions.** Capitalized Terms not defined in this Exhibit "E" shall have meanings defined in the Lease. The following capitalized terms shall have the following meanings:

**"Applicable Percentage"** means the percentage applicable to each use specified below in Section B(2), and subject to adjustment pursuant to Section B(3).

**"Appreciation Rent"** shall mean the Additional Rent payable pursuant to Section C below.

**"Base Value"** means the value established upon Tenant's completion of the Development Plan as provided below, as increased from time to time pursuant to the provisions below. Upon Tenant's completion of the Development Plan described in Section 2.1 of the Lease, Base Value shall be set pursuant to a fair market value appraisal of Tenant's Interest to be conducted in accordance with the provisions set forth in Section 11.4(c) of the Lease. Such appraisal and resulting Base Value will serve to account for all capital investment in the Premises up to and through completion of the Development Plan. Base Value shall thereafter be adjusted upward as follows: (i) to the principal amount of any refinancing resulting in Net Financing Proceeds at the time of a financing event, (ii) to the amount (gross purchase price) of any sale or other Transfer resulting in Net Sale Proceeds at the time of a Transfer, (iii) by the amount of all expenditures by Tenant, constituting capital expenditures with respect to the Premises during the Term, including, without limitation, funds utilized from the Capital Improvement Fund or Renovation Fund, from Tenant's own funds, or from the proceeds of any policy of insurance; provided that, such capital expenditure must be approved by Landlord, such approval not to be unreasonably withheld, in order to qualify as an increase to Base Value; and provided, further, that insurance proceeds applied following an event of damage or destruction for purposes of restoring the Premises to the status quo ante shall not constitute capital expenditures resulting in an increase to Base Value; and (iv) after the foregoing adjustments of the Base Value for items (i) through (iii) above, by an additional increase of (A) ten percent (10%) per annum, compounded annually, during the first ten years of the Term, and (B) twelve percent (12%) per annum, compounded annually, every year thereafter during the Term, prorated for any partial years. With respect to application of (iv) above, all capital expenditures made during the January 1 to June 30 period of a year shall bear interest for that entire year, and all capital expenditures made during the July 1 to December 31 period of a year shall not begin bearing interest until the next year.

**"Gross Sales"** shall mean any and all gross receipts, proceeds and amounts of any kind derived from the sale of goods and services in connection with business operations at the Premises, including, without limitation, amounts from the sale of merchandise and services made in, upon, or from the Premises (whether received by Tenant, a Subtenant or any agent, subtenant, licensee or concessionaire of Tenant or Subtenant). Gross Sales shall include the proceeds of business interruption insurance which are received in lieu of revenues that would otherwise constitute Gross Sales, but shall not include any occupancy charges for the Premises, including, without limitation, rent or tenant advances, reimbursements, security deposits or funded reserves received by Tenant from Subtenants, rental loss insurance or casualty and disaster award

proceeds. Gross Sales shall also not include (i) taxes collected from customers and paid by Tenant or Subtenant to the applicable taxing authority, such as sales taxes, (ii) bad debt losses or reserves provided such reserves shall be limited to actual cash reserves established and funded for that purpose and shall not exceed two percent (2%) of Gross Sales, (iii) goods returned to suppliers or which are delivered without consideration to another location for sale to the public from that location, (iv) an amount equal to cash refunds or credits for returned merchandise which was originally included in Gross Sales, (v) sales of fixtures, equipment or property which are not stock in trade, (vi) interest earned on funds arising from the Premises, and (vii) reserve accounts required by the Lease.

**"Net Financing Proceeds"** means the principal amount of any loan or financing proceeds (net of any direct transaction or closing costs charged by the applicable lender or financing source or otherwise directly attributable to such financing, including loan fees, escrow fees, title insurance premiums, attorneys' fees and costs, transfer taxes, survey fees, recording fees, commissions, prepayment penalties, and other customary and usual fees of a refinancing (collectively "Refinancing Expenses") and net of any Refinancing Expenses or Transfer Expenses applicable to any previous financing or Transfer which did not result in Net Financing Proceeds or Net Sale Proceeds, respectively, payable to Landlord) *less the greatest of the following*: (i) the then current Base Value; (ii) the principal amount of any existing financing that is paid off entirely by the current loan or financing proceeds; or (iii) the principal amount of any previous financing or Transfer pursuant to which Landlord was paid Appreciation Rent pursuant to Section C below.

**"Net Sale Proceeds"** means the cash value of all consideration paid or payable in conjunction with any Transfer (net of any direct transaction and closing costs charged by a third party in connection with such Transfer or otherwise directly attributable to such Transfer, including escrow fees, title insurance premiums, reasonable attorneys' fees and costs, transfer taxes, survey fees, recording fees, commissions, prepayment penalties, defeasance fees and other customary and usual fees of a Transfer (collectively, "Transfer Expenses")) *less the greatest of the following*: (i) the then current Base Value; (ii) the purchase price paid by the then current Tenant in conjunction with the most recently completed Transfer, plus the amount of all funds, from any source, constituting capital expenditures by the then current Tenant with respect to the Premises; or (iii) the principal amount of any previous financing or Transfer with respect to which Landlord was paid Appreciation Rent pursuant to Section C below.

**"Operation Year"** means a twelve (12) month period starting on the Lease Commencement Date, and each subsequent twelve (12) month period.

**"Percentage Rent"** shall have the meaning set forth in Section B(1) below.

**"Transfer"** means any sale, assignment, transfer or other conveyance of the Lease, or any sale or assignment of an undivided five percent (5%) or greater direct ownership interest in Tenant's Interest in the Lease (provided, that for purposes of determining whether such (5%) threshold has been met, any series of Transfers that is substantially contemporaneous or otherwise interrelated in such a manner as to constitute a single integrated transaction, shall be aggregated for purposes of measuring the percentage of Tenant's Interest being transferred). If Tenant is a limited liability company, corporation, unincorporated association, trust or partnership of any kind, a transaction constituting a sale, assignment, transfer, redemption, or conversion which results in the loss of a controlling interest in the membership interest, stock,

partnership interest or beneficial interest in said limited liability company, corporation, association, trust or partnership shall also be deemed a Transfer. Notwithstanding anything to the contrary herein, the following shall not constitute a "Transfer" for purposes of this Lease:

(i) a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(ii) a transfer for estate planning purposes of ownership interests in Tenant or in constituent entities or members of Tenant to a member of the family of the transferor, or to a trust or other entity for the benefit of a member of the family of the transferor, whether such transfer is the result of gift, devise, intestate succession or operation of law;

(iii) a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market;

(iv) a mere change in the form, method or status of ownership (e.g. trust interest to limited liability company);

(v) any transfer resulting from a Condemnation by Landlord.

(vi) any granting of a security interest in connection with a financing upon the Premises or any transfer resulting from the foreclosure thereof.

## **B. Percentage Rent.**

**1. Payment of Percentage Rent.** Tenant shall pay to Landlord within sixty (60) calendar days following the end of each Operation Year percentage rent ("**Percentage Rent**") to the extent that the aggregate amount of such Percentage Rent calculated under this Section B exceeds the Base Rent paid by Tenant during such applicable Operation Year. The Percentage Rent shall be calculated by multiplying the Gross Sales (or Gross Income of Tenant with respect to Office rents received from Subtenants) derived from the Premises by the Applicable Percentage for the use generating such Gross Sales (or Gross Income, if applicable). For example only, if a retail store Subtenant generates Gross Sales of \$300,000 in an Operation Year and the Applicable Percentage with respect to those Gross Sales is 5%, then the Percentage Rent for the portion of the Premises occupied by that Subtenant is \$15,000.

**2. Applicable Percentages.** The initial Applicable Percentage for each category of use for the Premises by Tenant and its Subtenants is as follows:

Restaurant & Bar	3.5%
Alcoholic Beverages (without food).	7%
Fish Market	4%
Snack Bar / Take Out	6%
Coffee Shop	3%
Ice Cream Parlor	5%
Vending Machines	
(Tenant's commissions on non-owned machines)	10%
(Gross Sales from machines owned by Tenant)	10%

Bakery	3%
Disco in Basement	3%
Cocktail Lounge in Basement	3%
Electronic Game Room	7%
Office [greater of the following two amounts]	
(subtenants' Gross Sales)	2%
(Tenant's Gross Income received with respect to the subleased premises)	12%
Retail	5%

3. **Renegotiation of Percentage Rent.** Effective as of the tenth (10<sup>th</sup>) anniversary of the Lease Commencement Date, and every ten (10) years thereafter (except any such anniversary falling within the last two (2) years of the Term)(each a "Renegotiation Date"), Landlord and Tenant agree to renegotiate an adjustment in the Applicable Percentages provided for in this Section B for purposes of maintaining a "Fair Percentage Rent" with respect to the Premises. "Fair Percentage Rent" shall mean the fair market percentage rents, expressed as respective percentages of Gross Sales, which the Premises would bring if offered for lease in the open market under conditions existing as of the date of valuation, with a reasonable time allowed in which to find a Tenant renting with a knowledge of all of the permitted uses of the Premises and the covenants, conditions and restrictions of the Lease, the Landlord being willing to lease but under no particular or urgent necessity for doing so and the Tenant being ready, willing and able to lease but under no particular or urgent necessity for doing so. In the event that the parties do not reach an agreement with respect to the appropriate adjustments to the Applicable Percentages on or before any required adjustment date, such adjustments for the succeeding ten (10) year period shall be determined pursuant to the appraisal provisions set forth in Section 11.4(c) of the Lease. Notwithstanding the foregoing, all Applicable Percentages relating to Gross Sales at Harvelle's shall remain unchanged throughout the tenancy of the current Subtenant and shall not be renegotiated until the first required Renegotiation Date following the termination of such tenancy; provided, that, if the percentage rent under the Harvelle's lease is increased in connection with any modification, amendment or extension thereof, this protection shall cease and the Applicable Percentage for Gross Sales at the Harvelle's tenancy shall become subject to adjustment at the next Renegotiation Date thereafter.

C. **Appreciation Rent.**

1. **Payment Upon Financing.** In the event Tenant borrows money whose repayment is secured, directly or indirectly, by Tenant's Interest in the Lease, Tenant shall pay Landlord an amount equal to ten percent (10%) of the Net Financing Proceeds, if any, resulting from such borrowing, as Appreciation Rent. Such Appreciation Rent shall be due and payable immediately upon the funding of the loan, and shall be payable in addition to any other sums payable by Tenant under this Lease. The foregoing provisions of this Section C(1) shall not apply to the first refinancing during the Lease Term, provided it closes within the first ten (10) years following the Lease Commencement Date, and no Appreciation Rent shall be payable with respect to such refinancing.

## **EXAMPLE 1**

**Assume:** Concurrent with the Lease Commencement Date, an initial leasehold mortgage in the principal amount of \$8 Million is recorded against the Leased Land. During the fifth lease year, there is a refinancing and a new leasehold mortgage is recorded against the Leased Land securing a loan in the principal amount of \$10 Million. The transaction costs (e.g. loan fees, escrow, title, attorneys' fees, etc.) in connection with that refinancing are \$50,000. During the eleventh (11<sup>th</sup>) lease year following the Lease Commencement Date, another refinancing occurs in the principal amount of \$14 Million and a new leasehold mortgage is recorded against the Leased Land. The transaction costs of such second refinancing are again \$50,000. At the time of such refinancing the Base Value is \$12 Million.

**Result:** Concurrent with recordation of the refinancing in the eleventh (11<sup>th</sup>) lease year, Tenant shall pay to Landlord the amount of One Hundred and Ninety Thousand Dollars (\$190,000) as Appreciation Rent.

**Explanation:** There is no Appreciation Rent with respect to the first refinancing, as it is prior to the tenth (10<sup>th</sup>) anniversary of the Lease Commencement Date. In order to calculate the Appreciation Rent payment, if any, due upon the second refinancing, you first deduct from the principal amount of that refinancing (\$14 Million), the transaction costs of that refinancing (\$50,000) and the Refinancing Expenses or Transfer Expense of any previous financing or Transfer which did not result in Net Financing Proceeds or Net Sole Proceeds payable to Landlord (in this case, another \$50,000 attributable to the first, exempt refinancing). From the remaining amount (\$13.9 Million), you then deduct the greatest of (i) the current Base Value (in this case, \$12 Million), or (ii) the principal amount of any existing financing that is paid off entirely by the current loan or financing proceeds (in this case, \$10 Million); or (iii) the principal amount of any previous financing or Transfer pursuant to which Landlord was paid Appreciation Rent (in this case, not applicable). Accordingly, the Net Refinancing Proceeds would be \$1,900,000 (\$13.9M-12M), and the payment due to the Landlord would be ten percent (10%) of that amount, \$190,000.

**2. Payment Upon Transfer.** In the event Tenant Transfers (as defined above) its Interest in this Lease, Tenant shall pay Landlord an amount equal to ten percent (10%) of the Net Sale Proceeds, if any, resulting from such Transfer as Appreciation Rent. Such Appreciation Rent shall be due and payable immediately upon the closing of the Transfer, and shall be payable in addition to any other sums payable by Tenant under this Lease. The foregoing provisions of this Section C(2) shall not apply to the first Transfer during the Lease Term, provided a request for approval of such Transfer is submitted to Landlord by Tenant within the first ten (10) years following the Lease Commencement Date, and no Appreciation Rent shall be payable with respect to such Transfer. Where a Transfer has occurred by reason of a change in control of the ownership interest in Tenant, the Net Sale Proceeds shall be due and payable only with respect to those portions of such beneficial interest which were the subject of the Transfer and, in no event, shall any Net Sale Proceeds be due with respect to any portion of the beneficial ownership interest which was unaffected by such Transfer.

## **EXAMPLE 2**

**Assume:** In addition to the facts set forth above in Example 1, assume that in the twelfth year of the Lease, the Tenant sells the Leasehold Estate to a third party purchaser for Eighteen Million Dollars (\$18 Million), and the transaction costs of such sale (including escrow fees, title



premiums, attorneys' fees, transfer taxes, and prepayment fees) are \$300,000. At the time of such sale, the Base Value is \$15.5 Million.

**Result:** Concurrent with the close of escrow for sale of the Leasehold Estate, Tenant shall pay to Landlord the additional amount of One Hundred and Eighty Thousand Dollars (\$180,000).

**Explanation:** In order to calculate the Appreciation Rent payment, if any, due upon the sale, you first deduct from the gross proceeds of that sale (\$18 Million), the transaction costs of that sale (\$300,000). You then subtract from the remaining amount (\$17.3 Million) the greatest of (i) the Base Value, (ii) the most recent purchase price for the Leasehold Estate, plus subsequent capital expenditures, and (iii) the principal amount of a previous financing or Transfer with respect to which Appreciation Rent was paid (see Definition of Net Sale Proceeds). In this case, item (ii) is inapplicable, item (iii) is the \$14 Million refinancing in the eleventh lease year, and item (i) is the Base Value of \$15.5 Million. Accordingly, the deduction is \$15.5 Million and the resulting Net Sale Proceeds are \$1.8 Million (\$17.3 Million - \$15.5 Million). The amount owed to Landlord is 10% of that amount, or \$180,000. Note that, in determining Base Value, given that the \$14 Million refinancing in the eleventh lease year exceeded the then effective Base Value of \$12 Million, the Base Value would have been increased to \$14 Million at that time. The above example then assumes that there were no additional capital expenditures increasing that Base Value, and that the per annum interest increases to Base Value (pursuant to subsection (iv) of the "Base Value" definition set forth in Section A above) thereafter raised the Base Value from \$14 Million to \$15.5 Million. Note also that this sale triggered an Appreciation Rent payment because it occurred after the 10<sup>th</sup> anniversary of the Lease Commencement Date, but would not have resulted in an Appreciation Rent payment if the request for approval of such transaction had been initiated before that 10<sup>th</sup> anniversary.

#### **D. Procedures.**

1. **Record Keeping.** Tenant shall keep full and accurate books and accounts and records and other pertinent data showing the financial operation of the Premises and directly related to the calculation of Participation Rent. Such records shall be kept on the basis of sound accounting principles applied on a consistent basis. Any information gained by Landlord from such records shall be confidential, and Landlord shall make reasonable best efforts not to disclose such information other than to carry out the purposes of this Section D(1), with the exception of the following: Landlord shall be permitted to divulge the contents of any such records in connection with any administrative or judicial proceedings in which Landlord is involved where Landlord may be required by law to divulge such information, or when Landlord (as a public agency) is required by law to divulge such information, or when Tenant waives any right of confidentiality which Tenant may claim to have for such information.

2. **Statements and Reports.** Tenant shall furnish to Landlord: (i) interim monthly statements of Gross Sales (and gross rentals due with respect to any office tenants) on a tenant by tenant basis as promptly as they are available but no later than thirty (30) calendar days following the end of such month (the "**Monthly Statement**"); and (ii) an annual written statement of Gross Sales (and gross rentals with respect to any office tenants) on a tenant by tenant basis within one hundred twenty (120) calendar days after the close of each calendar year (the "**Annual Statement**"). The Annual Statement shall be signed and certified by a licensed CPA. The receipt by Landlord of any Annual Statement, Monthly Statement, or any payment of Participation Rent for any period shall not bind it as to the correctness of such Statement or the

correctness of any payment. Any information gained by Landlord from such Statements, or the results of any audit or inspection, shall be maintained as confidential information to the extent permitted by law, and shall be kept by Landlord in accordance with Section D(1) above.

3. **Right to Inspect, Audit and Dispute Resolution.** Landlord shall, within five (5) years after receipt of the Annual Statement for an Operation Year, be entitled to inspect and audit, on reasonable written notice, at Landlord's sole cost and expense, all of Tenant's books, records and accounts necessary for the determination of Participation Rent for such Operation Year. Such audit shall be conducted either by Landlord or by an auditor designated by Landlord during normal business hours at Tenant's principal place of business and provided to Tenant in full upon completion. If Landlord alleges as a result of such audit that there has been a deficiency or overpayment in the payment of any Participation Rent then Landlord shall provide written notice to Tenant detailing the deficiency or overpayment. Tenant shall have sixty (60) calendar days to object to such calculation of Participation Rent by delivering a detailed written response to Landlord describing its objection(s). If the parties are unable to obtain a final resolution within thirty (30) calendar days of Landlord's receipt of Tenant's objections, the Accounting Firm described in Section 2.5 of the Lease, or another mutually agreed upon accounting firm, shall be retained to resolve any remaining objections. The determination of the selected accounting firm shall be set forth in writing and will be conclusive and binding among the parties in the event the parties submit any unresolved objections to such accounting firm as provided herein. The non-prevailing party, as determined by the accounting firm, will be responsible for any fees and expenses of the accounting firm. Any deficiency in the payment of Participation Rent shall become immediately due and payable and bear interest at the lesser of eight percent (8%) per annum or the maximum applicable rate per annum allowed by law from the date such Participation Rent should have been paid until the date paid; provided, that such retroactive interest period shall not exceed one (1) year and there shall be no interest accrual with respect to any earlier period of time. Any overpayment of Participation Rent shall be immediately repaid to Tenant without interest on such amount with respect to the period of overpayment prior to the discovery thereof.

## EXHIBIT "F"

### LIMITATION OF USES

#### PERMITTED USES

1. Restaurant and bar
2. Fish Markets
3. Fruits and Vegetables
4. Walk-away Snack Bar
5. Coffee Shop, eating facilities on premises without alcoholic beverages
6. Sportswear and sporting Goods Shops
7. Novelty and Gift Shops
8. Bait and Tackle Stands
9. Ice Cream Parlor and Specialty Candy Shop
10. Storage
11. Pay Restrooms
12. Vending Machines
13. Motel
14. Delicatessen
15. Bakery
16. Bar, without the sale of food
17. Live Bait
18. Discotheque
19. Electronic Game Room in the western portion of the basement structure designated as 100J Fisherman's Wharf r subject to the conditions hereinafter set forth:
  - (a) Lessee (Robert D. Resnick or his successors in interest or the managing or controlling partner of any successors in interest) shall be the principal or general partner (or managing or controlling partner) in any Electronic Game Room operation.
  - (b) The hours of operation of the Game Room will be as follows:
    - (i) Summer: Memorial Day to Labor Day  
10:00 a.m. to 10:00 p.m. Monday through Thursday  
10:00 a.m. to 12:00 a.m. (midnight) Friday, Saturday and Sunday night
    - (ii) Winter: Holidays - Thanksgiving/Christmas/Easter, etc. same as summer hours
    - (iii) Winter: Balance of year  
2:00 p.m. to 10:00 p.m. Monday through Thursday  
2:00 p.m. to 12:00 a.m. (midnight) Friday  
10:00 a.m. to 12:00 a.m. (midnight) Saturday and Sunday

- (c) There shall be no loud noise generated outside the premises in conjunction with the operation of premises.
- (d) Security will be provided at a level to be determined by need in consultation with the Police Department.
- (e) A central station burglar alarm system will be installed to contact the City of Redondo Beach Police station.
- (f) The operation of the premises shall not affect the quiet enjoyment of other tenants of the pier Area.
- (g) No special sound effects or lighting effects will be installed in the premises except as they may relate to a particular "attraction" which might be installed in the premises.
- (h) The operation shall, whenever open, be supervised by on premises adult personnel (over 21 years of age).
- (i) Adequate lighting will be provided within the premises.
- (j) Alcoholic beverages may not be consumed on the premises whenever the premises are open to the public.
- (k) Food, snacks and soft drinks may be served within the premises.
- (l) No gambling machines, machines that in any way suggest or depict sexual organs or acts, or machines that display vulgar or lewd language will be permitted.

In the event of the failure of Lessee or his sublessee to comply with any of the foregoing conditions, the permission to make such use shall be cancelled and annulled and said use shall be terminated and discontinued unless Lessee, within twenty calendar days immediately following the receipt of written notice of default from Lessor to Lessee, cures said default and reasonably and substantially complies with all of said conditions and takes all reasonable steps necessary to prevent further or subsequent default, violation or noncompliance.

20. Offices in the easterly 4,000 square feet of the second level of the existing building.

## EXHIBIT "G"

### MEMORANDUM OF LEASE

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

BROWN, WINFIELD & CANZONERI, INC.  
300 South Grand Avenue, Suite 1500  
Los Angeles, California 90071  
Attention: Dennis S. Roy, Esq.

### MEMORANDUM OF LEASE

This Memorandum of Lease, dated for identification purposes only as of \_\_\_\_\_, 2008, is entered into by CITY OF REDONDO BEACH, a chartered municipal corporation ("Landlord") and ROBERT DALE RESNICK, as Trustee of the RDR Living Trust of 1996 ("Tenant").

1. Grant of Lease; Term. For good and valuable consideration received, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") located in the City of Redondo Beach, County of Los Angeles, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all buildings, structures, improvements and fixtures now or hereafter erected thereon during the initial term of the Lease, commencing on the Lease Commencement Date (as defined in the Lease) and expire, without notice or other action by either party, at 11:50 p.m. Pacific Time, on the day prior to the fifty-fifth (55<sup>th</sup>) anniversary of the Lease Commencement Date, subject to the terms, conditions, provisions and covenants of that certain Lease Agreement (the "Lease") between the Parties hereto, dated for identification purposes only as of the \_\_\_\_ day of \_\_\_\_\_, 2008. Pursuant to the terms and conditions of the Lease, Tenant has the right to extend the term of the Lease for two (2) separate additional option periods. The first option period shall be a six (6) year period commencing when the initial Term expires. The second option period shall be a five (5) year period commencing when the first option period expires. All of the terms, provisions and covenants of the Lease are incorporated in this Memorandum of Lease by reference as though written out at length herein, and the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for recordation purposes only, and it in no way modifies the terms, conditions, provisions and covenants of the Lease. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum of Lease and the Lease, the terms, conditions, provisions, and covenants of the Lease shall prevail.

3. Counterparts. This Memorandum of Lease may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

The Parties hereto have executed this Memorandum of Lease at the place and on the dates specified immediately adjacent to their respective signatures.

TENANT:

RDR LIVING TRUST OF 1996

By: \_\_\_\_\_  
Robert Dale Resnick, Trustee

LANDLORD:

CITY OF REDONDO BEACH,  
a chartered municipal corporation

By: \_\_\_\_\_  
Michael A. Gin, Mayor

STATE OF CALIFORNIA

)

COUNTY OF LOS ANGELES

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA

)

COUNTY OF LOS ANGELES

)

)

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)