IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 2020-020

RESOLUTION OF THE CITY OF SAN LEANDRO CITY COUNCIL APPROVING AND AUTHORIZING EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND CAL COAST COMPANIES LLC, INC.

WHEREAS, the City owns certain real property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area (the "Property"); and

WHEREAS, the City and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. (the "Developer"), entered into an Exclusive Negotiating Rights Agreement dated April 2, 2012 regarding development of the Property, as such agreement has been amended and extended (the "ENRA"); and

WHEREAS, the City desires to facilitate the development of the Shoreline-Marina area to create new housing units, lodging and restaurants, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding the City's tax base; and

WHEREAS, Developer desires to develop the Property with a multi-component development that includes the construction of between 200 and 215 detached single-family homes and attached townhomes; the redesign and reconstruction of an existing 9-hole golf course; the construction of a hotel with between 200 and 220 rooms, publicly accessible outdoor space, and an approximately 5,000 square foot restaurant; the construction of a market-rate multifamily residential development with approximately 285 rental units; the construction of an approximately 15,000 square foot restaurant and banquet facility; and the construction of an approximately 3,000 square foot single-story freestanding building shell to house a market or other neighborhood serving retail or service facility; and

WHEREAS, in connection with Developer's development of the Property, the City desires to design and construct an approximately eight acre park, demolish certain improvements in the San Leandro Marina Harbor adjacent to the Property, reconstruct the Mulford-Marina Branch Library, and undertake other public improvements within and adjacent to the Property; and

WHEREAS, City staff and Developer negotiated the terms and conditions under which the City would transfer portions of the Property to the Developer, and the parties would develop the Property (the Developer's and City's development obligations are referred to herein as the "Project"), and to that end the parties jointly drafted a proposed Disposition and Development Agreement (the "DDA"), copies of which are provided to the City Council; and

WHEREAS, the DDA would provide that the City sell to the Developer the site for the proposed single family homes and townhomes pursuant to a Purchase and Sale Agreement substantially in the form attached to the DDA, and would provide for the City to lease to Developer the sites of the hotel, multifamily housing complex, restaurant and market through separate Ground Leases for each of those components of the Project, substantially in the forms attached to the DDA, which would commence and close upon the satisfaction of certain conditions thereto; and

WHEREAS, the sales price for the City's sale to the Developer of the site of the single family homes and townhomes pursuant to the Purchase and Sale Agreement is not less than the fair market value of such real property, as determined by an Appraisal Report prepared by Carneghi-Nakasako & Associates; and

WHEREAS, the rent payable under the Ground Leases for the hotel, multifamily development, the restaurant, and market are established at not less than the fair rental value of such properties; and

WHEREAS, the City is not providing any economic development subsidies (as defined in Government Code Section 53083) to the Developer pursuant to the DDA, Purchase and Sale Agreement or the Ground Leases; and

WHEREAS, the sale and lease of the Property pursuant to the DDA, Purchase and Sale Agreement and Ground Leases are subject to the requirements of the Surplus Property Act, Government Code Section 54220, et seq., as it existed on December 31, 2019, because the ENRA between the City and the Developer was entered into prior to September 30, 2019, and the DDA requires that all conveyances of the Property must occur no later than December 31, 2022; and

WHEREAS, the continued use and development of the Property will provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure, recreational facilities, lodging, restaurants, retail and housing for area growth, thereby achieving the goals and objectives of the City; and

WHEREAS, the environmental effects of the proposed Project were analyzed in the San Leandro Shoreline Development Project Final Environmental Impact Report (SCH # 2013072011) (the "FEIR") certified by Resolution 2015-125, adopted by the City Council on July 20, 2015, and City has also adopted a mitigation monitoring and reporting program (the "MMRP") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed; and

WHEREAS, subsequent to certification of the FEIR, the Shoreline Development Concept Plan was updated as a result of feedback from the San Francisco Bay Conservation and Development Commission (BCDC) and changes in market conditions; and

WHEREAS, staff reviewed the proposed Project and analyzed it based upon the provisions in CEQA and Section 15162 of the CEQA Guidelines and completed an Addendum to the San Leandro Shoreline Development Project Final Environmental Impact Report (EIR), incorporated herein by reference; and

WHEREAS, the City Council adopted an addendum to the FEIR (the "Addendum") by its approval of Resolution 2020-019 adopted by the City Council on February 24, 2020, finding that the environmental effects of the Project were sufficiently analyzed, the Project would not result in any new significant impacts or substantially increase the severity of any significant impacts identified in the FEIR and that none of the circumstances described in CEQA or the CEQA Guidelines requiring preparation of a subsequent or supplemental EIR exist; and

WHEREAS, the City Council finds that the economic interests of the City's residents and the public health, safety and welfare will be best served by entering into the DDA.

NOW THEREFORE the City Council of the City of San Leandro **HEREBY RESOLVES** as follows:

1. The City Council finds that the foregoing Recitals are true, correct, and incorporated into this Resolution.

2. The City Council approves the transfer of the Property from the City to the Developer pursuant to the terms and conditions set forth in the DDA, the Purchase and Sale Agreement and the Ground Leases.

3. Subject to the condition that Developer submit to the City Manager, by 5pm on March 25, 2020, a signed copy of a letter of intent between authorized representatives of Cal Coast Companies LLC, Inc. and the Building & Construction Trades Council of Alameda County to enter into a Project Labor Agreement, the City Council authorizes the City Manager, on behalf of the City Council, to execute the DDA, the Purchase and Sale Agreement, and the Ground Leases substantially in the forms attached to the DDA, and to make revisions and amendments to such documents, subject to the approval of the City Attorney, so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified in the DDA, Purchase and Sale Agreement, or Ground Leases, or materially or substantially reduce the revenue earned or to be earned by the City, and such amendments may include extensions of time to perform as specified in the Schedule of Performance.

4. The City Council authorizes the City Manager (or designee) to execute all grant deeds, easements, escrow documents and other instruments, and to take such other actions, as necessary to carry out the DDA, Purchase and Sale Agreement, Ground Leases, and this Resolution. The City Manager (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, and make and execute further agreements on behalf of the City, so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified in the DDA, Purchase and Sale Agreement, or Ground Leases, or materially or substantially reduce the revenue earned or to be earned by City.

The City Council finds and determines that the DDA is consistent with the Project as analyzed in the FEIR and Addendum, the environmental effects associated with the DDA have been analyzed in the Addendum in accordance with the requirements of CEQA and the CEQA Guidelines and no subsequent environmental impact report or additional environmental analysis is required in connection with the approval of the DDA or this Resolution, in that the City Council finds and determines that none of the conditions set forth in Public Resources Code Section 21166, State CEQA Guidelines Section 15162(a) have occurred.

Introduced by Councilmember Ballew and passed and adopted this 24th day of February 2020, by the following vote:

Members of the Council:

AYES:	Councilmembers Aguilar, Ballew, Cox, Hernandez, Lee, Lopez	(6)
NOES:	None	(0)
ABSENT:	Mayor Cutter	(1)

ATTEST: _____
Leticia I. Miguel, City Clerk

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN LEANDRO

AND

CAL COAST COMPANIES LLC, INC.

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of February 24, 2020 (the "**Agreement Date**"), by and between the City of San Leandro, a California charter city organized and existing under the laws of the State of California ("**City**"), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. ("**Developer**"). City and Developer are referred to individually as "**Party**," and collectively as the "**Parties**."

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings and intentions of City and Developer.

A. The City seeks development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area as depicted in Exhibit A attached hereto (the "**Property**").

B. The City previously entered into an Exclusive Negotiating Rights Agreement with Developer on April 2, 2012 regarding development of the Property, which the Parties have subsequently amended from time to time.

C. Developer desires to develop the Property with a multi-component development that includes, but is not limited to construction of, single and multifamily for sale residential units ("**Single Family Element**"), reconstruction of an existing golf course ("**Golf Course Element**"), a hotel ("**Developer Hotel Element**"), a multifamily apartment complex ("**Multifamily Element**"), a restaurant ("**Developer Restaurant Element**"), a market ("**Market Element**"), reconstruction of Monarch Bay Drive (the "**Monarch Bay Drive Element**"), and associated infrastructure and public improvements ("**Infrastructure Element**") (as defined more fully in Section 1.4 below, the "**Project**"). The elements of the Project to be developed by Developer are described below:

(1) The Single Family Element consists of the design and construction of between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City's inclusionary housing ordinance as specified herein;

(2) The Golf Course Element consists of the redesign and reconstruction of a nine hole links style golf course;

(3) The Developer Hotel Element consist of the design and construction of a hotel with between 200 and 220 rooms, publicly accessible outdoor space, and an approximately 5000 square foot restaurant;

(4) The Multifamily Element consists of the design and construction of a market-rate multifamily residential development with approximately 285 rental units;

(5) The Developer Restaurant Element consists of the design and construction of an approximately 15,000 square foot restaurant and banquet facility;

(6) The Market Element consists of the design and construction of an approximately 3,000 square foot single-story free- standing building shell to house a market or other neighborhood serving retail or service facility;

(7) The Monarch Bay Drive Element consist of the redesign and reconstruction of Monarch Bay Drive in conformance with City requirements and standards; and

(8) Developer's portion of the Infrastructure Element consists of the design and construction of certain improvements in the public right-of-way, which provide service and access to the Project Elements.

D. City desires to advance the development of the Shoreline-Marina area to create new housing units, lodging and restaurants, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base. The elements of the Project to be developed by City are described below:

(1) design and reconstruct Monarch Bay Park and associated publicly-accessible trail elements ("**Park Element**");

(2) perform demolition at the San Leandro Marina Harbor adjacent to the Property in conformance with plans approved by the City, the San Francisco Bay Conservation and Development Commission (BCDC) and other applicable agencies ("**Harbor Element**");

(3) reconstruct the Mulford-Marina Branch Library ("**Library Element**"); and

(4) City's portion of the Infrastructure Element consists of the design and construction of certain improvements in the public right-of-way, which provide service and access to the Project Elements.

The elements to be constructed by Developer and City are collectively referred to herein as the "**Elements**."

E. In connection with the Developer's construction of the Project, the City desires to design and construct Monarch Bay Park, to be located on a portion of the peninsula portion of the Property. The City shall be responsible for the design and construction of surface improvements for the Park Element. Developer shall deposit engineered soil on the Park Parcel, in accordance with the requirements of Section 2.7.

F. In order to facilitate construction of the Project, the City and the Developer shall enter into certain land disposition agreements, leases, access agreements, construction agreements and other definitive agreements pertaining to the sale or lease of portions of the Property and for construction of the Project, as further described in this Agreement.

G. Developer has agreed to cooperate with the City in the formation of a Community Facilities District (the "**District**") under the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et. seq*.). Developer agrees that the District shall include all of the Property and any improvements constructed thereon. Special taxes derived from the District will be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District.

H. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in the City; (2) development will proceed in accordance with the goals and policies set forth in the City of San Leandro General Plan (the "**General Plan**") and will implement City's stated General Plan policies; (3) City will receive increased tax revenues; and (4) City will benefit from increased housing, lodging, restaurant, employment, economic and recreational opportunities for residents and businesses of the City that are created by the Project.

I. City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq*., hereinafter "**CEQA**"), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were analyzed by the Final Environmental Impact Report (the "**FEIR**") certified by Resolution 2015-125, adopted by the City Council on July 20, 2015. City has also adopted a mitigation monitoring and reporting program (the "**MMRP**") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. The City adopted an addendum to the FEIR (the "**FEIR Addendum**") based upon changes in the Project after the FEIR was certified by the City Council. The FEIR Addendum was certified by Resolution_____ adopted by the City Council on February 24, 2020.

J. The use and development of the Property pursuant to this Agreement will provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure, recreational facilities, and housing for area growth, thereby achieving the goals and objectives of the City. This Agreement will provide for the development of the Shoreline area with a resilient and self-sustaining mix of housing, recreation, public amenities and hospitality consistent with the vision of the City's General Plan.

K. The City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1.
GENERAL PROVISIONS

1.1. Parties and Responsibilities.

1.1.1. City. City is a California charter city, with offices located at 835 East 14th Street, San Leandro, CA 94577-3767. "City," as used in this Agreement, includes City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2. Developer. Developer is a Delaware corporation with offices located at 11755 Wilshire Blvd. Suite 1660, Los Angeles, California 90025. "Developer," as used in this Agreement, includes any permitted assignee or successor-in-interest as herein provided.

1.1.3. Responsibilities of City Generally. The Parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to develop the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City set forth herein. City shall cooperate with Developer and shall undertake such actions as may be reasonably necessary to ensure that this Agreement remains in full force and effect.

1.1.4. Responsibilities of Developer Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations of Developer set forth in this Agreement is a material consideration for City's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The Parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the EIR and the Mitigation Monitoring and Reporting Program.

1.2. Property Subject to this Agreement.

The Property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as depicted in Exhibit A, is subject to this Agreement. The Developer shall prepare and obtain City approval of a vesting tentative map as a Project Approval pursuant to the Subdivision Map Act, Government Code Section 66410, et seq., to create the parcels listed below.

a. Parcel A - Library. City shall retain title to parcel A.

b. Parcel B - Golf Course. City shall retain title to parcel B.

c. Parcel C - Single Family Homes (Townhome and Detached). Subject to the Developer satisfying all conditions precedent to conveyance as set forth in the Single Family PSA, City shall transfer fee title to parcel C to Developer.

d. Parcel D - Existing Pump Station. City shall retain title to parcel D.

e. Parcel E - Existing Water Treatment Plant. City shall retain title to parcel E (except as otherwise approved in the tentative parcel map that is approved by City).

f. Parcel F - Existing Restaurant. City shall retain title to parcel F.

g. Parcel G - Existing Hotel. City shall retain title to parcel G.

h. Parcel H - Multifamily Housing. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall lease ground parcel H to Developer. A portion of Parcel H will be subject to an easement for the Bay Trail and other public purposes and uses, which will provide for City maintenance of the easement area. There is currently a restroom, boat launch ramp and other improvements located on Parcel H, which will remain in place as of the commencement of the Multifamily Ground Lease.

i. Parcel I - Developer Hotel. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel I to Developer. There is currently an existing restaurant building located on Parcel I, which will remain in place as of the commencement of the Developer Hotel Ground Lease.

j. Parcel J - Developer Restaurant. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel J to Developer. The Developer Restaurant Element shall have an easement over parcel I for parking and access.

k. Parcel K – Market. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel K to Developer. The Market Element shall have an easement over Parcel I for parking and access.

l. Parcel L – Park and Harbor Basin. City shall retain title to parcel L.

1.3. Term of the Agreement.

The term ("**Term**") of this Agreement shall commence upon the Effective Date and continue in full force and effect for a period ending on the first to occur of (i) ten (10) years from the Effective Date, (ii) the date all construction required by this Agreement has been completed, or (iii) the termination of this Agreement as provided herein. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the benefits of the Project. The obligations of the parties must be completed within the times set forth in the Schedule of Performance attached hereto.

1.4. The Project

Developer shall construct the Project in accordance with this Agreement. The Project consists of various Elements, as described below and in other sections herein. A detailed description of the improvements to be constructed by Developer and City pursuant to this Agreement is set forth in the Scope of Development which is attached hereto as Exhibit I and incorporated herein.

1.4.1. Single-Family Element. Developer shall design and construct not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes, with the final number subject to the City's approval of the Project Approvals for the Single Family Element. The Single Family Element shall consist of a mix of single-family townhomes and detached single-family homes in accordance with the Scope of Development and the Project Approvals, as defined in Section 2.1 hereof. The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with the Scope of Development, City Building and Zoning codes and pursuant to plans to be approved by the City. All single-family homes shall include sustainability measures in accordance with Section 1.4.15 hereof.

The Single-Family Element shall be subject to all of the requirements of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq*.), which requires fifteen percent (15%) of the units to be restricted to occupancy by moderate income or low-income households, unless an alternative means of compliance is approved in accordance with Section 6-3016. As an alternate means of compliance, Developer shall provide not less than six percent (6%) of the units as workforce housing, restricted to sale at a price affordable to households earning up to 135% of the Area Median Income, and to provide not less than four percent (4%) of the units as moderate income housing, restricted to sale at a price affordable to households earning up to 120% of the Area Median Income, and to pay an in lieu fee equal to $10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by the remaining percentage of the required inclusionary housing units, divided by fifteen (15). For example, if Developer elects to satisfy the Inclusionary Housing Ordinance by performing the minimum required amount of construction of workforce housing and moderate income housing, and constructs exactly six percent (6%) of the units as workforce housing, and constructs exactly four percent (4%) of the units as moderate income housing, the remaining percentage of the required inclusionary housing units would be five percent (5%), and the in lieu fee would be $10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by one-third (5 divided by 15)). The method of compliance with the Inclusionary Housing Ordinance is set forth in the Single Family Parcel Purchase and Sale Agreement (as defined below), and shall be described in greater detail in an Inclusionary Housing Plan approved by the City and an Inclusionary Housing Agreement to be executed by Developer and City with respect to the Single Family Element pursuant to Section 6-3014 of the City Zoning Code.

The Single-Family Element shall be located on that portion of the existing nine-hole Marina Golf Course owned by the City and described on Exhibit B, attached hereto and

incorporated herein by this reference (the "**Single Family Parcel**"). The City shall use good faith efforts to enter into an amendment to the Lease between the City and American Golf Corporation, dated November 15, 1997, as amended, as soon as practicable, but no later than April 20, 2020, which would allow the City to terminate the Lease upon notice to American Golf Corporation, and would provide for the City and American Golf Corporation to enter into a mutually acceptable golf course management agreement upon the termination, in order to permit the development of the Single Family Element upon the Single Family Parcel and the construction of the Golf Course Element on the remaining portion of the Golf Course property. The Developer and City shall enter into a purchase and sales agreement for the Single-Family Parcel, which purchase and sale agreement shall be in substantially the form of Exhibit L attached hereto (the "**Single-Family Parcel PSA"),** concurrently with the Effective Date of this Agreement. The Developer shall be responsible for the submission and approval of any necessary tentative and final subdivision and/or parcel maps. The Single-Family Parcel shall be delivered in an "as is" condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Single Family Parcel with no express or implied warranty by City of their suitability for the Single Family Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City's files and records with regard to any such existing or buried utilities that serve the Single Family Parcel.

The purchase price for the Single Family Parcel to be paid by Buyer to Seller (the "**Purchase Price**") is the sum of the following: (a) the number of approved Townhome Lots multiplied by One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars ($116,697), plus (b) the number of approved Detached Lots multiplied by One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars ($157,276); provided, however, that the Purchase Price shall not be less than Twenty-Nine Million Three Hundred Forty-Five Thousand and Ninety-Two Dollars ($29,345,092) unless the total number of approved Lots is less than Two Hundred (200) or the number of approved Detached Lots is less than One Hundred Forty-Eight (148). The number of approved Lots shall be determined pursuant to the Governmental Entitlements (as defined in the Single-Family PSA) in effect as of the date of close of escrow. For purposes of this Agreement, a single condominium lot which will accommodate multiple attached townhomes and detached single family homes will be counted as multiple Lots equal to the number of attached townhomes and detached single family homes which are approved, rather than counted as a single Lot. The full amount of the Purchase Price, less applicable deposit, shall be paid in full prior to the close of escrow for the conveyance of the Single Family Parcel to the Developer.

Developer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units created on the Single-Family Parcel until the Golf Course Element is substantially complete. Substantial completion will be achieved when all major construction is complete and only minor work and/or maturation of landscaping remaining, as determined by the acceptance of the work as substantially complete by the Directors of Engineering and Transportation and Public Works, respectively. The City shall record a lien or covenants on the Property prohibiting sale of more than one hundred thirty-two (132) new residential units until the Golf Course Element is substantially complete, and shall remove the lien or covenant after the Golf Course Element is substantially complete and accepted by the City Council.

Developer hereby agrees to form a homeowner association ("**HOA**") to own, maintain, repair and manage streets, storm drains (including any Municipal Regional Stormwater Permit compliance features), sanitary sewer systems, utilities, landscaping, common areas and other improvements within the Single-Family Parcel as a common interest development under the Davis-Stirling Common Interest Development Act. The purpose of the HOA will be to enforce the rules and regulations adopted from time to time by its board of directors, enhance and protect the value, desirability, and attractiveness of the community, and discharge such other lawful duties and responsibilities as may be required pursuant to its bylaws and the declaration of covenants, conditions and restrictions ("**CC&Rs**") to be recorded in the Office of the Recorder of Alameda County. The CC&Rs shall require the construction, protection, preservation and maintenance of the appearance, condition, function and operation of the Single-Family Parcel and the Single-Family Element, including but not limited to all landscaping visible from any public or private road. In addition to other matters, the CC&Rs shall provide for the coordination of the Single Family Element with the operation of the City's Marina Golf Course, maintenance of borders and access between the Single Family Element and the Marina Golf Course, and communications between the occupants of the Single-Family Element and the operator of the Marina Golf Course. Prior to recordation of the declaration of CC&Rs, Developer agrees to provide City a reasonable opportunity to review and comment on the provisions of the CC&Rs to ensure consistency and compliance with the requirements of this Agreement and any other applicable law. City shall not unreasonably withhold its approval of the CC&Rs.

1.4.2. Golf Course Element. In the event that Developer acquires the Single Family Parcel from City pursuant to the Single Family Parcel PSA, Developer shall redesign and reconstruct, at Developer's sole expense, a nine-hole links style par 3 golf course located on that portion of the City's Marina Golf Course not sold by the City to the Developer, as further described in Exhibit C, attached hereto and incorporated herein by this reference (the "**Golf Course Parcel**"). The Parties acknowledge that the City is and shall remain the owner of the Golf Course Parcel after the close of escrow for the Single Family Parcel.

The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course. The existing north lake (subject to City-approved reconfiguration), mature trees (where feasible and appropriate as determined by the City Public Works Director), and the monarch butterfly nesting area shall remain. Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code. Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom. A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City. The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library. The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain. Final golf course design and any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.

Developer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City. The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively. The final design for the Golf Course Element shall be approved by the City in writing, with input from applicable community groups. Developer shall provide an implementation plan that includes (a) a golf course redesign plan that includes input from applicable community groups, (b) a detailed budget and schedule for completion of the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element sufficient to ensure timely completion (the "**Golf Course Implementation Plan**"). Developer and City shall also enter into a Public Improvement Agreement in substantially the form of Exhibit Q attached hereto (the "**Public Improvement Agreement")** regarding the construction of certain public improvements throughout the Project which shall, among other things, (i) set forth the procedures and requirements for inspection and acceptance of the Golf Course Element by the City, and (ii) contain the acknowledgement of the Parties that, following such acceptance of the Golf Course Element, the City shall have the exclusive obligation to operate and maintain the Golf Course Element. The Public Improvement Agreement shall require that the work performed thereunder is in compliance with the Prevailing Wage Laws, as defined in Section 1.6.1 hereof. The City's approval of the Golf Course Implementation Plan, the parties' execution of the Public Improvement Agreement for the Golf Course Element, and Developer's furnishing of all bonds and/or other security required by the Public Improvement Agreement, Developer's application for Building Permits, Grading Permits and Demolition Permits, Developer's entrance into a contract with a qualified general contractor for construction, and Developer's compliance with any other applicable Seller's Conditions to Closing, as set forth in Section 5.3 of the Purchase and Sale Agreement, shall be conditions precedent to the close of escrow for City's sale of the Single Family Parcel to Developer.

1.4.3. Developer Hotel Element. The Developer Hotel Element shall be located on that portion of the Property described in Exhibit D, attached hereto and incorporated herein by this reference (the "**Developer Hotel Parcel**"). Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel (as defined in the Developer Hotel Ground Lease) with between 200 and 220 rooms, publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the Scope of Development, City Building and Zoning codes, and pursuant to plans to be approved by the City. The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby. Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City. Developer shall also perform demolition, grading, site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located adjacent to the Developer Hotel Parcel, in accordance with the Scope of Development. City and Developer shall mutually agree upon a budget for such improvements. In accordance with City Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of such public facility and in accordance with the approved budget, shall be provided by the City. The Developer Hotel Element shall include an approximately 5,000 square-foot full-service

restaurant, which the Developer may sublease to an independent third-party operator, subject to the requirements of the Developer Hotel Ground Lease.

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Developer Hotel Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Developer Hotel Parcel to the Developer, which ground lease shall be substantially in the form of Exhibit M attached hereto (the "**Developer Hotel Ground Lease**"). The Developer Hotel Parcel shall be delivered in an "as is" condition, which includes an existing restaurant building, parking lot, landscaping, a service building, and other ancillary site elements. Developer further acknowledges and accepts the current condition of any existing or buried utilities that serve the Developer Hotel Parcel with no express or implied warranty by City of their suitability for the Developer Hotel Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City's files and records with regard to any such existing or buried utilities that serve the Developer Hotel Parcel. The Developer anticipates that it will sublease the Developer Hotel Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Developer Hotel Ground Lease.

Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto provided to users and customers of the Developer Restaurant Element and the Market Element to utilize parking on the Developer Hotel Parcel, and to provide for joint access between the parcels. The days and hours of public use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.

The term of the existing lease for the El Torito restaurant occupying the building on the Developer Hotel Parcel is currently on a month-to-month basis (the "**Existing Restaurant Lease**"). The City has the right under the Existing Restaurant Lease to terminate the lease upon at least thirty (30) days' notice to the tenant. Developer shall give at least sixty (60) days' notice to City of Developer's intended date for signing and commencement of the Developer Hotel Ground Lease in order to provide City sufficient time for termination of the Existing Restaurant Lease and relocation of the existing tenant. City shall be responsible for determining and providing any relocation assistance required under applicable law to be provided to the tenant of the Existing Restaurant Lease, if any is so required.

1.4.3.1 Conditions for Benefit of the City. City's obligation to execute the Developer Hotel Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("**City's Developer Hotel Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Developer Hotel Ground Lease Subtenant. If Developer proposes to sublease the Developer Hotel Parcel concurrently with the execution of the Developer Hotel Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Developer Hotel Ground Lease, and the form of the proposed

sublease, in accordance with the standards set forth in Article 7 hereof and Section 13 of the Developer Hotel Ground Lease ("**Developer Hotel Ground Lease Subtenant**"), and shall have approved a copy of the organizational documents of the Developer Hotel Ground Lease Subtenant as the City deems necessary to document the power and authority of the Developer Hotel Ground Lease Subtenant to perform its obligations set forth in the Developer Hotel Ground Lease.

(b) City Approval of Hotel Brand and Franchise Agreement. Developer shall have submitted to City the proposed identity of the proposed Hotel Brand and a proposed Franchise Agreement in accordance with the requirements of Section 5.2 of the Developer Hotel Ground Lease, and the City shall have approved the same.

(c) City Approval of Operator. Developer shall have submitted to the City the identity of the proposed Operator of the Developer Hotel, and the City shall have approved the proposed Operator in accordance with the requirements of Section 5.2 of the Developer Hotel Ground Lease.

(d) Evidence of Developer Hotel Element Funding. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Developer Hotel Element, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Developer Hotel Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Developer Hotel Element, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction, development and operation of the Developer Hotel Element at a cost consistent with the budget approved by the City.

(e) General Contractor. The general contractor for the Developer Hotel Element (the "**General Contractor**") shall have been approved by the City.

(f) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Developer Hotel Element at a cost consistent with the costs set forth therefor in the approved Project Budget (the "**Construction Contract**").

(g) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Developer Hotel Element. If the Developer determines that the Developer Hotel Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the prevailing wage requirements set forth in the Developer Hotel Ground Lease, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(h) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Developer Hotel Ground Lease.

(i) Labor Peace Agreement. The Developer shall have submitted to the City an executed Labor Peace Agreement in the form required by Section 5.4 of the Developer Hotel Ground Lease.

(j) Insurance. The Developer shall have submitted to the City and the City shall have approved the Developer's evidence of the liability insurance required pursuant to Section 8 of the Developer Hotel Ground Lease.

(k) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Developer Hotel Ground Lease.

(l) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition Permits for the Developer Hotel Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(m) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Developer Hotel Element are ready to commence not later than ninety (90) days after the Effective Date of the Developer Hotel Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(n) Documents Executed. The Developer shall have duly executed the Developer Hotel Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Developer Hotel Ground Lease.

(o) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Developer Hotel Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(p) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.3.2. Conditions for Benefit of Developer. Developer's obligation to execute the Developer Hotel Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer Hotel Ground Lease Commencement Conditions Precedent"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Developer Hotel Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Developer Hotel Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Developer Hotel Parcel pursuant to the Developer Hotel Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Developer Hotel Element.

(b) Property Vacant. The Developer Hotel Parcel shall be free of any occupants.

(c) Developer Hotel Element Financing. The Developer shall have received commitments for all Developer Hotel Element construction financing in form and substance acceptable to the Developer, and the construction phase Developer Hotel Element financing shall be ready to close concurrently with the Effective Date of the Developer Hotel Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Hotel Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Developer Hotel Parcel, and Old Republic Title Company, or another title company mutually designated by the Parties ("**Title Company**"), shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Developer Hotel Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes, except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions

similar to the one contemplated by this Agreement (the "**Developer Hotel Title Policy**"). The Title Company shall provide the City with a copy of the Developer Hotel Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.4. Multifamily Element. The Multifamily Element shall be located on that portion of the Property described in Exhibit E, attached hereto and incorporated herein by this reference (the "**Multifamily Parcel**"). Developer shall design and construct a Multifamily residential development with approximately two hundred eighty-five (285) rental units, including parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the Scope of Development, City Building and Zoning codes, and pursuant to plans to be approved by the City. Developer shall also perform demolition, rough grading, and provide clean fill as a part of site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located on the Multifamily Parcel, in accordance with the Scope of Development. City and Developer shall mutually agree upon a budget for such improvements. In accordance with Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of such public facility and in accordance with the approved budget, shall be provided by the City. Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.

The Multifamily Element shall meet the objectives of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq*.) by paying a fee in-lieu of providing affordable rental units (the "**Affordable Rental Housing In-Lieu Fee**"). The Affordable Rental Housing In-Lieu Fee is equal to five dollars ($5.00) per rentable square foot of the Multifamily residential building provided for herein. If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance. The unit mix of the Multifamily Element and any amenities are subject to the Project Approvals, as defined in Section 2.1 hereof.

The City is the lessor of certain existing leases for boat storage located on the Multifamily Parcel. Such leases are currently on a month-to-month basis (the "**Existing Boat Leases**"). The City has the right under the Existing Boat Leases to terminate such leases upon at least thirty (30) days' notice to the tenants. Developer shall give at least sixty (60) days' notice to City of Developer's intended date for signing and commencement of the Multifamily Ground Lease in order to provide City sufficient time for termination of the Existing Boat Leases and relocation of the existing tenants. City shall be responsible for determining and providing any relocation assistance required under applicable law to be provided to the existing tenants, if any is so required.

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Multifamily Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Multifamily Parcel to the

Developer, which ground lease shall be in substantially the form of Exhibit N attached hereto (the "**Multifamily Ground Lease**"). The Developer anticipates that it may want to sublease the Multifamily Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Multifamily Ground Lease. The Multifamily Parcel shall be delivered in an "as is" condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Multifamily Parcel with no express or implied warranty by City of their suitability for the Multifamily Element. There is currently a restroom, boat launch ramp and other improvements located on the Multifamily Parcel, which will remain in place as of the commencement of the Multifamily Ground Lease.

1.4.4.1 Conditions for Benefit of the City. City's obligation to execute the Multifamily Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("**City's Multifamily Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Multifamily Ground Lease Subtenant. If Developer proposes to sublease the Multifamily Ground Lease Parcel concurrently with the execution of the Multifamily Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Multifamily Ground Lease, and the form of the proposed sublease, in accordance with the standards set forth in Article 7 hereof and Section 13 of the Multifamily Ground Lease ("**Multifamily Ground Lease Subtenant**"), and shall have approved a copy of the organizational documents of the Multifamily Ground Lease Subtenant as the City deems necessary to document the power and authority of the Multifamily Ground Lease Subtenant to perform its obligations set forth in the Multifamily Ground Lease.

(b) Evidence of Multifamily Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Multifamily Element, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Multifamily Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Multifamily Element, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction,

development and operation of the Multifamily Element at a cost consistent with the budget approved by the City.

(c) General Contractor. The general contractor for the Multifamily Element (the "**General Contractor**") shall have been reasonably approved by the City.

(d) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Multifamily Element at a cost consistent with the costs set forth therefor in the approved Project Budget (the "Construction Contract")

(e) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Multifamily Element. If the Developer determines that the Multifamily Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(f) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Multifamily Ground Lease.

(g) Insurance. The Developer shall have submitted to the City and the City shall have approved the evidence of the liability insurance required pursuant to Section 8 of the Multifamily Ground Lease.

(h) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Multifamily Ground Lease.

(i) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Multifamily Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(j) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Multifamily Element are ready to commence not later than ninety (90) days after the Effective Date of the Multifamily Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(k) Documents Executed. The Developer shall have duly executed the Multifamily Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Multifamily Ground Lease.

(l) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Multifamily Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(m) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.4.2. Conditions for Benefit of Developer. Developer's obligation to execute the Multifamily Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Multifamily Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Multifamily Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Multifamily Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Multifamily Parcel pursuant to the Multifamily Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Multifamily Element. There is currently an existing restaurant building, storage building and other improvements located on the Developer Hotel Parcel, with leases on a month-to-month basis, which will remain in place as of the commencement of the Developer Hotel Ground Lease.

(b) Property Vacant. The Multifamily Parcel shall be free of any occupants.

(c) Multifamily Element Financing. The Developer shall have received commitments for all Multifamily Element financing and equity funds in form and substance acceptable to the Developer, and the construction phase Multifamily Element financing shall be ready to close concurrently with the Effective Date of the Multifamily Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including -grading, encroachment and demolition permits for the Multifamily Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Multifamily Parcel, and the Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount

acceptable to Developer showing leasehold title to the Multifamily Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "Multifamily Title Policy"). The Title Company shall provide the City with a copy of Multifamily Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.5. Developer Restaurant Element. Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor, in accordance with the Scope of Development. Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself. The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City. The Developer Restaurant Element shall be located on that portion of the Property described in Exhibit F, attached hereto and incorporated herein by this reference (the "**Developer Restaurant Parcel**").

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Developer Restaurant Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Developer Restaurant Parcel to the Developer, which ground lease shall be in substantially the form of Exhibit O attached hereto (the "**Developer Restaurant Ground Lease**"). The Developer anticipates that it may sublease the Developer Restaurant Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Developer Restaurant Ground Lease. The Developer Restaurant Parcel shall be delivered in an "as is" condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Developer Restaurant Parcel with no express or implied warranty by City of their suitability for the Developer Restaurant Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City's files and records with regard to any such existing or buried utilities that serve the Developer Restaurant Parcel.

1.4.5.1 Conditions for Benefit of the City. City's obligation to execute the Developer Restaurant Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("**City's Developer Restaurant Ground Lease**

Commencement Conditions Precedent"), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Developer Restaurant Ground Lease Subtenant. If Developer proposes to sublease the Developer Restaurant Parcel concurrently with the execution of the Developer Restaurant Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Developer Restaurant Ground Lease in accordance with the standards set forth in Section 7 hereof and Section 13 of the Developer Restaurant Ground Lease ("**Developer Restaurant Ground Lease Subtenant**"), and shall have approved a copy of the organizational documents of the Developer Restaurant Ground Lease Subtenant as the City deems necessary to document the power and authority of the Developer Restaurant Ground Lease Subtenant to perform its obligations set forth in the Developer Restaurant Ground Lease.

(b) City Approval of Developer Restaurant. Developer shall have submitted to the City the identity of the proposed Developer Restaurant, and the City shall have approved the proposed Developer Restaurant in accordance with the requirements of Section 5.2 of the Developer Restaurant Ground Lease.

(c) Evidence of Developer Restaurant Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Developer Restaurant, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Developer Restaurant Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Developer Restaurant, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction and development of the Developer Restaurant at a cost consistent with the budget approved by the City.

(d) General Contractor. The general contractor for the Developer Restaurant (the "**General Contractor**") shall have been approved by the City.

(e) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Developer Restaurant at a

cost consistent with the costs set forth therefor in the approved Project Budget (the "Construction Contract").

(f) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Developer Restaurant Element. If the Developer determines that the Developer Restaurant Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(g) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Developer Restaurant Ground Lease.

(h) Insurance. The Developer shall have submitted to the City and the City shall have approved evidence of the insurance policies required pursuant to Section 8 of the Developer Restaurant Ground Lease.

(i) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Developer Restaurant Ground Lease.

(j) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Restaurant Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(l) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Developer Restaurant is ready to commence not later than ninety (90) days after the Effective Date of the Developer Restaurant Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(m) Documents Executed. The Developer shall have duly executed the Developer Restaurant Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Developer Restaurant Ground Lease.

(n) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Developer Restaurant Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(o) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of

time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.5.2. Conditions for Benefit of Developer. Developer's obligation to execute the Developer Restaurant Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Restaurant Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. Developer shall have approved the physical and environmental condition of the Developer Restaurant Property (subject to any rights Developer may have with respect to the physical and environmental condition of the Developer Restaurant Parcel pursuant to the Developer Restaurant Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Restaurant Element.

(b) Property Vacant. The Developer Restaurant Parcel shall be free of any occupants.

(c) Developer Restaurant Element Funding. The Developer shall have received commitments for all Developer Restaurant construction financing and equity funding in form and substance acceptable to the Developer, and the construction phase Developer Restaurant financing and equity funding shall be ready to close concurrently with the Effective Date of the Developer Restaurant Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Restaurant Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Developer Restaurant Parcel, and the Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Developer Restaurant Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "**Developer Restaurant Title Policy**"). The Title Company shall provide the City with a copy of the Developer Restaurant Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.6. Market Element. Developer shall construct an approximately 3,000 square foot single-story free-standing building shell, in accordance with the Scope of Development (the "**Market**"). A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion. Unless the City agrees to another location, the Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive. The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. The Market Element shall be located on that portion of the Property described in Exhibit G, attached hereto and incorporated herein by this reference (the "**Market Parcel**").

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Market Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Market Parcel to the Developer, which ground lease shall be in substantially the form of Exhibit P attached hereto (the "**Market Ground Lease**"). The Developer anticipates that it may sublease the Market Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 hereof and Section 13 of the Market Ground Lease; provided that if the proposed use of such parcel is not for a market but is for some other use, the terms of the Market Ground Lease, including rental rates, shall be subject to market assessment and alteration by mutual agreement of the Parties. The Market Parcel shall be delivered in an "as is" condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Market Parcel with no express or implied warranty by City of their suitability for the Market Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City's files and records with regard to any such existing or buried utilities that serve the Market Parcel.

1.4.6.1 Conditions for Benefit of the City. City's obligation to execute the Market Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below ("**City's Market Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Market Ground Lease Subtenant. If Developer proposes to sublease the Market Parcel concurrently with the execution of the Market Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Market Ground Lease in accordance with the standards set forth in Section 7 of this Agreement and Section 13 of the Market Ground Lease ("**Market Ground Lease Subtenant**"), and shall have approved a copy of the organizational documents of the Market Ground Lease Subtenant as the City deems necessary to document the power and authority of the Market Ground Lease Subtenant to perform its obligations set forth in the Market Ground Lease.

(b) Evidence of Market Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Market, as submitted by Developer to City.

(ii) Total Project Cost. The City shall have determined that there are sufficient funds available to the Developer for the construction and development of the Market shell, and sufficient funds available for the construction and development of the Market tenant improvements, at a cost consistent with the budget approved by the City.

(d) General Contractor. The general contractor for the Market (the "**General Contractor**") shall have been approved by the City.

(e) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Market shell at a cost consistent with the costs set forth therefor in the approved Project Budget (the "**Construction Contract**").

(f) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Market Element. If the Developer determines that the Market Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(g) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Market Ground Lease.

(h) Insurance. The Developer shall have submitted to the City the evidence of the liability insurance required pursuant to Section 8 of the Market Ground Lease.

(i) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Market Ground Lease.

(j) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Market Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both. In addition, construction drawings for Vertical Improvements shall

have been submitted for Building Permit review, accepted as complete and shall be in plan check.

(l) Construction to Commence. The City shall be reasonably satisfied that construction of the Market shell is ready to commence not later than sixty (60) days after the Effective Date of the Market Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(m) Documents Executed. The Developer shall have duly executed the Market Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Market Ground Lease.

(n) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Market Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(o) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.6.2. Conditions for Benefit of Developer. Developer's obligation to execute the Market Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Market Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Market Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Market Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Market Parcel pursuant to the Market Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Market Element.

(b) Property Vacant. The Market Parcel shall be free of any occupants.

(c) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Market Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(d) Title Insurance. Developer shall have reviewed and approved the condition of title of the Market Parcel, and Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Market Parcel vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "**Market Title Policy**"). The Title Company shall provide the City with a copy of the Market Title Policy.

(e) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.8. Park Element. A new park and public recreational area, Monarch Bay Park, is to be located on the peninsula portion of the Property as well as along the publicly-accessible areas abutting both the shoreline adjacent to the Developer Hotel Parcel and the exterior of the Multifamily Parcel, as described in Exhibit H, attached hereto and incorporated herein by this reference (the "**Park Parcel**"). City shall be responsible for the design and construction of surface improvements for the Park Element. The City's obligation to cause the design and construction of the Park Element is expressly made contingent upon the close of escrow for the Single Family Parcel. The Park Element shall consist of pedestrian paths, plazas, landscaping, irrigation, restrooms, boat launch, sitting areas, parking, public art and sections of the San Francisco Bay Trail, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. The trail design shall conform to the San Francisco Bay Trail Design Guidelines and Toolkit, dated June 2016, as it may be amended.

The City intends to obtain some or all of the funding for the Park Element design and construction from the proceeds of the sale of the Single Family Parcel to Developer, and the Park Facilities Impact Fee payable by Developer to City in connection with the Single Family Element. The City may also use all or a portion of the deposit made by Developer pursuant to the Single Family PSA for the costs of the design of the Park, subject to the terms and conditions set forth in the Single Family PSA. Such design work shall be completed by an architect and/or consultant selected by the City in its sole discretion, and may be performed as part of a design-build contract as determined by the City in its sole discretion. The final design for the Park Element shall be approved by the City in its sole discretion and approved by the San Francisco Bay Conservation and Development Commission ("**BCDC**").

If this Agreement is terminated for any reason other than a material default or default hereunder by City, City may, in its sole and absolute discretion, request that Developer assign and transfer Developer's rights to any or all Park Element plans that have previously been prepared, provided that the City shall pay to Developer, as consideration for such plans, Developer's out of pocket cost for such plans. Upon such request, the Developer shall deliver to the City copies of all plans requested by the City together with a bill of sale therefor, provided

that Developer makes no representations, warranties or guarantees regarding the completeness or accuracy of the plans, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such plans shall thereupon be free of all claims or interests of Developer or any liens or encumbrances. Upon City acquiring Developer's rights to any and all of the Park Element plans, City shall be permitted to grant, license, or other dispose of said plans to any person or entity for development of the Park Element or any other purpose, provided, however, that Developer shall have no liability whatsoever to City or any transferee or title to the plans in connection with the use of the plans.

1.4.9. Harbor Element. The City shall be responsible for performing demolition within the San Leandro Marina Harbor ("**Harbor**") adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound environment, at City's expense. The City's obligation to cause the demolition within the Harbor is expressly made contingent upon the close of escrow for the Single Family Parcel. The demolition within the Harbor shall be in conformance with the Scope of Development. The final plan for the Harbor demolition shall be approved by the City in its sole discretion and approved by BCDC. Subject to compliance with the Scope of Development, public trust requirements and all applicable laws, City has sole discretion of the extent of the demolition within the Harbor. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, relocate the Wes McClure public boat launch located on the outside of the Harbor from its current location to Pescador Point, as described in the Scope of Development.

1.4.10. Monarch Bay Drive Element. The Developer shall be responsible for design, expansion, and reconstruction of Monarch Bay Drive, including but not limited to, construction of a two lane road with appropriate left turn lanes, a class I bicycle facility, parking, sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of utilities (excepting the existing steel pole utilities that north from the Horatio's driveway), lighting, pedestrian, and transit amenities, and construction of a traffic circle at Monarch Bay Drive and Mulford Point Drive. A credit against the applicable Development Fee for Street Improvements, in an amount equal to the cost of any required improvements to the western half of Monarch Bay Drive that directly abuts the existing Horatio's Restaurant (Parcel G) and Marina Inn Hotel (Parcel H), shall be provided by the City.

1.4.11. Infrastructure Element. The Developer shall be responsible for site preparation required for the development of its Project Elements: Single Family Element, Golf Course Element, Developer Hotel Element, Multifamily Element, Developer Restaurant Element, and Market Element. Such site preparation shall include Demolition of existing paving, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, geotechnical mitigation, and rough grading in accordance with the Scope of Development and Exhibit R. The Developer is responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are located south of the Developer Hotel Element (Parcel J) and Multifamily Element (Parcel I), in accordance with the Scope of Development and Exhibit R. Such improvements shall include, but are not limited to sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. The Developer is responsible for design and reconstruction of portions of Mulford Point Drive located to the west of the

Developer Hotel Element (Parcel J) and the shared Park Element parking lot located to the west of the Developer Hotel Element (Parcel J) and the Developer Restaurant Element (Parcel K), in accordance with the Scope of Development and Exhibit R. Such roadway improvements shall include, but are not limited to, sidewalks, new pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to half (50%) of the cost of any required improvements to portions of Mulford Point Road and the shared Park Element parking lot, located west of Parcels J and K, shall be provided by the City.

1.4.12. Construction Phasing. Developer's construction of the Project and City's design and construction of the Park Element and Harbor Element shall be performed in compliance with the Schedule of Performance, attached hereto as Exhibit J and incorporated herein by reference. Except as otherwise provided in the Schedule of Performance, construction of the Project shall occur in a continuous rolling phase. The Single-Family Element housing may be developed in multiple phases subject to market conditions, subject to the requirements of the Schedule of Performance.

1.4.13. Public Art. Developer shall finance and place public art at appropriate locations on the Property.

a. The amount to be used to fund the public art shall be calculated as one percent (1%) of the permit valuation for the Project (the "**Public Art Fund**").

b. Eligible expenses for the Public Art Fund include: art and artist selection process, site preparation, design, acquisition and/or construction of the art works.

c. City is responsible for maintenance of all public art located on the Property. City may provide for the costs thereof to be payable by a community facilities district or another entity designated by the City. The location of the Public Art on the Property shall be mutually agreed to by the City and Developer.

d. In lieu of funding on-site public art, Developer may fulfill all or a portion of its requirements under this Section by making a payment calculated as one percent (1%) of the total construction budget to the City, to be deposited into a public art fund managed by the City, which shall be used exclusively for eligible expenses for art on the Property consistent with the expenses set forth in paragraphs (b) and (c) above.

1.4.14. Landscaping. For all Elements of the Project which the Developer leases or owns, including the Single Family Element, Developer Hotel Element, Multifamily Element, Developer Restaurant Element, and Market Element, Developer shall construct and maintain landscaping in conformity with Article 19, Landscape Requirements, of the San Leandro Zoning Code. City has the right to review and approve the landscaping plan prior to construction.

1.4.15. Maintenance of Park Element. The Developer shall have no responsibility to maintain landscaping in the Park Element.

1.4.16. Sustainability. Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project, including those related to greenhouse gas emissions and traffic, as set forth in the mitigation measures in the San Leandro Shoreline Development Final Environmental Impact Report (FEIR), the Mitigation Monitoring and Reporting Program adopted by the City, and any amendments thereto and subsequent requirements of the California Environmental Quality Act. Per Mitigation Measure GHG-1, such measures shall include, but not be limited to, installation of electric vehicle charging stations, installation of Energy Star Rated appliances, establishment of an employee trip commute reduction program for employers with over 50 full-time onsite employees [***to be discussed***], achievement of either Build-it-Green Greenpoint Rated or US Green Building Council's Leadership in Energy and Environmental Design (LEED) standards, and design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6, of the California Building Code). Such increased efficiency may be related to window efficacy, low energy lighting, lighting occupancy sensors, wall, floor and attic insulation, efficient heating and cooling systems, water heater requirements, VOC Emissions reduced for use of construction material, and water conservation for landscaping and building use. Per Mitigation Measure TRAF-2A, such measures may also include development and implementation of a Transportation Demand Management (TDM) plan that would discourage single occupant vehicle trips.

Developer shall construct the Project in accordance with the current California Building Standards Code (CBC) in place at the time of applicable permit submittal, subject to local amendments. Such code shall be, at a minimum, the 2019 California Building Standards Code, which includes increased sustainability requirements beyond the 2016 CBC, such as the requirement for the installation of solar photovoltaic systems on single-family homes. Additionally, CBC requirements related to sustainable construction and demolition shall apply, including the requirement that at least 65 percent of the construction waste materials generated during the project be diverted from the landfill.

In addition to the required mitigation measures and Building Code requirements, Developer shall obtain a Leadership in Energy and Environmental Design (LEED) Certified rating for Building Design and Construction from the U.S. Green Building Council (USGBC) for the Developer Hotel and Multifamily Elements. Outdoor landscaping on the Single Family Element shall also utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.

1.4.17. Property Level. Developer's project elements must meet City engineering requirements related to flood plain and sea level rise, with final site engineering plans subject to approval of the Engineering and Transportation Director. Such plans shall include provisions related to surcharge and raising the Property in accordance with technical recommendations and approved plans. Developer shall deposit available soil on the Park Parcel in accordance with City plans. Developer shall not be obligated to import additional soil. Developer's deposit of soil shall be in accordance with the requirements of Section 2.7 hereof and the Scope of Development, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the testing of soil to confirm that there are no contaminants or similar unsuitable constituents and the stabilization of the soil deposited on the Park Parcel. Subject to City approval, Developer may import soil onto the

Property prior to property conveyance or ground lease commencement subject to City's Grading Ordinance.

1.5. Community Facilities District. Developer and City shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "**Mello-Roos Act**"). Special taxes derived from the District may be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District. Public area maintenance may include maintenance of public streets, parking lots, park, trail, boat launch, building(s), the harbor basin, and the pedestrian bridge. Such maintenance may be related to hardscape, landscape, and irrigation; lighting; site amenities (picnic tables, bbqs, public art, etc.); stormwater facilities; rodent and pest control; aeration fountains; and riprap. Reserves and capital expenditures may be utilized to make improvements and adaptation for sea level rise, including installation of additional rip rap or a seawall, as well as capital improvements to public areas, such as road replacement, infrastructure upgrades, and amenity replacement. The final scope of the Community Facilities District shall be subject to the Local Goals and Policies and Rate and Method of Apportionment Boundary Map, as adopted by the applicable landowners. The Rate and Method of Apportionment Map shall detail, among other things, how the special tax is levied, maximum special tax rates, and method of apportionment.

1.6. Labor Agreements.

1.6.1 Contractors. Prior to the date of this Agreement, Developer has entered into a Letter of Intent ("LOI") with the Building Trades Council of Alameda County regarding the Project. For each Element of the Project that is Developer's responsibility, and prior to the conveyance of such Element to Developer through the applicable Ground Lease or Purchase and Sale Agreement, Developer or its General Contractor shall enter into a project labor agreement in accordance with the LOI, and such labor agreement must be adhered to by any general contractor retained by the Developer. For purposes hereof, a project labor agreement means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

If and to the extent required by federal and state prevailing wage laws, rules and regulations, Developer and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed for the Project, in compliance with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions; provided that the Parties have determined that the Prevailing Wage Laws are applicable to the work to be performed for the Golf Course Element. If the Prevailing Wage Laws are applicable to an Element, Developer shall submit to City a plan for monitoring payment of prevailing wages for such Element and shall implement such plan at Developer's expense. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work

performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite.

Developer shall indemnify, defend (with counsel approved by City) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the **"Indemnitees"**) harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement and the issuance of Certificates of Occupancy for the Project. Developer's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

1.6.2 Developer Hotel. Developer shall enter into a labor peace agreement with the appropriate labor organization regarding the operation of the Developer Hotel located on the Developer Hotel Parcel. The Developer Hotel Ground Lease shall require the operator of the Developer Hotel operated thereon to adhere to such labor peace agreement.

1.6.3 Local Hiring. It is in the interests of City, its residents and local businesses to encourage development within the City boundaries that strengthens the local economy by providing jobs and increasing economic activity overall. The construction of the Project will directly create construction jobs and indirectly could increase ancillary and complementary jobs that support the Project's construction activities. City has a strong public interest in encouraging hiring local firms and business for major projects with the City. In order to further these goals, Developer shall make a good faith effort to contract with appropriate businesses located in San Leandro for both professionals and construction trades that will be working on the Project construction, subject to the following standards:

(a) For the purpose of this Section 1.6.3, a business is located in San Leandro if it has a physical presence within the City limits and has applied for and received a local business license; such business may also have offices outside the City.

(b) Developer shall conduct outreach to make City businesses aware of the availability of Project related contracts by (a) advertising such opportunities in the local

newspaper(s)), as well as websites, trade association publications, trade journals, or other applicable media, not less than twenty (20) calendar days before the date bids are due; (b) holding at least two advertised open houses in the vicinity of the Project to encourage local businesses to come and learn about the Project and how they might be engaged to work on the Project; and (c) requesting assistance from San Leandro community organizations, contractors or professional groups, local state or federal business assistance offices or other organizations that provide assistance in the recruitment and placement of San Leandro businesses. Developer shall keep records of these outreach efforts and shall provide them, as well as a listing all contact information for any San Leandro business or nonprofit organization that will participate in the project, or provide services or supplies to the prime contractor, to the City upon request.

(c) Developer and its contractors and subcontractors shall consider in good faith all applications submitted by local businesses in accordance with their normal practice to engage the most qualified business for each position and make a good faith effort to hire local businesses.

(d) Developer retains the sole and absolute discretion to engage both professional and construction firms it deems best qualified for the tasks to be performed.

(e) The requirements of this Section 1.6.3 shall continue until the issuance of the first temporary certificate of occupancy for each Element of the Project.

(f) The requirements of this Section 1.6.3 are limited to the construction activities of the Project.

1.7. Performance Bonds and Payment Bonds.

Prior to commencement of any construction work on the Project, Developer shall cause its general contractor for each Element of the Project to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for each Element of the Project. The bonds shall name the City as obligee and shall be in a form acceptable to the City Attorney. The bonds for each Element of the Project shall remain in place and in full force until release by the City upon completion of the Element as determined by the City. The Golf Course Element shall be accepted by the City Council prior to the release of any bonds for such work. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Developer may submit evidence satisfactory to the City of contractor's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution acceptable to the City, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. If proposed by Developer, the City shall reasonably consider the use of subguard bonds for construction of private improvements by or on behalf of the Developer or its assigns (but not public improvements to be constructed by or on behalf of the Developer or its assigns). Such evidence must be submitted to City in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

1.8. Mitigation Monitoring and Reporting Program (MMRP).

Developer shall be solely responsible for conducting, and paying for, all mitigation and reporting measures required by the Mitigation Monitoring and Reporting Program (MMRP).

ARTICLE 2.
DEVELOPMENT APPROVALS FOR THE PROJECT

2.1. Project Approvals. In order to develop the Project as contemplated in this Agreement, the Project will require land use approvals, entitlements, development permits, and use and/or construction approvals, which may include, without limitation: vesting tentative maps, development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals. Developer shall apply for and obtain all such environmental and land use approvals and entitlements related to the development of the Project. For purposes of this Agreement, the term "**Project Approvals**" means all of the approvals, plans and agreements described in this Section 2.1. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.

2.1.1. CEQA. The FEIR, which was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on June 18, 2015, and adopted with findings by the City Council on July 20, 2015, by Resolution No. 2015-125. The FEIR Addendum, based upon changes in the Project after the FEIR was certified by the City Council and was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on February 6, 2020 and adopted with findings by the City Council on February 24, 2020 by Resolution No. _____. In the event any further CEQA documentation or approvals are required for the Project, Developer shall apply for and obtain such further CEQA documentation and approvals at Developer's expense.

2.1.2. BCDC. City shall apply for and obtain any and all necessary permits and authorizations from the San Francisco Bay Conservation and Development Commission ("**BCDC**") that are required for the Park Element. Developer shall apply for and obtain any and all necessary permits and authorizations from BCDC that are required for the Project Elements to be constructed by Developer, if any are so required. Developer shall cooperate with City with respect to any applications and presentations that are made by the City to BCDC with respect to the Park Element and the Project, and if required by BCDC, each Party shall, at its sole expense, prepare all materials required for all of its presentations to be made to BCDC with respect to the Project.

2.1.3. Development Agreement. Developer and City staff shall negotiate diligently and in good faith with each other towards the preparation of a mutually acceptable Development Agreement for the Project within twelve (12) months from the Agreement Date, as set forth in the Schedule of Performance.

2.1.4. Vested-Tentative Map and Single-Family Element Approvals. Developer shall process the vested-tentative map, the planned development permit, and the related entitlements for the Single-Family Element, as well as all other Elements of the Project as required. Developer shall process a single lot subdivision map for the Single Family Element for approval of the City. Developer shall process a subsequent subdivision map for the Single Family Element as a Project Approval, and the number of Townhome Lots, Detached Lots and total Lots in the Single Family Element shall be determined based upon the subsequent subdivision map which is approved by the City.

2.1.5. Construction Plans. Before commencement of construction of the Project or other works of improvement upon the Property, and at or prior to the times set forth herein, the Developer shall submit to the City any plans and drawings (collectively, the "Construction Plans") which may be required by the City under the City Municipal Code with respect to any permits and entitlements which are required to be obtained to develop the Project. Developer, on or prior to the date set forth in the Schedule of Performance, shall submit to the City such plans for the Project as are required by the City under the City Municipal Code in order for Developer to obtain demolition, grading, building and other required permits for the Project. If City disapproves any portion of the Construction Plans, such disapproval shall be in writing and shall specify the basis for disapproval in reasonable detail, together with a description of reasonable proposed modifications as shall render the Construction Plans acceptable to City. If City disapproves any portion of the Construction Plans, Developer shall discuss the City's objections with City staff and City and Developer shall work together in good faith towards modifications of the Construction Plans that are mutually acceptable to City and Developer. In addition, Developer shall submit to the City for its approval, which shall not be unreasonably withheld, a Construction Management Plan for each Element which addresses the phasing of construction, construction traffic and delivery of soil and building materials, noise issues, and other related issues. The Construction Management Plan shall include a provision for personnel responsible for receiving and addressing noise and traffic inquiries and complaints from the community.

2.2. City Review and Approval. The City shall have all rights to review and approve or disapprove all Project Approvals and other required submittals in accordance with the City Municipal Code, and shall apply the same standards to and shall retain the same discretion over such matters as it has with respect to any other development applications submitted to the City. Nothing set forth in this Agreement shall be construed as the City's approval of any or all of the Project Approvals. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving Project Approvals and other required submittals with respect to the Project. In no event shall City's disapproval or failure to approve the Project Approvals and/or other required submittals be deemed a breach or Default of this Agreement. In the event that the Project Approvals and/or other required submittals as approved herein are materially different than as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition to City's conveyance of the applicable Element to Developer.

2.3. Defects in Plans. The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Construction Plans, nor for any structural or other

defects in any work done according to the approved Construction Plans, nor for any delays reasonably caused by the review and approval processes established by this Article 2.

2.4. City Discretion. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving land use and other entitlements, permits, and approvals with respect to the Project. In no event shall City's disapproval or failure to approve the Development Agreement or any land use and/or other entitlements, permits, and approvals with respect to the Project, or City's amendment of the general plan, zoning or other land use designations applicable to the Property or the Project, be deemed a breach or Default of this Agreement. In the event that the Project as approved herein is materially different than the Project as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition precedent to the conveyance of the applicable Element.

2.5. Site Condition. Developer shall have the opportunity to visit and investigate each portion of the Property prior to Developer's acquisition of such portion of the Property, and to satisfy itself as to the current condition of the Property. City shall grant Developer and its representatives and agents a right of entry during the term of this Agreement to enter upon the portions of the Property owned by the City for purposes of conducting Developer's due diligence inspection, provided that Developer shall (a) give City twenty-four (24) hours telephone or written notice of any intended access which involves work on the Property or may result in any impairment of the use of the Property by its current occupants; (b) access the Property in a safe manner; (c) conduct no invasive testing or boring without the written consent of the City; (d) comply with all laws and obtain all permits required in connection with such access; and (e) conduct inspections and testing, subject to the rights of existing tenants of the Property, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's written consent, which shall not be unreasonably withheld). The right of entry agreement shall be in writing in a form approved by the City and shall contain an indemnity provision stating that the Developer shall indemnify, protect, defend, and hold harmless the City and its elected officials, officers, employees, representatives, members, and agents ("Indemnitees") from and against any and all losses, liabilities, damages, claims or costs (including attorneys' fees), arising out of the Developer's entry upon the Property. This indemnity obligation shall survive the termination of the right of entry agreement. The Developer's obligations to indemnify Indemnitees shall not extend to losses to the extent such losses arise out of the negligence or willful misconduct of one or more Indemnitees.

2.6. As Is Conveyance. Developer understands and acknowledges that the rights conveyed to the Developer under this Agreement are for the Property in an "as is" condition, with no warranty, express or implied, by the City as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve the City from any legal obligation it may have regarding the disclosure of any such conditions of which the City has actual knowledge. City hereby discloses to Developer the actual knowledge City has with respect to the deposit of hazardous materials on the Property, which is described in Exhibit K hereto and incorporated herein. Developer shall be

responsible for any necessary demolition, grading or other work necessary to prepare the Property for the Project.

2.7. Pre-Closing Work. Developer may request City approval to perform certain work upon the Property prior to the close of escrow for the Single Family PSA or commencement of any of the Ground Leases. Such work may include, without limitation, demolition of existing buildings and improvements on the Property, deposit of soil upon portions of the Property in accordance with Section 1.4.17 hereof, and other site preparation work. Such request shall be in writing, and shall include a narrative description of the work which Developer proposes to undertake and such engineering and/or architectural plans and drawings as may be required by the City and other governmental agencies with jurisdiction over such proposed work. City's approval of the requested work may be granted or denied in City's sole discretion. In the event City approves the requested work, City and Developer shall enter into a right of entry agreement in the form described in Section 2.5 hereof. Any work performed by Developer hereunder shall be at the sole risk of Developer, and City shall not be responsible to compensate Developer for any such work performed upon the Property. Developer shall comply with all laws and obtain all permits required in connection with such work.

2.8. Not a Development Agreement. The Parties acknowledge that this Agreement does not contain the required elements of a "development agreement" as defined in Government Code Section 65864, *et seq*. This Agreement does not address the fundamental purpose of a development agreement in that it does not grant any vested rights to the Developer or provide any assurance to the Developer that upon approval of the Project, the Developer may proceed with the Project in accordance with existing policies, rules and regulations, and conditions of approval. Instead, this Agreement provides that the Project will be required to comply with any applicable rules, regulations and policies governing permitted uses of the land, density, design, improvement and construction standards and specifications applicable to the Project, whether or not in conflict with rules, regulations or policies existing as of the date of this Agreement. Accordingly, the Parties agree that this Agreement is not a development agreement as defined in Government Code Section 65864, *et seq*.

ARTICLE 3.
[Deleted]

ARTICLE 4.
AMENDMENTS

4.1. Amendments. Any amendments to this Agreement shall be made in writing executed by the parties hereto, and neither Developer nor City shall be bound by verbal or implied agreements. The City Manager (or designee) shall be authorized to enter into certain amendments to this Agreement on behalf of the City in accordance with Section 9.18 hereof.

4.2. Amendments Requested by Lenders. In the event that Developer or its Lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any costs incurred by the City

in connection with such amendments requested by Developer or its Lender, including without limitation attorneys' fees and consultants' fees for the review of the request and preparation of an amendment, shall be borne by the Developer.

ARTICLE 5.
DEFAULT, REMEDIES AND TERMINATION

5.1. Events of Default.

Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 8.3 hereof, any failure by either Party to perform any material term or provision of this Agreement (not including any failure by Developer to perform any term or provision of any Project Approvals) shall constitute an "**Event of Default**," (i) if such defaulting Party does not cure such failure within ninety (90) days (such ninety (90) day period is not in addition to any ninety (90) day cure period under Section 3.5, if Section 3.5 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such ninety (90) day period, or (ii) if such failure is not of a nature which can be cured within such ninety (90) day period, the defaulting Party does not within such ninety (90) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

5.2. Meet and Confer.

During the time periods specified in Section 5.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 90-day cure period referred to in Section 5.1 (even if the 90-day cure period itself is extended pursuant to Section 5.1(ii)) unless the Parties agree otherwise in writing.

5.3. Remedies and Termination.

If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Agreement and/or terminate this Agreement pursuant to Section 5.6 herein. In the event that this Agreement is terminated

pursuant to Section 5.6 herein and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

5.4. Legal Action by Parties.

5.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

5.4.2. No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

5.5. Remedies in Conveyance Agreements. Nothing in this Agreement shall modify any rights or remedies the Parties may have under the Single Family Purchase and Sale Agreement, Developer Hotel Ground Lease, Multifamily Ground Lease, Developer Restaurant Ground Lease, Market Ground Lease, Public Improvements Agreement, or any other agreements entered into between the Parties to carry out and implement this Agreement.

5.6. Termination.

5.6.1. Expiration of Term. Except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement as set forth in Section 1.3.

5.6.2. Survival of Obligations. Upon the termination or expiration of this Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation that is

specifically set forth as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals for the Project.

5.6.3. Termination by City. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement with respect to all or any portion of the Property before the expiration of its Term unless there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to this Article 5 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Agreement is terminated only with respect to that portion of the Property to which the default applies.

5.6.4 Termination With Respect to Property Conveyance. Notwithstanding the foregoing, either party hereto shall have the right to terminate its obligations with respect to the conveyance of a specific Element of the conveyance of the Property if the conditions precedent to such conveyance have not been satisfied or waived prior to the date set forth therefor in the Schedule of Performance. In the event that a specific Element or Elements of the Property conveyance is terminated as provided in this Section 5.6.4, the parties' obligations with respect to the other Elements of the Property which have not been terminated shall remain in full force and effect.

ARTICLE 6.
COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments.

Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

6.2. Regulation by Other Public Agencies.

Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

6.3. Other Governmental Permits and Approvals; Grants.

Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies.

6.4. Cooperation in the Event of Legal Challenge.

6.4.1. The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Project Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

6.4.2. In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Agreement, the procedures leading to its adoption, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. Developer shall pay for all of City's documented legal costs related to any action challenging the validity of any provision of this Agreement, or procedures leading to its adoption. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. City retains the option to select and employ independent defense counsel at its own expense. If, in the exercise of its sole discretion, Developer agrees to pay for defense counsel for City, Developer shall jointly participate in the selection of such counsel.

6.5. Revision to Project.

In the event of a court order issued as a result of a successful legal challenge, City shall, after exhausting all appeals and to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as consistent with the Scope of Development and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Scope of Development, or (ii) any conflict with the Scope of Development or frustration of the intent or purpose of the Scope of Development.

6.6. State, Federal or Case Law.

Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible

time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

6.7. Defense of Agreement.

City shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law. Developer shall pay all of City's documented costs, including attorneys' fees and experts' costs, incurred to modify or defend this Agreement.

ARTICLE 7.
TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign.

The Parties understand and anticipate that Developer may seek to transfer its rights and responsibilities under this Agreement with respect to one or more specific Elements of the Project to a person or entity with experience in the development of the type of Element proposed to be transferred. Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or this Agreement prior to the completion of the Project, without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

7.1.1 Process for City Approval of Transfer. Prior to any Transfer hereunder, Developer shall submit to City detailed written information regarding the proposed transferee's development experience as relevant to the proposed Transfer, detailed information with respect to the financial capacity of the proposed transferee, and the form of a proposed assignment and assumption agreement which requires the assignee to comply with the assigned sections of this Agreement. Upon receipt of Developer's submission City may request further information regarding the experience and financial capacity of the proposed transferee, and such requests shall not be considered an unreasonable withholding or delay of the City's consent.

7.1.2 Assignment and Assumption Agreement. Any such assignment made in compliance with this Section 7.1 shall be evidenced by a written assignment and assumption agreement in a form approved by the City Attorney, which agreement shall set forth in detail the assignee's specific duties under this Agreement.

7.1.3 Change of Ownership. In addition to the foregoing, prior to the completion of the Project, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than fifty percent (50%) in aggregate of the present ownership and /or control of

Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of investor limited partners, nor the transfer of beneficial or ownership interests by an investor limited partner to subsequent limited partners shall be restricted by this provision, nor shall the admission of a Passive Investor Member nor the transfer of a beneficial or ownership interest by a Passive Investor Member to another Passive Investor Member be restricted by this provision. "Passive Investor Member" means a member who pursuant to Developer's operating agreement is not authorized to actively manage or otherwise operate the business of the company.

7.1.4 Transfer to Affiliates. Notwithstanding anything to the contrary contained in this Section 7.1, Developer may Transfer, in whole or in part, the Property, the Project, or this Agreement to any "Affiliate" of Developer, without the prior written approval of City. As used herein, the term "Affiliate" means, with respect to Developer, (a) any person or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Developer, or (b) any individual or entity in which Developer has a 50.1% or more beneficial interest. A person or entity shall be deemed to control a person or entity if it has the power to direct the management, operations or business of such person or entity. The term "beneficial owner" is to be determined in accordance with Rule 13d promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

7.2. Release upon Transfer.

Upon the Transfer of Developer's rights and interests under this Agreement pursuant to Section 7.1, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) City has consented to the Transfer, and (ii) the transferee executes and delivers to City an assignment and assumption agreement in accordance with Section 7.1.2 hereof. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

7.3. Covenants Binding on Successors and Assigns.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

ARTICLE 8.
MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

8.1. Mortgagee Protection.

This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). No breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

8.2. Mortgagee Not Obligated.

Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

8.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure.

If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

8.4. No Supersedure.

Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.5. Technical Amendments.

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 9.
MISCELLANEOUS PROVISIONS

9.1. Limitation on Liability.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

9.2. Force Majeure.

The Term of this Agreement and the time within which a Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, without limitation of City's obligations under this Agreement, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, floods, earthquakes, unavoidable casualties, litigation involving this Agreement, or bankruptcy, insolvency or defaults of Project lenders or equity investors. Delays for any other reasons, including without limitation delays due to inability to obtain financing, or recession or other general economic conditions, shall not constitute events of force majeure pursuant to this Agreement; provided that City may approve extensions of time for such reasons upon the request of Developer, in City's sole discretion. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Agreement shall not include any period of time during which (i) a development moratorium including, but not limited to, a water, sewer or other public

utility moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval due to delays caused by City or other governmental agencies, then the Term of this Agreement shall be extended by the period of any such delay.

9.3. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

City:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: Community Development Director
with copies to:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: City Attorney
Developer:	Cal Coast Development, Inc. 11755 Wilshire Boulevard, Suite 1660 Los Angeles, CA 90025 Attn: Edward J. Miller
with copies to:	Nicholas F. Klein, Esq. 11755 Wilshire Boulevard, Suite 1660 Los Angeles, CA 90025

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received

twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a "hard" copy is delivered as provided above.

9.4. Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Developer joint venturers or partners.

9.5. Severability.

If any terms or provision(s) of this Agreement or the application of any term(s)or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Agreement by providing written notice of such termination to City.

9.6. Section Headings.

Article and Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

9.7. Construction of Agreement.

This Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

9.8. Entire Agreement.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement consists of _____ (__) pages including the Recitals and exhibits attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous

agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Map of the Property
Exhibit B	Single Family Parcel Legal Description
Exhibit C	Golf-Course Parcel Legal Description
Exhibit D	Developer Hotel Parcel Legal Description
Exhibit E	Multifamily Parcel Legal Description
Exhibit F	Developer Restaurant Parcel Legal Description
Exhibit G	Market Parcel Legal Description
Exhibit H	Park Parcel Legal Description
Exhibit I	Scope of Development
Exhibit J	Schedule of Performance
Exhibit K	Environmental Disclosure
Exhibit L	Single Family Parcel Purchase and Sale Agreement
Exhibit M	Developer Hotel Parcel Ground Lease
Exhibit N	Multifamily Parcel Ground Lease
Exhibit O	Developer Restaurant Parcel Ground Lease
Exhibit P	Market Parcel Ground Lease
Exhibit Q	Public Improvement Agreement
Exhibit R	Shoreline Responsibility Map

9.9. Calendar Days.

Unless otherwise expressly provided for herein, all references to any amount of days shall be a reference to calendar days.

9.10. Estoppel Certificates.

Either Party may, at any time during the Term of this Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or designee shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9.11. No Waiver.

No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.12. Time Is of the Essence.

Time is of the essence for each provision of this Agreement for which time is an element.

9.13. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

9.14. Attorneys' Fees.

Should any legal action be brought by either Party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, experts' fees, court costs and such other costs as may be found by the court from the other Party.

9.15. Third Party Beneficiaries.

Except as otherwise provided herein, City and Developer hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.16. Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.17. Counterparts.

This Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

9.18. City Approvals and Actions.

The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager (or designee). The City Manager (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, or materially or substantially reduce the revenue earned or to be earned by City, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration or action any matter under the City Manager's authority if the City Manager desires to do so. The City Manager may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City.

9.19. Authority.

The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils', or other approvals have been obtained.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first set forth above.

DEVELOPER:

Cal Coast Companies LLC, Inc.,
a Delaware corporation doing
business in California as Cal Coast
Developer, Inc.

By: _____
Edward J. Miller
Title: Authorized Signatory

CITY:

CITY OF SAN LEANDRO
a California Charter City

By: _____
Name: Jeff Kay
Title: City Manager

ATTESTATION:

By: _____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda
City Attorney

Exhibit A - Map of Shoreline Property

PARCEL L
43.04 ACRES
1,874,991 SQ.FT.
PARK PARCEL

PARCEL D
0.05 ACRES
2,293 SQ.FT.
(E) PUMP STATION

S.D.E. PER RE 939 IM 619; EXC. NO. 24

PARCEL I
6.11 ACRES
266,193 SQ.FT.
DEVELOPER HOTEL ELEMENT

EXISTING PUMP STATION TO REMAIN

CENTERLINE OF 42" WATER PIPELINE

PARCEL L
43.04 ACRES
1,874,991 SQ.FT.
PARK PARCEL

PARCEL J
0.46 ACRES
20,131 SQ.FT.
DEVELOPER RESTAURANT ELEMENT

GRAPHIC SCALE
120 0 120 240

PARCEL K
0.14 ACRES
6,019 SQ.FT.
MARKET ELEMENT

PARCEL L
43.04 ACRES
1,874,991 SQ.FT.
PARK PARCEL

PARCEL C
16.26 ACRES
708,068 SQ.FT.
SINGLE-FAMILY ELEMENT

PARCEL F
0.36 ACRES
15,468 SQ.FT.
(E) RESTAURANT (HORATIOS)

PARCEL B
23.05 ACRES
1,004,137 SQ.FT.
GOLF COURSE ELEMENT

PARCEL G
2.11 ACRES
91,694 SQ.FT.
(E) HOTEL (MARINA INN)

EXISTING PUMP STATION TO REMAIN

EXISTING STRUCTURE TO REMAIN

PARCEL E
0.10 ACRES
4,446 SQ.FT.
(E) WATER TREATMENT PLANT

EXISTING PUMP STATION TO REMAIN

CITY OF SAN LEANDRO MONUMENT PER PM 90/33, 300 M 74

PARCEL L
43.04 ACRES
1,874,991 SQ.FT.
PARK PARCEL

PARCEL H
6.37 ACRES
277,496 SQ.FT.
MULTIFAMILY ELEMENT

S.D.E. PER RE 1006 IM 868, PARCEL 2; EXC. NO. 25

EXISTING PUMP STATION TO REMAIN

PARCEL A
1.15 ACRES
49,934 SQ.FT.
LIBRARY

S.D.E. PER RE 1006 IM 868, PARCEL 1; EXC. NO. 25

REMOVE PARCEL LINE

MULFORD GARDENS MANOR 8 M 5

ANAL

U

V

W

SAN LEANDRO SHORELINE
PARCEL EXHIBIT

1/28/2020
SHEET 1 OF 1

EXHIBIT B

SINGLE FAMILY PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'08" West, 463.43 feet to the beginning of a curve to the left, having a radius of 840.00 feet;
- Southwesterly along said curve, through a central angle of 11°06'46", for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of 11°06'47", for an arc length of 147.41 feet;
- South 63°18'10" West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'10" West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of 81°37'46", for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:

North 35°04’04” West, 405.83 feet to the beginning of a curve to the right, having a radius of 1,100.00 feet; Northwesterly along said curve, through a central angle of 04°44’50”, for an arc length of 91.14 feet;

Thence leaving said northeasterly line of Monarch Bay Drive, the following courses and distances:

- North 62°55’28” East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00’00”, for an arc length of 47.12 feet;
- North 27°04’32” West, 25.00 feet;
- South 62°55’28” West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32’46” West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53’12”, for an arc length of 132.22 feet;
- North 20°34’02” West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56’39”, for an arc length of 212.27 feet;
- North 39°30’41” West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50’17”, for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39’59” West;
- Northeasterly along said curve, through a central angle of 41°34’58”, for an arc length of 255.63 feet;
- South 27°16’28” East, 54.01 feet;
- North 62°43’32” East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled “Mulford Gardens Addition”, filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30’00” East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30’00” West, 17.13 feet;
- South 20°33’26” East, 134.14 feet;
- South 69°26’34” West, 80.00 feet;
- South 20°33’26” East, 726.01 feet;
- South 34°04’02” East, 130.39 feet;
- North 71°53’55” East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37’44” West;
- Southeasterly along said curve, through a central angle of 89°56’49”, for an arc length of 78.49 feet;
- South 18°40’54” East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.

EXHIBIT C

GOLF COURSE PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, South 63°18'08" West, 230.60 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said northwesterly line of Fairway Drive;

North 27°30'00" West, 187.16 feet to the southeasterly line of Block W of said Map of "Mulford Gardens Manor";

Thence along said southwesterly line, South 62°30'00" West, 84.00 feet to the southwesterly line of Block W of said Map (8 Maps 5);

Thence along said southwesterly line, North 27°30'00" West, 797.40 feet to the southeasterly line of Block W, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southeasterly line "Mulford Gardens Addition"; (7 Maps 55), South 62°30'00" West, 425.00 feet to the southwesterly line of said Block W of said Map;

Thence along said southwesterly line, North 27°30'00" West, 423.00 feet to the northwesterly line of said Lands (Re: 990 Im: 651);

Thence along said northwesterly line, South 62°30’00” West, 317.13 feet;

Thence leaving said northwesterly line, the following courses and distances:

- South 20°33’26” East, 134.14 feet;
- South 69°26’34” West, 80.00 feet;
- South 20°33’26” East, 726.01 feet;
- South 34°04’02” East, 130.39 feet;
- North 71°53’55” East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37’44” West;
- Southeasterly along said curve, through a central angle of 89°56’49”, for an arc length of 78.49 feet;
- South 18°40’54” East, 370.01 feet to said to said northwesterly line of Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

North 63°18’10” East, 289.79 feet to the beginning of a curve to the left, having a radius of 760.00 feet;
Northeasterly along said curve, through a central angle of 11°06’47”, for an arc length of 147.41 feet to the beginning of a reverse curve, concave to the Southeast, having a radius of 840.00 feet;
Northeasterly along said curve through a central angle of 11°06’46”, for an arc length of 162.92 feet;
North 63°18’08” East, 232.83 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 1,004,132 square feet or 23.052 acres, more or less.

EXHIBIT D

DEVELOPER HOTEL PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2 (233 M 50-53);

Thence leaving said corner and along the westerly line of said Parcel 2, North 09°00'05" West, 404.34 feet to the northerly line of said Parcel 2;

Thence along said northerly lines of said Parcel 2, the following courses and distances:

- North 80°59'55" East, 85.99 feet;
- North 50°59'55" East, 9.00 feet;
- North 80°59'55" East, 5.01 feet;
- South 24°00'05" East, 158.97 feet;
- North 80°59'55" East, 143.35 feet to the to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 20°34'02" East, 9.95 feet to the beginning of a curve to the left, having a radius of 1,184.00 feet;
- Southeasterly along said curve, through a central angle of 08°34'26", for an arc length of 177.18 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 30.00 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, southwesterly along said curve through a central angle of 103°39'07", for an arc length of 54.27 feet to the southerly line of said Parcel 2;

Thence along said southerly line, South 74°30'39" West, 310.85 feet to the Point of **BEGINNING**.

Containing 91,694 square feet or 2.105 acres, more or less.

EXHIBIT E

MULTIFAMILY PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26’52” West, 53.79 feet;
- South 72°26’34” West, 239.33 feet;
- South 29°07’04” East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09’06”, for an arc length of 43.01 feet;
- North 68°43’50” East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04’04” West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55’36”, for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51’32” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39’07”, for an arc length of 54.27 feet; South 74°30’39” West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT F

DEVELOPER RESTAURANT PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

Containing 15,468 square feet or 0.355 acres, more or less.

EXHIBIT G

MARKET PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence continuing along said southwesterly line of Monarch Bay Drive, northwesterly along said curve through a central angle of 11°57'32", a distance of 116.47 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 54°23'55" West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46'01", for an arc length of 26.51 feet;
- South 06°22'06" East, 84.86 feet;
- North 85°26'24" East, 51.31 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 04°41'59" East;
- Northeasterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 6,019 square feet or 0.138 acres, more or less.

EXHIBIT H

PARK LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a political corporation, recorded on November 22, 1960 in Reel 211 at Image 738, Official Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of said County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most southerly corner of Parcel 2, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County;

Thence leaving said corner and along the westerly boundary line of said Parcel 2, North 09°00’05” West, 404.34 feet to the northerly line of said Parcel 2;

Thence along said northerly line of said Parcel 2, the following courses and distances:

North 80°59’55” East, 85.99 feet;
North 50°59’55” East, 14.01 feet;
South 24°00’05” East, 161.56 feet;
North 80°59’55” East, 143.35 feet to the southwesterly line of said Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34’02” West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46’01”, for an arc length of 26.95 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 55°45’39” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southwesterly along said curve, through a central angle of 51°03’40”, for an arc length of 24.95 feet;
- South 85°26’24” West, 572.53 feet;
- North 04°25’13” West, 177.04 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 180.00 feet, with a radial line that bears South 57°29’56” East;
- Northerly along said curve, through a central angle of 36°55’17”, for an arc length of 115.99 feet;
- North 04°25’13” West, 52.42 feet;
- North 85°34’47” East, 15.00 feet;
- North 04°25’13” West, 141.33 feet;

- North 85°34’47” East, 14.00 feet;
- North 04°25’13” West, 125.32 feet;
- North 25°36’23” East, 28.93 feet;
- North 64°57’42” East, 400.39 feet to the westerly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave Southeasterly, having a radius of 436.23 feet, with a radial line that bears North 69°54’00” West;

Thence along said westerly line of Monarch Bay Drive, northeasterly along said curve, through a central angle of 09°00’38”, for an arc length of 68.60 feet to a point on the southeasterly line of Marina Boulevard (formerly West Avenue) being 60.00 feet in width;

Thence leaving said westerly line of Monarch Bay Drive, along said southeasterly line of Marina Boulevard, South 62°30’00” West, 206.35 feet to the westerly line of Block Z, as said Block is shown on that certain Map entitled “Mulford Gardens Addition”, filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of Alameda County;

Thence along said westerly line of Block Z of said Map of “Mulford Gardens Addition”, the following courses and distances:

- North 11°00’00” West, 31.29 feet;
- North 09°47’00” West, 13.50 feet;

Thence leaving said westerly line of Block Z, the following courses and distances:

- South 62°30’00” West, 248.54 feet to the beginning of a curve to the right, having a radius of 50.00 feet;
- Westerly along said curve, through a central angle of 35°09’59”, for an arc length of 30.69 feet to the beginning of a reverse curve, concave to the Southeast, having a radius of 50.00 feet;
- Southwesterly along said curve through a central angle of 120°37’39”, for an arc length of 105.27 feet;
- South 22°57’40” East, 34.26 feet to the beginning of a curve to the right, having a radius of 50.00 feet;
- Southerly along said curve, through a central angle of 18°34’36”, for an arc length of 16.21 feet;
- South 04°23’04” East, 96.32 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Southerly along said curve, through a central angle of 16°21’24”, for an arc length of 8.56 feet;
- South 11°58’20” West, 87.53 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Southerly along said curve, through a central angle of 16°21’24”, for an arc length of 8.56 feet;
- South 04°23’04” East, 101.88 feet to the beginning of a curve to the right, having a radius of 120.00 feet;
- Southwesterly along said curve, through a central angle of 89°18'57", for an arc length of 187.06 feet;
- South 84°55’53” West, 661.73 feet to the beginning of a curve to the left, having a radius of 200.00 feet;
- Southwesterly along said curve, through a central angle of 83°50'08", for an arc length of 292.64 feet;
- South 01°05’45” West, 921.33 feet to the beginning of a curve to the left, having a radius of 100.00 feet;
- Southerly along said curve, through a central angle of 45°44’08”, for an arc length of 79.82 feet;
- South 44°38’23” East, 340.96 feet to the beginning of a curve to the left, having a radius of 40.00 feet;
- Easterly along said curve, through a central angle of 70°46’07”, for an arc length of 49.41 feet;
- North 64°35’30” East, 37.82 feet to the beginning of a curve to the left, having a radius of 40.00 feet;
- Northeasterly along said curve, through a central angle of 66°04’23”, for an arc length of 46.13 feet;
- North 01°28’52” West, 77.80 feet;

- North 71°55’51” East, 332.76 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 34°47’02”, for an arc length of 18.21 feet;
- South 73°17’07” East, 73.46 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 30°51’56”, for an arc length of 16.16 feet;
- North 75°50’57” East, 87.12 feet;
- North 31°35’14” East, 14.74 feet;
- South 58°24’46” East, 90.02 feet;
- North 31°35’14” East, 50.00 feet;
- North 58°24’46” West, 90.83 feet;
- North 31°35’14” East, 17.32 feet;
- North 71°05’22” East, 456.17 feet;
- North 29°07’04” West, 138.87 feet;
- North 72°26’34” East, 239.33 feet;
- South 72°26’52” East, 53.79 feet to the Point of **BEGINNING**.

Containing 1,875,754 square feet or 43.061 acres, more or less.
Excepting therefrom Parcel F, herein above described, more particularly described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, and further described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00’05” East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59’55” West, 38.00 feet;
- South 09°00’05” East, 21.80 feet;
- South 80°59’55” West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00’05” West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59’55” East, 95.00 feet to the Point of **BEGINNING**.

EXHIBIT I

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

1. **Single Family Housing Element**
   a) Design and construct approximately between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City's inclusionary housing ordinance as specified in the DDA.
   b) The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
   c) All single-family homes and townhomes shall meet or exceed CA Title 24 requirements and be EnergyStar Rated.
   d) Outdoor landscaping on the Single-Family Element shall utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.
   e) Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project of the Agreement, including design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6m of the California Building Code).

2. **Golf-Course Element**
   a) Redesign and reconstruct a nine-hole links style golf course ("Golf Course Parcel").
   b) The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course.
   c) The existing north lake shall be reconfigured, mature trees (where feasible and appropriate), and the monarch butterfly roosting habitat shall remain.

d) Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code.
e) Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom.
f) A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City.
g) The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library.
h) The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain.
i) Any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.
j) The public improvements related to the Golf Course Element shall be subject to a Public Improvement Agreement.
k) Developer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City, with input from applicable community groups.
l) The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively.

3. Developer Hotel Element

a) Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel that has between 200 and 220 rooms.
b) The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby.
c) The Hotel Parcel shall include publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
d) Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
e) Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto. The days and hours of public

use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.

f) Developer further agrees that an easement shall be recorded on the Developer Hotel Parcel allowing users of the Developer Restaurant Element (parcel J) and the Market Element (parcel K) to utilize parking on the Developer Hotel Parcel and to provide for joint access between the parcels.

g) The Developer Hotel Element shall include a full-service restaurant of approximately 5,000 square-foot, which the Developer or Developer Hotel Ground Lease Subtenant may sublease to an independent third-party operator, subject to the prior approval of the City and the requirements of the Developer Hotel Ground Lease.

4. Multifamily Element

a) Developer shall design and construct a multifamily residential development with approximately two hundred eighty-five (285) rental units ("Multifamily Element").

b) The Multifamily Element shall include parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.

c) Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.

d) The unit mix and any amenities are subject to the Project Approvals, as defined in Section 2.1 of the Agreement.

e) The Multifamily Element shall meet the objectives of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq*.) by paying a fee in-lieu of providing affordable rental units (the "Affordable Rental Housing In-Lieu Fee"). If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance.

5. Developer Restaurant Element

a) Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor ("Developer Restaurant Element").

b) Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself.

c) The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant

Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City.

6. Market Element

a) Developer shall construct an approximately 3,000 square foot single-story free-standing building shell (the "Market").
b) The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
c) A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion.
d) The Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive.

7. Park Element

a) City shall be responsible for the design and construction of Monarch Bay Park, to be located on the peninsula portion of the Property, as described and depicted in Exhibit H, (the "Park Parcel").
b) The Park Element shall consist of pedestrian paths, plazas, landscaping, irrigation, restrooms, boat launch, sitting areas, parking, public art and sections of the San Francisco Bay Trail, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
c) The trail design shall conform to the San Francisco Bay Trail Design Guidelines and Toolkit, dated June 2016, as it may be amended.
d) Developer shall deposit soil on the Park Parcel in accordance with each of the requirements of Section 2.7 hereof, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the stabilization of the soil deposited on the Park Parcel.
e) The City's obligation for the Park Element is expressly made contingent upon the close of escrow for the Single Family Parcel.
f) The City intends to obtain some or all of the funding for the Park design and construction from the proceeds of the sale of the Single Family Parcel to Developer, and the Park Development Impact Fee payable by Developer to City in connection with the Single Family Element. The City may also use all or a portion of the deposit made by Developer pursuant to the Single Family Purchase and Sale Agreement for the costs of the design of the Park, subject to the terms and conditions set forth in the Single Family Purchase and Sale Agreement.
g) Such design work shall be completed by an architect and/or consultant selected by the City in its sole discretion, and may be performed as part of a design-build contract as determined by the City in its sole discretion.

h) The final design for the Park Element shall be approved by the City in its sole discretion and approved by the San Francisco Bay Conservation and Development Commission ("BCDC").

8. Harbor Element

a) The City shall perform demolition at the San Leandro Marina Harbor adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound harbor, in conformance with plans approved by the City, the San Francisco Bay Conservation and Development Commission (BCDC) and other applicable agencies.

9. Library Element

a) The City shall demolish and reconstruct the Mulford-Marina Branch Library.

10. Developer Responsibilities

a) The Developer shall be responsible, at its sole expense, for the installation and/or coordination of all site preparation required for the development of the following Project Elements: Single Family Housing, Golf Course, Developer Hotel, Multifamily, Developer Restaurant, and Market. Such site preparation, whether within the Project, off-site or in the public right-of-way shall include, but is not limited to, the following: demolition of existing paving, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, geotechnical mitigation, and rough grading.

b) In accordance with Section 1.4.10 and Exhibit R, Developer shall deposit soil on the Park Parcel in accordance with City-approved plans. Developer's deposit of soil on the Park Parcel shall be in accordance with each of the requirements of Section 2.7 hereof, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the stabilization of the soil deposited on the Park Parcel.

c) Developer shall perform demolition, rough grading, and provide clean fill, as a part of site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located adjacent to the Developer Hotel Parcel and Multifamily Parcel, as shown in Exhibit R. In accordance with Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of the such public facility, shall be provided by the City.

f) The Developer is responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are adjacent to the Developer Hotel Element (Parcel J) and Multifamily Element (Parcel I), as shown in Exhibit R. Such improvements shall include, but are not limited to sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director.

g) The Developer is responsible for design and reconstruction of portions of Mulford Point Drive located to the west of the Developer Hotel Element (Parcel J) and the Developer Restaurant Element (Parcel K), as well as the associated Park Element parking lot, as

shown in Exhibit R. Such roadway improvements shall include, but are not limited to, sidewalks, new pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to half (50%) of the cost of any required improvements to portions of Mulford Point Road and the shared Park Element parking lot, located west of Parcels J and K, shall be provided by the City.

EXHIBIT J

SCHEDULE OF PERFORMANCE

Task	Time for Performance
1. Entire Project	
Planning entitlements and vesting tentative map for Project	Within 12 months of the Agreement Date, entitlements and tentative map applications are complete and public hearing is held (Entitlement Date)
Development Agreement for the Project	Within 12 months of the Agreement Date, agreement is prepared and public hearing is held
Submittal of application for City permits for Horizontal Improvements for at least one project Element (demolition, encroachment, or grading)	Within 12 months of Entitlement Date
2. Single Family Element	
Effective Date	_____, 2020
Opening of Escrow	Within 5 business days from expiration of appeals periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment, and Addendum to the Shoreline Project EIR
Deposit due	Within 3 business days from Opening of Escrow
Escrow Holder delivers a Preliminary Title Report for the Property	Within 3 business days from Opening of Escrow
Due Diligence Contingency Date	90 days from Effective Date
Entitlements Contingency Date	270 days from Effective Date (subject to one 90 day extension)
Buyer and City enter into Public Improvement Agreement for Single Family Element, and Buyer submits required security to City	Prior to Close of Escrow

Close of escrow for Single Family parcel occurs.	Within 90 days after first to occur of (a) receipt of Government Entitlements, (subject to one 90 day extension) or (b) December 31, 2021
Commencement of construction of Horizontal Improvements for Single-Family Element	Within 90 days of receipt of City approval of first permit for Horizontal Improvements (demolition, encroachment or grading), permit is issued and work begins
Completion of construction of Horizontal Improvements for Single-Family Element	Within 24 months of commencement of construction of Horizontal Improvements, work under demolition, encroachment and grading permits is given final approval
Submittal of Building Permit applications for Vertical Construction for Single-Family Element	Prior to Close of Escrow
3. Golf Course Element	
Submit Golf Course Implementation Plan to City	90 days from Opening of Escrow, or after termination of lease with the American Golf Corporation for that portion of land to be utilized for the Single-Family Element, whichever comes later
Developer and City enter Public Improvement Agreement for Golf Course Element, and Developer submits required security to City	Prior to Close of Escrow for sale of Single Family Element to Developer
Commencement of construction of Golf Course Element	Within 90 days after receipt of City approval of first permit for Golf Course Element (demolition, encroachment and/or grading), permit is issued and work begins under such permit
Substantial completion of construction of Golf Course Element.	Within 30 months after commencement of construction of Golf Course Element, all major construction is complete and only minor work and/or maturation of landscaping remains, as accepted by the Directors of Engineering and Transportation and Public Works

Developer may sell more than 132 completed residential units within the Single Family Element.	Upon substantial completion of the Golf Course Element.
4. Developer Hotel Element	
All conditions precedent to commencement of Developer Hotel Ground Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Developer Hotel Ground Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Developer Hotel Lease
Approval of permits for Horizontal Improvements for the Developer Hotel Element (including grading, encroachment and demolition)	Prior to Effective Date of Developer Hotel Lease
Commencement of construction of Horizontal Improvements for the Developer Hotel Element	Within 90 days of Effective Date of Developer Hotel Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Hotel Element	Within 18 months of commencement of construction of Horizontal Improvements for Developer Hotel, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Hotel Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Developer Hotel, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for the Developer Hotel.	Within 33 months after approval of first Building Permit for Vertical Improvements for Developer Hotel, TCO is received
Developer Hotel opens for business to the public	Within 60 days after receipt of TCO for Developer Hotel
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after

	approval of first Building Permit for Vertical Improvements for Developer Hotel
5. Multifamily Element	
All conditions precedent to commencement of Multifamily Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Multifamily Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Multifamily Lease
Approval of permits for Horizontal Improvements for the Multifamily Element (including grading, encroachment and demolition)	Prior to Effective Date of Multifamily Lease
Commencement of construction of Horizontal Improvements for the Multifamily Element	Within 90 days of Effective Date of Multifamily Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Multifamily Element	Within 18 months of commencement of construction of Horizontal Improvements for Multifamily Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Multifamily Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Multifamily Element, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Multifamily Element	Within 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element
6. Developer Restaurant Element	

All conditions precedent to commencement of Developer Restaurant Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Developer Restaurant Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Developer Restaurant Lease
Approval of permits for Horizontal Improvements for the Developer Restaurant Element (including grading, encroachment and demolition)	Prior to Effective Date of Developer Restaurant Lease
Commencement of construction of Horizontal Improvements for the Developer Restaurant Element	Within 90 days of Effective Date of Developer Restaurant Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Restaurant Element	Within 18 months of commencement of construction of Horizontal Improvements for Developer Restaurant Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Restaurant Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Developer Restaurant Element, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Developer Restaurant Element	Within 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element
7. Market Element	
All conditions precedent to commencement of Market Lease are satisfied or waived by the parties.	By December 31, 2022

Effective Date - Execution and commencement of Market Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Market Lease
Approval of permits for Horizontal Improvements for the Market Element (including grading, encroachment and demolition)	Prior to Effective Date of Market Lease
Commencement of construction of Horizontal Improvements for the Market Element	Within 90 days of Effective Date of Market Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Market Element	Within 18 months of commencement of construction of Horizontal Improvements for Market Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Market Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Market Element , permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Market Element	Within 18 months after approval of first Building Permit for Vertical Improvements for Market Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 18 months after approval of first Building Permit for Vertical Improvements for Market Element

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Development Agreement including, without limitation, extension due to Force Majeure. Times of performance under the Development Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the non-requesting Party's sole and absolute discretion (subject to events of force majeure set forth in the Development Agreement.

EXHIBIT K

City Environmental Disclosure

City has provided the following documents to Developer:

1. **Phase I Environmental Site Assessment, San Leandro Shoreline Redevelopment, San Leandro, California**, prepared by ENGEO, March 2, 2017, addressed to Cal-Coast Companies, LLC ("Phase I Report")

a. The Phase I Report identified the following historical Recognized Environmental Conditions for the Property:

- In 1991, the City excavated impacted soil from the drum storage area where a spillage had occurred, and the excavated soil was deposed offsite. Confirmation sampling indicated that all impacted soil had been removed. A no further action letter was issued by the Alameda County Health Care Services Agency on October 27, 1995.

- Three underground storage tanks were removed from the Property in April 2016 under permit from the City's Environmental Services Division.

b. The Phase I Report identified the following potential Recognized Environmental Conditions for the Property:

- The golf course was constructed in 1967. Agricultural chemicals, some persistent in the environment, may have been used during the maintenance of the golf course.

- Due to the past and current use of the Property as a marina, it is possible that the soil or groundwater may be potentially impacted.

c. The Phase I Report identified the following features of potential environmental concern:

- If Bay sediments are to be disturbed during construction activities, historically high metal levels in sediment should be taken into consideration if materials are to be disturbed.

d. The Phase I Report makes the following recommendations:

- A Phase II environmental site assessment should be conducted to evaluate potential impacts to the surface and subsurface due to potential use of pesticides on the current golf course, and to evaluate potential impacts to soil and groundwater at the Property due to its past and current use as a marina.

- Given the age of structures on the Property, it is possible that asbestos-containing materials or lead-based paints are present within the structure. If the structure will be demolished, an environmental professional should be retained to determine if asbestos-containing materials or lead-based paints are present within the structures.

- A soil management plan should be prepared and implemented as a contingency if unknown environmental issues are encountered during construction.

e. The Phase 1 report lists a number of facilities located within appropriate ASTM search distances which could be associated with hazardous materials releases, including Ruan Transportation, Major Salvage Co., East Bay Leasing Corporation, Associated Aerospace Activities, Former Airgas Facility, Latchford Glass, Owens-Corning, Parts Distribution Services, Inc., US Ink, Sun Chemical Corp US Ink Division, Adohr Farms, Lincoln Properties, San Leandro City Hall, San Leandro Marina, H Dump Station, Shore Line Maintenance, and Tony Lema Golf Course.

f. The Phase I Report lists facilities and properties within and near the Property which are associated with hazardous materials releases, including:

- 40 San Leandro Marina, UST site, cleanup conducted in 1995. The HAZNET listing for the Property is associated with the disposal of unspecified organic liquid mixture (2001), unspecified oil containing waste (2007 and 2009). unreported waste (2013), and waste oil and mixed oil (2005). The SWEEPS UST listing is associated with four 4,000 gallon motor vehicle fuel tanks (status unknown), a 6,000 gallon diesel tank (status unknown), and four active diesel and gasoline tanks.

- Chevron, 13700 Doolittle Drive, closed leaking underground storage tank site. Soil is listed as the potential media affected and motor oil/waste oil is listed as the potential contaminant of concern. This site has been closed since October 1995.

- Four Seasons Cleaners, 13778 Doolittle Drive, open assessment cleanup program site, six USTs were removed from the site in 1992 and the site was closed in June 1993. Tetrachloroethylene (PCE) was previously detected in soil gas and groundwater at this site. Prior to 2001, the dry cleaning operation utilized PCE as a cleaning agent.

- Don Elgie property, 14100 Doolittle Drive, closed LUST site. Other groundwater (uses other than drinking water) is listed as the potential media affected, and gasoline is listed as the potential contaminant of concern. The site has been closed since March 1995.

g. The Phase I Report describes files from the City's Environmental Services Division indicating the following, which may be associated with releases of hazardous materials:

In May 1989, spillage was discovered around the waste oil drum storage are at the San Leandro Marine Center, In 1991, the impacted soil was excavated and disposed offsite. Confirmation sampling indicated that all impacted soil had been removed.

2. **Phase II Environmental Site Assessment, San Leandro Shoreline Redevelopment, San Leandro, California**, prepared by ENGEO, March 2, 2017 ("Phase II Report")

a. The Phase II Report identified the following soils test results with respect to the Marina portion of the Property:

(i) No detectable concentrations of TPH-g or VOCs were reported for the 30 discrete soil samples.

(ii) Detectable concentrations of TPH-d, ranging from 2.34 to 31.8 mg/kg, were reported for six of the 3-point vertical composite samples. TPH-mo concentrations ranging from 10.3 to 156 mg/kg were reported for eight of the 3-point vertical composite samples. However, reported TPH-d and TPH-mo concentrations were below respective RSLs.

(iii) Several metallic analytes were detected in the 3-point vertical composite samples. However, with the exception of arsenic, all of the reported concentrations were below established residential soil screening levels. Composite sample S13 exhibited an arsenic concertation of 13.5 mg/kg, which slightly exceeds the expected background concentration for the region. The reported concentrations of arsenic in the other nine composite samples ranged from 3.12 to 10.6, which are within the range of expected background concentrations for the region.

(iv) Composite sample S14 exhibited detectable concentrations of DDE and DDD (38.9 and 6.68 µg/kg, respectively). The reported concentrations of DDE and DDD were below corresponding residential RSLs.

(v) Detectable concentrations of SVOCs were reported for composite sample S14 (phenanthrene, fluoranthene, and pyrene) and S16 (benzyl butyl phthalate). The reported concentrations of SVOCs were below RSLs for residential soil.

(vi) A summary of the soil sample analytical results is presented in Table A of the Phase II Report. The laboratory results are presented in their entirety in Appendix A to the Phase II Report.

b. The Phase II Report identified the following groundwater test results with respect to the Marina portion of the Property:

(i) Laboratory testing of the groundwater samples exhibited detectable concentrations of o-xylene and methyl tert-butyl ether (MTBE). Reported concentrations were below the drinking water Maximum Contaminant Levels (MCLs) established by the San Francisco Regional Water Quality Control Board (RWQCB).

(ii) Several metallic analytes were detected in the groundwater samples. All concentrations were below the associated drinking water MCL, with the exception of the following:

Sample GW-5 exhibited a cobalt concentration of 0.013 milligrams per liter (mg/L), and a selenium concentration of 0.06 mg/L. The reported concentrations of cobalt and selenium slightly exceed the established MCLs for drinking water of 0.006 mg/L and 0.05 mg/L, respectively.

(iii) TPH-d and TPH-mo were not detected in any of the groundwater samples collected from the Property. TPH-g was detected at 65.5 mg/L in sample GW-2. The reported concentration of TPH-g was below the corresponding MCL.

(iv) A summary of the groundwater sample analysis is presented in Table B of the Phase II Report. The laboratory analytical reports are presented in their entirety in Appendix A to the Phase II Report.

c. The Phase II Report identified the following near-surface soils test results with respect to the Golf Course portion of the Property:

(i) Review of the laboratory test results found detectable concentrations of OCPs, lead, and/or arsenic in the near-surface soil samples.

(ii) Reported concentrations of DDE ranged from 3.58 to 6.73 micrograms per kilogram (µg/kg) in the composite samples, with no detectable concentrations of DDE reported for samples S2(A-D) and S3(A-D). DDT Concentrations of 8.04 µg/kg and 7.26 µg/kg were reported for samples S1(A-D) and S7(A-D), respectively. Samples S1(A-D), S2(A-D), and S7(A-D) exhibited detectable concentrations of dieldrin (1.7 µg/kg, 1.61 µg/kg, and 4.1 µg/kg, respectively). The reported concentrations for all OCPs were below the corresponding USEPA Region 9 Regional Screening Levels for residential soil (RSLs).

(iii) Arsenic was detected in all seven of the discrete samples analyzed. Reported concentrations of arsenic ranged from 2.01 and 5.18 milligrams per kilogram (mg/kg), which is within the range of expected background concentrations for the San Francisco Bay Area region. Detectable concentrations of lead were reported for all samples analyzed, with the exception of sample S2-B. Reported lead concentrations ranged from 11.9 to 40.9 mg/kg. The reported concentrations of lead were below the respective RSL.

(iv) A summary of the soil sample analytical results is presented in Table C to the Phase II Report. The laboratory results are presented in their entirety in Appendix A to the Phase II Report.

d. The Summary and Conclusion of the Phase II Report states as follows:

(i) Review of the laboratory test results found detectable concentrations of OCPs, metals, and petroleum hydrocarbons in soil samples collected from the marina portion of

the Property. Reported concentrations of all analytes were below their corresponding USEPA RSL or expected background concentrations, with the exception of arsenic. Elevated concentrations of arsenic were only observed in the composite sample recovered from location S13, in the northeast portion of the Property. The laboratory was instructed to run the composite sample exhibiting elevated concentrations of arsenic on a discrete basis; discrete samples S-13@2', S-13@5' and S-13@10' reported arsenic concentrations below the respective USEPA RSL. Detectable concentrations of OCPs, arsenic, and lead were reported for the near-surface soil samples collected throughout the golf course portion of the Property. Reported concentrations of all analytes were below their corresponding USEPA's RSLs or expected background concentrations.

(ii) Laboratory testing of the groundwater samples exhibited detectable concentrations of TPH-g, o-xylene, MTBE, cobalt, and selenium at the Property. With the exception of the cobalt and selenium, the reported concentrations of all analytes were below their respective MCL established by the RWQCB. Since there is no current or historic source of cobalt or selenium on the Property and groundwater is not a drinking water source at the Property, the report believes this is not a concern for the proposed redevelopment.

(iii) Given the past/current uses of the Property, it is possible that small areas with potentially impacted soil could be encountered during future site development activities. If encountered, these materials should be handled in an appropriate manner under the observation of an environmental professional. The report recommends the preparation of a Soil Management Plan (SMP) to outline procedures and protocols for handling potentially impacted soil.

EXHIBIT L

SINGLE FAMILY PURCHASE AND SALE AGREEMENT

EXHIBIT M

DEVELOPER HOTEL GROUND LEASE

EXHIBIT N

MULTIFAMILY GROUND LEASE

EXHIBIT O

DEVELOPER RESTAURANT GROUND LEASE

EXHIBIT P

MARKET GROUND LEASE

EXHIBIT Q

PUBLIC IMPROVEMENT AGREEMENT

CITY OF SAN LEANDRO

STANDARD PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT, entered into on _____, by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California, hereinafter referred to as "City," and *[Applicant Name]* hereinafter referred to as "Owner."

In consideration of the granting of certain entitlement of use described as follows: *[Planning Permit Application Reference]* at *[Address]*, San Leandro, California, Assessor's Parcel No. *[APN No.]*, hereinafter referred to as "Project."

It is mutually agreed as follows:

AGREEMENTS

1. Performance of Work. Owner agrees to furnish, construct, and install at his own expense all required public improvements as shown on the plans prepared by *[Applicant's Consultant Name]* and identified as *[Description of Improvement Plans]*, a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference and all other improvements required by the City Engineer based upon the standards imposed by Title VII, Chapter 8 of the San Leandro Municipal Code of 1985 and the Standard Specifications adopted by the City of San Leandro for public works. Owner's costs shall include all necessary relocation of existing utilities. The total project costs are estimated according to the approved Engineer's Estimate attached hereto and made a part hereof.

2. Work; Satisfaction of City Engineer. All of the work on the required improvements is to be done at the places, with the materials, in the manner, and at the grades, all as shown upon the approved plans and specifications, and to the reasonable satisfaction of the City Engineer.

3. Work; Inspections; Fees. The City Engineer or his designee shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations. Concurrently

with the execution of this agreement, the Owner shall deposit with the City the sum of ---------- DOLLARS ($___) to cover the cost of design review and inspection of the improvements. Owner hereby agrees to increase the amount of the deposit to pay City the actual cost of inspection if such costs should exceed the original deposit.

4. Modification for Unforeseeable Circumstances. Owner reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the City Engineer. The City shall bear no responsibility whatsoever for work performed and rejected by the City Engineer. City reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Owner shall pay City for all costs incurred in plan checking and inspection resulting from said modifications.

5. Work; Time for Commencement and Performance. City hereby fixes the time for the commencement of the required work to be on or before the ____ day of _____, and for its completion to be on the ____ day of *[generally allow for one-year unless the project is large or multi-phase]*. At least 15 calendar days prior to the commencement of work hereunder, Owner shall notify the City Engineer in writing of the date fixed by Owner for commencement thereof, in order that the City Engineer shall be able to provide services for inspection.

6. Location of Construction Yard. Owner agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials, or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said project or the construction of buildings therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said project, including installation of appropriate fencing and screening, and to obtain the approval of the City Engineer as to the proposed location and standards of maintenance of the yard. Immediately upon completion of the improvements to be constructed to which this agreement refers, Owner agrees to cease using the construction yard, clear the site and restore it to its original condition, and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Owner agrees not to use the construction yard in connection with the installation of improvements or construction of buildings elsewhere. City may extend

the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Owner to the City Engineer stating fully the grounds and facts relied upon for such extension.

7. Rights-of-Way Free From Obstruction. Owner agrees to keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referred to Property, including streets being constructed and/or improved pursuant to this agreement, free and clear of all building materials, dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said project.

8. Extension. The dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer shall extend said dates for delays in said work actually caused by riots, strikes, lockouts, fires, earthquakes, flood and conditions resulting therefrom. Extension of said dates for any other cause shall be made only by the City Engineer. The City Engineer shall be the sole and final judge as to whether good cause has been shown to entitle Owner to an extension. Any extension granted pursuant to this paragraph shall not obligate City in any manner to grant other requests for extension.

9. Request for Extension; Granting. Any request for extension of any commencement and completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to City in the manner hereinafter specified for services of notices. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

10. Extension; No Release of Obligations. In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by Owner pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time,

alteration or addition to the term of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on the bond, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

11. Extension; Condition. The granting of any extension may be conditioned upon Owner providing City with increased Inspection Fees, a cash deposit which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements, and new or amended surety bonds in amounts increased to reflect increases in the cost of constructing the required improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

12. No Waiver by the City, Final Acceptance. Inspection of the work and/or materials, or approval of work and/or materials inspected, use of the work by the public as public right-of-way, or statement by any officer, agent, or employee of the City indicating the work complies with the requirements of this Agreement, shall not relieve the Owner from the obligation to fulfill the Agreement as prescribed herein. Acceptance of any part or stage of said improvements shall not be final until a written notice of acceptance of all the improvements shall have been delivered to Owner.

13. Improvement Security. Concurrently with the execution hereof Owner shall furnish City:

(a) Improvement security in the sum of _____ DOLLARS ($_____), which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements and the cost of any other obligation to be performed by Owner hereunder, securing the faithful performance of this Agreement.

(b) Separate improvement security in the sum of _____ DOLLARS ($_____), which sum is equal to one hundred percent (100%) of the estimated cost of constructing the required improvements, security payment to the contractor, his subcontractor and to persons furnishing labor, materials or equipment to them for the construction of the required improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the installation of such improvements. The form of the improvement security shall be subject to the approval

of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the City Engineer. No change, alteration or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement.

14. Maintenance Security: Concurrently with the execution hereof Owner shall furnish the City a maintenance and repair security in a form acceptable to the City Engineer in the amount of _____ DOLLARS ($_____), to guarantee that all areas to be improved are free from defect for a period of one year after initial acceptance of entire work by the City. In the event Owner fails, neglects or refuses to maintain said areas, City is hereby authorized to expend all or any portion of said deposit during construction and during the one year maintenance period to accomplish the above.

15. Hold Harmless Agreement. Owner hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from and against any or all loss, liability, expense, claim, costs, suits, damages of every kind, nature and description directly or indirectly arising from the performance of the work from Owner, Owner's contractors', subcontractors', agents' or employees' operations under this Agreement. Owner agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

(a) That City does not, and shall not, waive any rights against Owner which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in paragraph 16 hereof.

(b) That the aforesaid hold harmless agreement by Owner shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied, or approved of plans and/or specifications for the project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. Owner's Insurance. Concurrently with the execution hereof, Owner shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Prior to the commencement of work under this Agreement, Owner's contractor(s) shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Owner shall not allow any contractor(s) to commence work under this agreement until all insurance required for Owner and Owner's contractor(s) shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by City. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

The City uses the online insurance program "PINS Advantage". Owner and contractor(s) will receive separate emails from the City's online insurance program requesting the email be forwarded to the responsible insurance provider(s). All certificates of insurance and original endorsements effecting coverage required in this Section must be electronically submitted through the online insurance program at www.PINSAdvantage.com.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

(b) Minimum Limits of Insurance. Owner shall maintain limits no less than (unless otherwise approved by the City's Risk Manager):

1. General Liability: $3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

(c) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

a. The City, its officers, agents, officials, employees and volunteers shall be named as additional insureds as respects: liability arising

out of activities performed by or on behalf of the owner; products and completed operations of the Owner, premises owned, occupied or used by the Owner, or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.

b. The Owner's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Owner's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

d. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Owner for the City.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written

notice by certified mail, return receipt requested, has been given to the City.

(e) Acceptability of Insurers. Insurance is to be placed with insurers with an A.M. Best rating of A- or better.

(f) Verification of Coverage. Owner shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City reserves the right to modify these insurance requirements as the best interests of the City dictate.

(g) Subcontractors. Owner and/or Owner's contractor(s) shall provide separate certificates and endorsements subject to all of the requirements stated herein.

17. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by Owner shall vest absolutely in City, upon completion and acceptance of such improvements by City unless otherwise provided.

18. Repair or Reconstruction of Defective Work. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Owner guarantees all work executed by Owner and/or Owner's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by City. Owner shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to City. Owner further covenants and agrees that when defects

in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the Owner shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and Owner shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, City shall have the right to immediately repair, or cause to be repaired, such defect, and Owner shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

If City, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, Owner shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

19. Owner Not Agent of City. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of City in connection with the performance of Owner's obligations under this Agreement.

20. Notice of Breach and Default. If Owner refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if Owner should be adjudged as bankrupt, or should make a general assignment for the benefit of Owner's creditors, or if a receiver should be appointed, or if Owner, or any of Owner's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City Engineer may serve written notice on Owner and

Owner's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of Owner.

21. Breach of Agreement; Performance by Surety or City. In the event of any such notice of breach of this Agreement, Owner's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Owner and Owner's surety shall be liable to City for any damages and/or reasonable and documented excess costs occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Owner as may be on the site of the work and necessary therefor.

22. Notices. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Clerk
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Notices required to be given to Owner shall be addressed as follows:

[Applicant Name and Address]
Attn: _____

Notices required to be given surety of Owner shall be addressed as follows:

[Surety Name and Address]

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. Recordation of Abstract. Concurrently with the execution of this Agreement, Owner has executed and has caused to be acknowledged an abstract of this Agreement. Owner agrees City may record said abstract in the Official Records of Alameda County.

24. Assignment. This Agreement will not be assigned without the prior written consent of City.

25. Additional Terms and Conditions. This Agreement is subject to the following additional terms and conditions, if any:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year herein above written.

CITY OF SAN LEANDRO,
a Municipal Corporation

Dated: _____ By: _____
Jeff Kay
City Manager

Owner(s)

Dated: _____ By: _____
Signature

_____
Print name

_____
Title

Attach:

[Notary Acknowledgment for each signature]
[Approved Engineer's Estimate]

Approved as to Form:

_____
Richard Pio Roda, City Attorney

Exhibit R

SAN LEANDRO SHORELINE RESPONSIBILITY EXHIBIT

FEBRUARY 18, 2020

SAN FRANCISCO BAY

INTERIOR BASIN

MONARCH BAY DRIVE

GOLF COURSE

PARCEL L
43.04 ACRES
1,874,991 SQ.FT.
PARK PARCEL

PARCEL I
6.11 ACRES
266,193 SQ.FT.
DEVELOPER
HOTEL ELEMENT

PARCEL J
0.46 ACRES
20,131 SQ.FT.
DEVELOPER
RESTAURANT
ELEMENT

PARCEL K
0.14 ACRES
6,019 SQ.FT.
MARKET
ELEMENT

PARCEL H
6.37 ACRES
277,496 SQ.FT.
MULTIFAMILY
ELEMENT

PARCEL G
2.11 ACRES
91,694 SQ.FT.
(E) HOTEL
(MARINA INN)

PARCEL F
0.36 ACRES
15,465 SQ.FT.
(E) RESTAURANT
(HOOKERS)

PARCEL C
16.26 ACRES
708,068 SQ.FT.
SINGLE-FAMILY
ELEMENT

PARCEL B
23.05 ACRES
1,004,137 SQ.FT.
GOLF COURSE
ELEMENT

PARCEL E
0.10 ACRES
4,446 SQ.FT.
(E) WATER
TREATMENT
PLANT

PARCEL D
0.05 ACRES
2,293 SQ.FT.
(E) PUMP
STATION

PARCEL A
1.15 ACRES
49,934 SQ.FT.
LIBRARY

S.D.E. PER RE 939 IM 619; EXC. NO. 24

EXISTING PUMP STATION TO REMAIN

CENTERLINE OF 40" WATER PIPELINE EASEMENT PER BOOK 3

EXISTING PUMP STATION TO REMAIN

EXISTING STRUCTURE TO REMAIN

EXISTING PUMP STATION TO REMAIN

S.D.E. PER RE 1006 IM 868, PARCEL 2; EXC. NO. 25

S.D.E. PER RE 1006 IM 868, PARCEL 1; EXC. NO. 25

REMOVE PARCEL LINE

LEGEND

- BOUNDARY LINE
- DEVELOPER RESPONSIBILITY
- CITY RESPONSIBILITY
- SHARED RESPONSIBILITY (50/50)
- PARK AREA
- DEVELOPMENT FEE FOR STREET IMPROVEMENT (DFSI) CREDIT
- BAY TRAIL SUBJECT TO FEE CREDITS

Estimated Areas of Responsibility		
	Marina Area (sf)	Golf Course Area (sf)
City Responsibility	1,030,200 +/-	4,400 +/-
Developer Responsibility	556,400 +/-	1,762,200 +/-
Shared Responsibility (Roadway)	101,200 +/-	-
Shared Responsibility (Park)	670,400 +/-	-

RESPONSIBILITY DIVISION ALONG MONARCH BAY DRIVE

TOTAL AREA	= 197,600 SF
DEVELOPER RESPONSIBILITY	= 160,150 SF (81%)
DFSI	= 37,450 SF (19%)

GRAPHIC SCALE

120 0 120 240

TABLE OF CONTENTS

Page

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is entered into as of _____, 2020 (the "**Effective Date**"), by and between the City of San Leandro, a California charter city (the "**City**" or "**Seller**"), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. ("**Buyer**"). Seller and Buyer are collectively referred to herein as the "**Parties**."

RECITALS

A. Seller seeks the development of certain City-owned real property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area (the "**Shoreline Area**").

B. Buyer desires to develop the Shoreline Area with a multi-component development that includes, but is not limited to, reconstruction of the nine-hole executive golf course, and construction of single and multi-family residential units, a hotel, a restaurant, a market, and associated infrastructure improvements (the "**Shoreline Project**").

C. Buyer and Seller have entered into that certain Disposition and Development Agreement regarding the Shoreline Area and development of the Shoreline Project dated February 24, 2020 (the "**DDA**").

D. The DDA includes the requirement that the Buyer redesign and reconstruct, at Buyer's sole cost, a nine-hole par 3 links style golf course, located on that portion of the City's Marina Golf Course located adjacent to the Property (the "**Golf Course Element**").

E. As part of the Golf Course Element, Buyer is required to provide an implementation plan that includes (a) a golf course redesign plan that incorporates input from applicable community groups, (b) a budget for the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element (the "**Golf Course Implementation Plan**").

F. The redesign undertaken through the Golf Course Element will free up approximately 16.26 acres located on that portion of the existing nine-hole Marina Golf Course (the "**Property**"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

G. As part of the Shoreline Project, Buyer intends to construct on the Property not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes (the "**Single Family Element**"), with the final number subject to the City's approval of the Project Approvals for the Single Family Element, which shall include the construction of attached single-family townhomes on approximately forty-eight (48) or more lots (the **"Townhome Lots"**) and the construction of detached single-family homes on approximately one hundred fifty-two (152) or more lots (the "**Detached Lots**") (the Townhome Lots and the Detached Lots are referred to collectively as the "**Lots**"). For purposes of this

Agreement, a single condominium lot which will accommodate multiple attached townhomes and multiple detached single family homes will be counted as multiple Lots equal to the number of attached townhomes and detached single family homes which are approved, rather than counted as a single Lot. The requirements for the construction of the Single Family Element are set forth in the DDA.

H. The Seller has caused an appraisal for the Property to be prepared that concludes that the Property is valued at One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars ($116,697) per Townhome Lot and One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars ($157,276) per Detached Lot, based upon certain assumptions described in the appraisal.

I. Buyer has entered into a Letter of Intent with the Building and Trades Council of Alameda County with respect to the labor requirements pertaining to the construction of the Single Family Element, dated _____, 2020 (the "**Project Labor LOI**").

J. Buyer agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Buyer, subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the "**Purchase Price**") is the sum of the following: (a) the number of approved Townhome Lots multiplied by One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars ($116,697), plus (b) the number of approved Detached Lots multiplied by One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars ($157,276); provided, however, that the Purchase Price shall not be less than Twenty-Nine Million Three Hundred Forty-Five Thousand and Ninety-Two Dollars ($29,345,092) unless the total number of approved Lots is less than Two Hundred (200) or the number of approved Detached Lots is less than One Hundred Forty-Eight (148). The number of approved Lots shall be determined pursuant to the Governmental Entitlements (as defined below) in effect as of the date of Close of Escrow.

2.3 Payment of Purchase Price. The Purchase Price shall be paid by Buyer as follows: (i) the Initial Deposit shall be paid into Escrow within three business days after the Opening of Escrow in accordance with Section 3.3 hereof, and (ii) the balance of the

Purchase Price, less the Deposit and any interest accrued thereon, shall be paid into the Escrow in immediately available funds within one day prior to Closing (defined below).

3. ESCROW.

3.1 Escrow Account. Seller shall open an interest-bearing escrow account (the "**Escrow**") maintained by Old Republic Title Company (the "**Escrow Holder**"), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within five (5) business days after the expiration of the appeal periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment and Addendum to Shoreline Project EIR which were adopted by the City concurrently with the DDA, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the "**Opening of Escrow**" and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Buyer's Deposits. Within three (3) business days after the Opening of Escrow, the Buyer shall deposit Three Hundred Thousand Dollars ($300,000) into Escrow (the "**Initial Deposit**"). If Buyer exercises its right to extend the Entitlement Contingency Date pursuant to Section 3.5(b) or to extend the Outside Closing Date pursuant to Section 5.1, Buyer shall deposit an additional Two Hundred Thousand Dollars ($200,000) in Escrow in consideration for each such extension (each, an "**Additional Deposit**"). The Initial Deposit and Additional Deposits are collectively referred to herein as the "**Deposit**." The Deposit is applicable to the Purchase Price at Closing. After the Buyer's approval of the Property in accordance with Section 3.4(b) hereof, the Buyer shall not be entitled to a refund of the Initial Deposit except if the Close of Escrow does not occur by the time set forth herein as a result of a failure of a Buyer Condition Precedent (as defined in Section 5.2 below), or if this Agreement is terminated by Buyer prior to the Close of Escrow as a result of the Default of Seller. The Buyer shall not be entitled to a refund of the full amount of the Additional Deposits except if this Agreement is terminated by Buyer prior to the Close of Escrow as a result of the Default of Seller or the failure of a Buyer Condition Precedent to be satisfied or waived by Buyer prior to the Outside Closing Date (except those Buyer Conditions Precedent which are not satisfied due to Buyer's failure to timely act).

3.4 Satisfaction of Due Diligence Contingency.

(a) Buyer will have ninety (90) days from the Effective Date (the "**Due Diligence Contingency Period**") to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession not later than five (5) business days following the Opening of Escrow. All physical inspections must be coordinated with Seller's representative and shall take place not more than three (3) days after the date Buyer provides written or emailed notice of the timing of such inspections and related testing. Buyer

hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) solely by Buyer's inspections.

(b) Buyer shall have the right, in its sole discretion, to disapprove the Property and terminate this Agreement for any reason (or no reason) prior to the expiration of the Due Diligence Contingency Period by delivery of written notice thereof to Seller in accordance with Section 13.8 hereof ("**Disapproval Notice**"). Within thirty (30) days of delivery of the Disapproval Notice, Buyer shall receive a refund of the Deposit plus any interest which has accrued thereon. If Buyer elects to approve the Property, Buyer shall provide written notice to Seller in accordance with Section 13.8 hereof prior to the expiration of the Due Diligence Contingency Period ("**Approval Notice**"). If Buyer fails to issue either an Approval Notice or Disapproval Notice before 5:00 p.m. on the last day of the Due Diligence Contingency Period, Buyer shall be deemed to have disapproved the Property.

3.5 Satisfaction of Entitlements Contingency.

(a) Buyer shall have two hundred seventy (270) days from the Effective Date (the "**Entitlements Contingency Date**") to obtain all required governmental land use approvals, site plan approvals, environmental approvals, and any other discretionary governmental approval necessary for the construction of the Single Family Element. Such approvals shall include any general plan amendments, zoning change approvals, zoning variance approvals, Planned Development approval, vesting tentative tract map, and other land use entitlements necessary or desirable for the construction and development of the Single Family Element (but shall not include approval of construction plans, building permits, grading permits, demolition permits, or other required permits). Such approvals shall be referred to in this Agreement individually as the "**Governmental Entitlements**." Buyer agrees to (i) diligently pursue and use reasonable and good faith efforts to obtain the Governmental Entitlements as soon as practicable after the Effective Date, and (ii) deliver written notice of receipt of the Governmental Entitlements to Seller (other than Governmental Entitlements approved by City, for which no notice to Seller shall be required) within five (5) days of receipt of the Governmental Entitlements. Buyer agrees to provide Seller with copies of all written applications and/or submittals delivered by Buyer to any governmental agency other than City in connection with the Governmental Entitlements.

(b) In the event that Buyer has not received the Governmental Entitlements by the Entitlements Contingency Date, Buyer shall have the right to extend the Entitlements Contingency Date for one ninety (90) day extension (the "**Entitlement Extension**") to secure the Governmental Entitlements. Buyer must provide Seller with written notice in accordance with Section 13.8 hereof at least ten (10) days prior to the Entitlements Contingency Date and deposit an additional Two Hundred Thousand Dollars ($200,000) into Escrow as an Additional Deposit in consideration for Buyer's exercise of the Entitlement Extension. The Additional Deposit is applicable to the Purchase Price as provided in Section 3.3(a) hereof.

(c) If Buyer fails to deliver written notice removing the Entitlements Contingency by the Entitlements Contingency Date, or the expiration of the Entitlement Extension, or if Buyer fails to provide the notice and deposit increase required by Section 3.5(b) to extend this Agreement, this Agreement will terminate as of the Entitlements

Contingency Date, or the expiration date of any exercised extension thereof, and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under this Agreement. In that event, the Escrow Holder will return to Buyer the Deposit and any interest accrued thereon.

3.6 Independent Consideration. As independent consideration for Seller's entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of One Hundred Dollars ($100.00) to Seller through Escrow ("**Independent Consideration**"). Seller shall retain the Independent Consideration whether or not the Close of Escrow occurs.

4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "**Preliminary Report**") to Buyer within three (3) days after the Opening of Escrow. Buyer shall have until the end of the Due Diligence Contingency Period to approve the condition of title to the Property. If Buyer delivers the Approval Notice, Buyer agrees to take title to the Property subject to the following "**Permitted Exceptions"**: (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; (c) a lien or other covenants prohibiting the sale of more than one hundred thirty-two (132) homes on the Property prior to substantial completion of the Golf Course Element as set forth in the DDA; and (d) the Schedule B exceptions to the title approved by Buyer in the Approval Notice.

4.2 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller has disclosed to Buyer the actual knowledge Seller has with respect to the deposit of hazardous materials on the Property, as described in Exhibit K to the DDA and incorporated herein. Seller agrees to make all further disclosures required by law within five (5) business days after the Opening of Escrow.

4.3 Golf Course Lease. The Seller has entered into a Lease with American Golf Corporation, dated November 15, 1997, as amended, pursuant to which the Seller has leased the golf course which is located on the Property to American Golf Corporation (the "Golf Course Lease"). The Seller shall use good faith efforts to enter into an amendment of the Golf Course Lease, as soon as practicable after the Effective Date, but no later than April 20, 2020, which will permit the Seller to terminate the Golf Course Lease upon notice to American Golf Corporation. The termination of the Golf Course Lease is a Buyer's Condition Precedent and a Seller's Condition Precedent to the Closing.

5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. Subject to the satisfaction or waiver of the Buyer's Conditions Precedent and Seller's Conditions Precedent as provided below, the closing (the "**Closing**" or "**Close of Escrow**") will occur no later than the first to occur of (a) ninety (90)

days after Buyer has received the Governmental Entitlements for the Single Family Element, or (b) December 31, 2021 ("**Outside Closing Date**"). Buyer shall have the right to extend the Outside Closing Date by ninety (90) days, no more than one time (the "**Extension Period**"), by payment of an Additional Deposit of Two Hundred Thousand Dollars ($200,000) into the Escrow in accordance with Section 3.3(a) hereof in consideration for Buyer's extension of the Outside Closing Date. The Additional Deposit is applicable to the Purchase Price as provided in Section 3.3(a) hereof.

5.2 Buyer's Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions ("**Buyer's Conditions Precedent**") or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Outside Closing Date:

(a) Buyer shall have received the Governmental Entitlements for the Property, and the Development Agreement shall have been approved by the Parties.

(b) Buyer shall not have sent (or be deemed to have sent) a Disapproval Notice to Seller prior to the expiration of the Due Diligence Contingency Period.

(c) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement.

(d) Seller's representations and warranties herein shall be true and correct in all material respects as of the Closing.

(e) There shall be no litigation or administrative proceeding pending with respect to the Property or the Governmental Entitlements as of the Closing, nor any moratoria which would adversely impact the development, use or value of the Property as contemplated by this Agreement.

(f) The Property shall be free of tenants, occupants, leases and contracts, except as provided pursuant to Section 4.3 hereof.

(g) Seller shall have terminated the Golf Course Lease on or before the Closing.

(h) The DDA shall be in full force and effect.

(i) There shall have been no material adverse change with respect to the Property since the date of Buyer's Approval Notice.

(j) The Title Company shall be irrevocably committed to issue an ALTA Title Policy, together with any title insurance endorsements requested by Buyer, effective as of the Closing, insuring title to Buyer in the full amount of the Purchase Price subject only to the Permitted Exceptions.

(k) Seller has deposited into the Escrow all documents to be submitted by Seller pursuant to this Agreement, all duly executed by Seller.

In the event any of the Buyer's Conditions to Closing are not satisfied or waived by Buyer prior to the Outside Closing Date, Buyer may either (i) terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to promptly return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder, or (ii) elect to extend the Outside Closing Date for ninety (90) days as provided in Section 5.1 hereof, during which time Buyer shall use reasonable good faith efforts to cause the unsatisfied Buyer's Conditions Precedent to be satisfied, and Seller shall cooperate in good faith with such efforts by Buyer.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Outside Closing Date:

(a) The Seller shall have received and reasonably approved a financing plan for the Single Family Element which includes the following:

(i) A detailed budget for the construction and development of the Horizontal Improvements for the Single Family Element (as described in the Scope of Development), as submitted by Buyer to Seller.

(ii) The Seller shall have determined that there are commitments for sufficient debt financing and/or equity funding available to the Buyer for the construction and development of the Horizontal Improvements at a cost consistent with the submitted budget.

(b) The Buyer shall have entered into a Project Labor Agreement in accordance with Section 7.9 hereof.

(c) The Buyer shall have submitted to the Seller and the Seller shall have approved the Buyer's evidence of insurance required pursuant to Section 9 hereof.

(d) The Buyer shall have submitted an application for the Horizontal Improvements, together with all required fees and deposits, which application shall have been accepted as complete by the City, as necessary for the City's issuance of all Building Permits, Grading Permits and Demolition Permits for the Horizontal Improvements.

(e) Seller shall have terminated the Golf Course Lease on or before the Closing.

(f) Seller shall have approved the Golf Course Implementation Plan.

(g) Buyer shall have provided evidence of financing for construction of the Golf Course Element, and Seller shall have determined that there is sufficient funding available to Buyer for the construction of the Golf Course Element.

(h) Buyer shall have submitted an application for the Golf Course Element, together with all required fees and deposits, which application has been accepted as complete by the City, as necessary for the City's issuance of Building Permits, Grading Permits and Demolition Permits for the Golf Course Element.

(i) Buyer and Seller shall have entered into the Public Improvements Agreement for the Golf Course and the Public Improvements Agreement for the Single Family Element.

(j) Buyer shall have entered into a contract with a qualified general contractor for construction of the Golf Course Element in accordance with the requirements of the DDA.

(k) Seller shall have approved the Development Agreement and the Governmental Entitlements for the Property.

(l) Buyer shall not be in default of its obligations pursuant to this Agreement, and there shall be no matters which would constitute a default of Buyer upon the passage of time.

(m) Buyer's representations and warranties set forth herein shall be true and correct in all material respects as of the Closing.

(n) Buyer has deposited into the Escrow the Purchase Price and Buyer's Escrow and Title Costs.

(o) Buyer has deposited into the Escrow all documents to be submitted by Buyer pursuant to this Agreement, all duly executed by Buyer.

In the event any of the Seller's Conditions to Closing are not satisfied or waived by Seller prior to the Outside Closing Date, Seller may either (i) terminate this Agreement upon written notice to Buyer, whereupon Escrow Holder shall return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder, or (ii) elect to extend the Outside Closing Date for no more than ninety (90) days, during which time Seller shall use reasonable good faith efforts to cause the unsatisfied Seller's Conditions Precedent to be satisfied, and Buyer shall cooperate in good faith with such efforts by Seller.

5.4 Conveyance of Title. Seller shall deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions. The Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge. Seller has disclosed to

Developer the actual knowledge Seller has with respect to the deposit of hazardous materials on the Property, which is described in Exhibit K to the DDA and incorporated herein.

5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed substantially in the form attached hereto as Exhibit "B" and incorporated herein (the "Grant Deed"); (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "**Non-Foreign Affidavit**"); (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131; (iv) an executed copy of the Public Improvement Agreement for the Single Family Element; (v) an executed copy of the Public Improvement Agreement for the Golf Course Element; and (vi) executed copies of all other documents required by this Agreement to complete the Closing.

(b) Deliveries by Buyer. Not less than one (1) business day prior to the close of escrow, Buyer shall deposit into Escrow immediately available funds in the amount, which together with the Deposit plus interest thereon, if any, is equal to: (i) the Purchase Price; (ii) Buyer's share of Escrow fees and recording fees; (iii) the cost of the Title Policy; and (iv) any remaining costs of the EIR and compliance with CEQA which Buyer is obligated to pay pursuant to Section 7 of the ENRA and the letter agreement between Buyer and Seller dated May 31, 2013. Buyer shall also deposit into Escrow an executed copy of the Public Improvement Agreement for the Single Family Element, an executed copy of the Public Improvement Agreement for the Golf Course Element, and all other documents required by this Agreement to complete the Closing.

(c) Closing Costs. Seller shall pay (i) the cost of recording the Grant Deed, (ii) the cost of recording any documents necessary to remove liens, encumbrances, or title exceptions, and (iii) all City and County documentary transfer taxes. Each Party shall pay one-half of the escrow fees. Buyer shall pay the cost of any title insurance coverage and any title surveys or endorsements. Each Party shall pay its own legal fees and costs. All other costs or expenses not otherwise provided for in this Agreement shall be divided equally between Seller and Buyer.

(d) Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: any bond or assessment that constitutes a lien on the Property at the Close of Escrow will be the responsibility of Buyer; provided, however, that all payments for all bonds and assessments that are due prior to the Close of Escrow shall be paid exclusively by Seller. The Property is currently exempt from the payment of property taxes, so no proration of property taxes will be made through Escrow.

(e) Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed; (ii) disburse to Seller the Purchase Price, less Seller's share of any escrow fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and a copy of the Grant Deed; (iv) deliver to Seller the Public Improvement Agreement for the Single Family Element and the Public Improvement Agreement for the Golf Course Element; (v)

pay any other expenses payable through Escrow; and (vi) distribute to itself the payment of Escrow fees and expenses required hereunder.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing; provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have sixty (60) days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 6.2 will apply.

(a) Authority. Seller is a California charter city, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and Seller does not have any actual knowledge of any liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force, without the approval of the Buyer.

(c) Agreements. Seller does not have any actual knowledge of any agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow, except those which can be terminated on thirty (30) days prior written notice.

(d) Environmental Condition. Seller has disclosed to Buyer all information, records, and studies in Seller's possession or reasonably available to Seller relating to the Property concerning Hazardous Substances and their use, storage, spillage or disposal on the Property.

Seller makes no representations or warranties to Seller that any of the Lots will have views of San Francisco Bay or the Shoreline Marina. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to Buyer's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall survive the expiration, termination, or close of escrow of this Agreement and shall not be deemed merged into the deed upon closing.

6.2 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and if Buyer cannot cause any such representation to be true prior to the Close of Escrow, Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) Buyer is a Delaware corporation, and is authorized to conduct business in the State of California. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder.

7. USE AND DEVELOPMENT OF SINGLE FAMILY ELEMENT.

7.1 Construction of Single Family Homes. Buyer shall use the Property solely for the purposes of constructing attached and detached for-sale housing thereon in accordance with this Agreement. Buyer will design and construct not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes, with such mix of single-family townhomes and detached single-family homes in accordance with the Scope of Development attached hereto as Exhibit "C" and incorporated herein, and as further determined by the Governmental Entitlements. The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all its onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electric and fiber optic internet service to all units. The construction of the Single Family Element shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Single Family Element shall be borne solely by the Buyer.

7.2 Timing of Construction of Single Family Element. Once construction of a discrete phase of the Single Family Element is commenced, such phase shall continuously and diligently be pursued to completion; provided that Buyer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element is substantially complete as set forth in Section 7.12 hereof. During the course of construction and until the issuance of the Certificate of Occupancy

for the final home in the Single Family Element, Buyer shall provide monthly reports to Seller of the progress of construction.

7.3 Seller's Cooperation in Construction of the Single Family Element. Seller shall cooperate with and assist Buyer, to the extent reasonably requested by Buyer, in Buyer's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Single Family Element. Such cooperative efforts may include Seller's joinder in any application for such approval, consent, permit or variance, where joinder therein by Seller is required or helpful; provided, however, that Buyer shall reimburse Seller for Seller's actual third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions). Notwithstanding the foregoing, Buyer and Seller acknowledge that the approvals given by Seller under this Agreement in no way release Buyer from obtaining, at Buyer's expense, all permits, licenses and other approvals required by law for the construction of Single Family Element on the Property, and that Seller's duty to cooperate and Seller's approvals under this Agreement do not in any way modify or limit the exercise of Seller's governmental functions or decisions as a city, as distinct from its proprietary functions pursuant to this Agreement.

7.4 Construction Contract. Buyer shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Single Family Element with a general contractor or contractors, which general contractor(s) shall be duly licensed in the State and shall have significant experience in constructing and contracting public-private development projects of the type and scale similar to the Single Family Element.

7.5 Construction Requirements. No development or construction on the Property shall be undertaken until Buyer shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements.

7.6 Compliance with Laws. Buyer shall carry out the design, construction and sale of the Single Family Element in conformity with all applicable laws. The design, construction and sale of the Single Family Element shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Single Family Element and the Shoreline Project. This Agreement does not provide Buyer any vested rights to construct the Single Family Element in accordance with the existing policies, rules and regulations of the City, or to construct the Single Family Element subject only to the existing conditions of approval which may have been previously approved by the City, except as Buyer may already have obtained vested rights to develop the Single Family Element in accordance with a Development Agreement between the City and Buyer, and/or a vesting tentative map.

7.7 Prevailing Wages. If and to the extent required by state and federal prevailing wage laws, Buyer and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Single Family Element as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., and its implementing

regulations, and perform all other obligations including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, all as may be amended from time to time (the "Prevailing Wage Law"). Seller does not make any representations to Buyer as to the applicability of the Prevailing Wage Law to the construction of the Single Family Element, and Buyer agrees and acknowledges that it is not relying on any representations of Seller in making its determination as to the applicability of the Prevailing Wage Law. It is agreed by the Parties that, in connection with the construction of the Single Family Element, as between Seller and Buyer, Buyer shall be solely responsible for determining whether the Prevailing Wage Law is applicable to the construction of the Single Family Element, and Buyer shall bear all risks of payment or non-payment of prevailing wages under the Prevailing Wage Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. The Buyer shall periodically, upon request of the Seller, certify to the Seller that, to its knowledge, it is in compliance with the requirements of this paragraph.

7.8 Indemnity. Buyer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction and development of the Single Family Element, results or arises in any way from any of the following: (a) the noncompliance by Buyer with the Prevailing Wage Law, if applicable; (b) Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Buyer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. "Increased costs," as used in this Section 7.8, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Single Family Element by the Buyer.

7.9 Project Labor Agreement. Prior to the Close of Escrow, and throughout the term of construction of the Single Family Element, Buyer shall enter into, remain a party to and comply with one or more Project Labor Agreements with respect to the construction of the Single Family Element, in accordance with the Project Labor LOI. For purposes hereof, a Project Labor Agreement is a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

7.10 Inclusionary Housing Requirements. The Single-Family Element shall be subject to all of the requirements of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq*.), which requires fifteen percent (15%) of the units to be restricted to occupancy by moderate income or low-income households, unless an alternative means of compliance is approved in accordance with Section 6-3016. As an alternate means of compliance, Buyer may elect to provide not less than six percent (6%) of the units as workforce housing, restricted to sale at a price affordable to households earning up to 135% of the Area Median Income, and to provide not less than four percent (4%) of the units as moderate income housing, restricted to sale at a price affordable to households earning up to 120% of the Area Median Income, and to pay an in lieu fee equal to $10 per square foot of all Single Family Element residential habitable floor area (exclusive of garage and off-street parking areas, balconies, decks and patios), multiplied by the remaining percentage of the required inclusionary housing units, divided by fifteen (15). For example, if Buyer elects to satisfy the Inclusionary Housing Ordinance by performing the minimum required amount of construction of workforce housing and moderate income housing, and constructs exactly six percent (6%) of the units as workforce housing, and constructs exactly four percent (4%) of the units as moderate income housing, the remaining percentage of the required inclusionary housing units would be five percent (5%), and the in lieu fee would be $10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by one-third (5 divided by 15)). The method of compliance with the Inclusionary Housing Ordinance shall be set forth in an Inclusionary Housing Plan approved by the Seller and an Inclusionary Housing Agreement to be executed by Buyer and Seller with respect to the Single Family Element pursuant to Section 6-3014 of the City Zoning Code.

7.11 Homeowner Association and CC&Rs. Buyer hereby agrees to form a homeowner association ("**HOA**") to own, maintain, repair and manage streets, storm drains (including any Municipal Regional Stormwater Permit compliance features), sanitary sewer systems, utilities, landscaping, common areas and other improvements within the Single-Family Parcel as a common interest development under the Davis-Stirling Common Interest Development Act. The purpose of the HOA will be to enforce the rules and regulations adopted from time to time by its board of directors, enhance and protect the value, desirability, and attractiveness of the community, and discharge such other lawful duties and responsibilities as may be required pursuant to its bylaws and the declaration of covenants, conditions and restrictions ("**CC&Rs**") to be recorded in the Office of the Recorder of Alameda County. The CC&Rs shall require the construction, protection, preservation and maintenance of the appearance, condition, function and operation of the Single-Family Parcel and the Single-Family Element, including but not limited to all landscaping visible from any public or private road. In addition to other matters, the CC&Rs shall provide for the coordination of the Single Family Element with the operation of the City's Marina Golf Course, maintenance of borders and access between the Single Family Element and the Marina Golf Course, and communications between the occupants of the Single-Family Element and the operator of the Marina Golf Course. Prior to recordation of the declaration of CC&Rs, Buyer agrees to provide City a reasonable opportunity to review and comment on the provisions of the CC&Rs to ensure consistency and compliance with the requirements of this Agreement and any other applicable law. City shall not unreasonably withhold its approval of the CC&Rs.

7.12 Golf Course Element. Buyer shall redesign and reconstruct, at Buyer's sole expense, a nine-hole par 3 links style par 3 golf course located on that portion of the City's Marina Golf Course not part of the Property (the "Golf Course Element"), as further described and depicted in Exhibit C to the DDA (the "Golf Course Parcel"). The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course. The existing north lake (subject to City-approved reconfiguration), mature trees (where feasible and appropriate as determined by the City Public Works Director), and the monarch butterfly nesting area shall remain. Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code. Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom. A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City. The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library. The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain. Final golf course design and any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.

Buyer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the Seller. The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively. The design work shall be completed by a consultant approved by the Seller. The final design for the Golf Course Element shall be approved by the Seller in writing, with input from applicable community groups. Buyer shall provide an implementation plan that includes (a) a golf course redesign plan that includes input from applicable community groups, (b) a detailed budget and schedule for completion of the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element sufficient to ensure timely completion (the "**Golf Course Implementation Plan**"). Buyer and Seller shall also enter into a Public Improvement Agreement in substantially the form of Exhibit Q attached to the DDA (the "**Public Improvement Agreement")** regarding the construction of certain public improvements throughout the Project which shall, among other things, (i) set forth the procedures and requirements for inspection and acceptance of the Golf Course Element by the Seller, and (ii) contains the acknowledgement of the Parties that, following such acceptance of the Golf Course Element, the Seller shall have the exclusive obligation to operate and maintain the Golf Course Element. The Seller's approval of the Golf Course Implementation Plan, the parties' execution of the Public Improvement Agreement for the Golf Course Element, and Buyer's furnishing of all bonds and/or other security required by the Public Improvement Agreement, Buyer's application for Building Permits, Grading Permits and Demolition Permits, Buyer's entrance into a contract with a qualified general contractor for construction, and Buyer's compliance with any other applicable Seller's Conditions to Closing, as set forth in Section 5.3 hereof, shall be conditions precedent to the close of escrow for Seller's sale of the Single Family Parcel to Buyer.

Buyer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element is substantially complete. Substantial completion will be achieved when all major construction is complete and only minor work and/or maturation of landscaping is remaining, as determined by acceptance of the work as substantially complete by the City Director of Engineering and Transportation and Public Works Director. The Grant Deed shall prohibit the sale of more than one hundred thirty-two (132) new residential units on the Property until the Golf Course Element is substantially complete. Buyer acknowledges and agrees that the City is not obligated to issue Certificates of Occupancy for more than one hundred thirty-two (132) new residential units on the Property until the Golf Course Element is substantially complete. Seller shall execute a release of such restriction after the Golf Course Element is substantially complete and accepted by the City Council. Prior to the release of such restriction, upon Buyer's demand, Seller shall sign and deliver to Buyer's designated escrow holder releases or other appropriate documents certifying that one or more of the first one hundred thirty-two (132) individual homes do not violate such restriction and are permitted to be sold, in such form and content reasonably required by applicable title insurance companies in order to release such restriction. The Parties acknowledge that the Seller is and shall remain the owner of the Golf Course Parcel after the Close of Escrow for the Property.

7.13 Performance and Payment Bonds. Prior to commencement of any public works required by the City as conditions of approval of the Single Family Element, Buyer shall cause its general contractor to deliver to the Seller an executed copy of the Public Improvement Agreement, and any payment bond(s) and performance bond(s) or other security required thereunder.

7.14 Force Majeure. The time within which a Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, delays of governmental agencies, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, floods, unavoidable casualties, litigation involving this Agreement, or bankruptcy, insolvency or defaults of Project lenders or equity investors. Delays for any other reasons, including without limitation delays due to inability to obtain financing, or recession or other general economic conditions, shall not constitute events of force majeure pursuant to this Agreement; provided that Seller may approve extensions of time for such reasons upon the request of Buyer, in Seller's sole discretion. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party.

7.15 Financing District. Buyer and Seller shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "**Mello-Roos Act**"). Special taxes derived from the District will be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and

administration of the District, as provided in Section 1.5 of the DDA. Public area maintenance may include maintenance to public streets, parking lots, park, trail, boat launch, building(s), the harbor basin, and the pedestrian bridge. Such maintenance may be related to hardscape, landscape, and irrigation; lighting; site amenities (picnic tables, bbqs, public art, etc.); stormwater facilities; rodent and pest control; aeration fountains; and riprap. Reserves and capital expenditures may be utilized to make improvements and adaptation for sea level rise, including installation of additional rip rap or a seawall, as well as capital improvements to public areas, such as road replacement, infrastructure upgrades, and amenity replacement. The final scope of the Community Facilities District shall be subject to the Local Goals and Policies and Rate and Method of Apportionment Boundary Map, as adopted by the applicable landowners. The Rate and Method of Apportionment Map shall detail, among other things, how the special tax is levied, maximum special tax rates, and method of apportionment.

8. HAZARDOUS SUBSTANCES

8.1 "Hazardous Substances" means all of the following:

(a) Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste" or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("CERCLA"); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("RCRA"); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

(b) any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(c) Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

(d) Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated

wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

(e) Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Agreement.

8.2 The term "Hazardous Substances" shall include the following "Permitted Hazardous Substances:" all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Single Family Element, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Buyer, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [C] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

8.3 "Environmental Law(s)" means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Agreement or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

8.4 Presence and Use of Hazardous Substances. Buyer shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Buyer and its permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Buyer shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Seller shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

8.5 Cleanup Costs, Default and Indemnification.

(a) Buyer shall be fully and completely liable for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Buyer's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

(b) Buyer shall indemnify, defend and save Seller harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Seller

(as well as Seller's attorneys' fees and costs) as a result of Buyer's use, disposal, transportation, generation and/or sale of Hazardous Substances.

(c) Upon and after the Close of Escrow, Buyer agrees to indemnify, defend and hold Seller harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, which release, use, generation, discharge, storage or disposal occurs after the Close of Escrow, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property, which release, use, generation, discharge, storage or disposal occurs after the Close of Escrow, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Seller, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Buyer's obligations under this Section 8.5 shall survive the Close of Escrow and completion of the Single Family Element.

8.6 Duty to Prevent Hazardous Materials Contamination. Buyer shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

8.7 Environmental Inquiries. Buyer shall notify Seller, and provide to Seller a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Buyer shall, as soon as reasonably possible after the release, furnish to Seller a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Seller, Buyer shall furnish to Seller a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential

8.8 Storage or Handling of Hazardous Materials. Buyer, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its contractors to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Buyer and/or any of its contractors will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Buyer shall promptly notify Seller in writing. Buyer shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. Buyer's obligations hereunder shall survive the Close of Escrow and completion of the Single Family Element.

9. INSURANCE AND INDEMNITY.

9.1 Indemnity.

(a) Buyer shall indemnify, defend and save harmless Seller and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "Indemnitees") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Buyer, its officers, contractors, agents, and employees, except as and to the extent arising out of the willful or negligent act of the Indemnitees. Seller and Buyer agree that this provision shall not require Buyer to indemnify, defend and save the Indemnitees harmless from the Indemnitees' sole or concurrent negligence, if any.

(b) All provisions of this Agreement pursuant to which Indemnitor agrees to indemnify Indemnitee against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages as and to the extent caused by or resulting from the negligence of the Indemnitees. The indemnifications provided in this Article 9 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

(c) Unless otherwise expressly provided in this Agreement to the contrary, Seller shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, to the greatest extent permitted by law, and except to the extent caused by Seller's negligence or willful misconduct, Seller shall not be liable for any injury, loss or damage suffered by Buyer or to any person or property occurring or incurred in or about the Property from any cause. This Section 9.1 shall survive the Close of Escrow and completion of the Single Family Element.

9.2 Acquisition of Insurance Policies. Buyer shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained from the Close of Escrow

until the completion of the construction of the Single Family Element, and covering all occurrences during such period, the insurance described in this Article 9 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California, with an A.M. Bests' rating of no less than A:VII, reasonably satisfactory to Seller reasonably covering and protecting Buyer. Such insurance may be provided by blanket policies covering multiple properties.

9.3 Types of Required Insurance**.** Buyer shall procure and maintain the following:

(a) Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Single Family Element, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars ($5,000,000) each occurrence; Ten Million Dollars ($10,000,000) Aggregate.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 9.3 for the Property and Single Family Element.

(b) Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Buyer and its contractors on or about the Property, in such policy amounts as are required by law.

(c) Business Interruption Insurance. Business interruption insurance in such policy amount as may be required by any lender to Buyer.

(d) Mutual Waivers of Recovery. Seller, Buyer, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Seller or Buyer under any fire, extended coverage or other property insurance policy maintained by Buyer with respect to its improvements or property or by Seller with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Buyer with respect to the Single Family Element or Property shall contain a waiver of subrogation provision or endorsement in favor of Seller, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Buyer shall obtain the approval and consent of its insurers, in writing, to the terms of this Agreement. Buyer agrees to indemnify, protect, defend and hold harmless the Seller from and against any claim, suit or cause of action asserted or brought by Buyer's insurers for, on behalf of, or in the name of Buyer, including, but not limited to, claims for contribution, indemnity or subrogation, brought

in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF SELLER OR BUYER.

9.4 Terms of Insurance**.** The policies required under Section 9.3 above, shall name Seller as additional insured and Buyer shall provide promptly to Seller certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 9.3 above shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Seller may carry;

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Seller, except after thirty (30) days prior written notice from Buyer to Seller or, in the event of non-payment, after ten days (10) prior written notice from Buyer to Seller;

(c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Seller, its agents and employees;

(d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Buyer which might otherwise result in a forfeiture of said insurance; and

(e) Provide that Seller shall not be required to give notice of accidents or claims and that Seller shall have no liability for premiums.

9.5 Seller's Acquisition of Insurance**.** If Buyer at any time prior to the completion of construction of the Single Family Element fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Buyer and a reasonable opportunity to cure, Seller shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Buyer shall pay to Seller upon demand the full amount so paid and expended by Seller, together with interest thereon at the rate of ten percent per annum, from the date of such expenditure by Seller until repayment thereof by Buyer. Any policies of insurance obtained by Seller covering physical damage to the Property or Single Family Element shall contain a waiver of subrogation against Buyer if and to the extent such waiver is obtainable and if Buyer pays to Seller on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Seller shall be excess coverage, non-contributory and for the benefit of the Seller only.

10. REMEDIES

10.1 Seller Default. In the event of a breach or default under this Agreement by Seller which occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller, or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and

the Outside Closing Date until Seller is able to perform; (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder; or (iv) to pursue a claim for Buyer's actual damages.

10.2 Buyer Default. IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER'S SOLE REMEDY SHALL BE TO RETAIN THE THREE HUNDRED THOUSAND DOLLAR ($300,000) INITIAL DEPOSIT AND ALL OF THE ADDITIONAL DEPOSITS, AND ALL INTEREST ACCRUED THEREON, AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, SUCH PORTION OF THE DEPOSIT AND ALL INTEREST ACCRUED THEREON REPRESENTS A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND IS NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

_____ _____

Buyer's Initials Seller's Initials

10.3 Notice and Right to Cure. A party shall not be in default hereof until the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which the other party shall have given written notice of the default; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an event of default shall not arise hereunder if such party commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default.

11. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement. Each Party shall indemnify, hold harmless and defend the other Party from any and all claims, actions and liability for any breach of the preceding sentence, and any commission, finder's fee, or similar charges arising out of the indemnifying Party's conduct.

12. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other. Notwithstanding the foregoing, however, Buyer shall have the right to assign this Agreement to any entity which is an approved or permitted transferee pursuant to Section 7.1 of the DDA. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

13. MISCELLANEOUS.

13.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

13.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

13.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

13.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

13.5 Governing Law & Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any dispute arising hereunder shall be in the Superior Court of Alameda County or the Northern District of California.

13.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

13.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not affect the legality, enforceability, or validity of the remainder of this

Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision in keeping with the intent of the Parties as expressed herein.

13.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer:	Cal Coast Companies LLC, Inc. 11755 Wilshire Boulevard, Suite 1660 Los Angeles, CA 90025 Attn: Edward J. Miller
with copies to:	Nicholas F. Klein, Esq. 11755 Wilshire Boulevard, Suite 1660 Los Angeles, CA 90025
To Seller:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: Community Development Director Copy to: City Attorney
To Escrow Holder:	Old Republic Title Company _____ _____ Attn: _____

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

13.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

13.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

13.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

13.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to confirm the status of this Agreement or to carry out the intent and purposes of this Agreement.

13.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

13.14 Counterparts and Electronic Signatures. This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, equally admissible in evidence, but all of which together shall constitute one and the same Agreement, notwithstanding that the signatures of each Party or their respective representatives do not appear on the same page of this Agreement. The Parties hereby acknowledge and agree that electronic signatures that comply with the eSign Act (15 U.S.C. Ch. 96) (such as DocuSign signatures), or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Parties hereto (a) intend to be bound by the signatures on any document sent by electronic means including by electronic mail, (b) are aware that the other Party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

13.15 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

13.16 Nondiscrimination. Buyer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Buyer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, tenants, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

13.17 Conflict of Interest. No member, official or employee of Seller shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Buyer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

13.18 Further Actions and Instruments; City Manager Authority. Each of the Parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. Seller hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Seller so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Seller as specified herein, or reduce the revenue earned or to be earned by Seller, as may be necessary or proper to satisfy the purpose and intent of this Agreement. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Seller to do so. The City Manager may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement is executed by Buyer and Seller as of the Effective Date.

SELLER:

City of San Leandro

By: _____
Jeff Kay
City Manager

Attest:

By: _____
Leticia I. Miguel
City Clerk

Reviewed as to Form:

By: _____
Richard Pio Roda
City Attorney

BUYER:

Cal Coast Companies LLC, Inc.

By:_____
Edward J. Miller
Title: Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'08" West, 463.43 feet to the beginning of a curve to the left, having a radius of 840.00 feet;
- Southwesterly along said curve, through a central angle of 11°06'46", for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of 11°06'47", for an arc length of 147.41 feet;
- South 63°18'10" West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'10" West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of 81°37'46", for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:

North 35°04’04” West, 405.83 feet to the beginning of a curve to the right, having a radius of 1,100.00 feet; Northwesterly along said curve, through a central angle of 04°44’50”, for an arc length of 91.14 feet;

Thence leaving said northeasterly line of Monarch Bay Drive, the following courses and distances:

- North 62°55’28” East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00’00”, for an arc length of 47.12 feet;
- North 27°04’32” West, 25.00 feet;
- South 62°55’28” West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32’46” West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53’12”, for an arc length of 132.22 feet;
- North 20°34’02” West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56’39”, for an arc length of 212.27 feet;
- North 39°30’41” West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50’17”, for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39’59” West;
- Northeasterly along said curve, through a central angle of 41°34’58”, for an arc length of 255.63 feet;
- South 27°16’28” East, 54.01 feet;
- North 62°43’32” East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled “Mulford Gardens Addition”, filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30’00” East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30’00” West, 17.13 feet;
- South 20°33’26” East, 134.14 feet;
- South 69°26’34” West, 80.00 feet;
- South 20°33’26” East, 726.01 feet;
- South 34°04’02” East, 130.39 feet;
- North 71°53’55” East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37’44” West;
- Southeasterly along said curve, through a central angle of 89°56’49”, for an arc length of 78.49 feet;
- South 18°40’54” East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.
APN _____

EXHIBIT B

GRANT DEED

Recording Requested by
and When Recorded, Return to:

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Documentary Transfer Tax: $_____
Based on full value of real property conveyed

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged, as of _____, 20__, the City of San Leandro, a California charter city (the "**Grantor**"), hereby grants to [Cal Coast Companies LLC, Inc., a Delaware corporation] (the "**Grantee**"), all that real property located in the City of San Leandro, County of Alameda, State of California and more particularly described in Attachment No. 1 hereto and incorporated in this grant deed ("**Grant Deed"**) by this reference (the "**Property**").

The grant of the Property to Grantee is subject to a Purchase and Sale Agreement between Grantor and Grantee, dated as of _____, 2020 (the "**PSA**"). The use and development of the Property by Grantee and its successors and assigns shall be in compliance with the requirements of the PSA. Grantee and its successors and assigns shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element (as defined in the PSA) is substantially complete.

City of San Leandro

By: _____
Jeff Kay
City Manager

Attest:

By: _____
Leticia I. Miguel
City Clerk

Attachment No. 1 to Grant Deed

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

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Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

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- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

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- Southwesterly along said curve, through a central angle of 11°06'46", for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of 11°06'47", for an arc length of 147.41 feet;
- South 63°18'10" West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'10" West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of 81°37'46", for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:

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- North 62°55’28” East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00’00”, for an arc length of 47.12 feet;
- North 27°04’32” West, 25.00 feet;
- South 62°55’28” West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32’46” West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53’12”, for an arc length of 132.22 feet;
- North 20°34’02” West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56’39”, for an arc length of 212.27 feet;
- North 39°30’41” West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50’17”, for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39’59” West;
- Northeasterly along said curve, through a central angle of 41°34’58”, for an arc length of 255.63 feet;
- South 27°16’28” East, 54.01 feet;
- North 62°43’32” East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled “Mulford Gardens Addition”, filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30’00” East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30’00” West, 17.13 feet;
- South 20°33’26” East, 134.14 feet;
- South 69°26’34” West, 80.00 feet;
- South 20°33’26” East, 726.01 feet;
- South 34°04’02” East, 130.39 feet;
- North 71°53’55” East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37’44” West;
- Southeasterly along said curve, through a central angle of 89°56’49”, for an arc length of 78.49 feet;
- South 18°40’54” East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.
APN _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On_____, 20____ before me, _____, a Notary Public, in and for said State and County, 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.

_____
NOTARY PUBLIC

3166098.9

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of _____)

On_____, 20____ before me, _____, a Notary Public, in and for said State and County, 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.

_____
NOTARY PUBLIC

EXHIBIT C

SCOPE OF DEVELOPMENT

The following definition of terms shall apply to this Scope of Development and the Agreement:

Horizontal Improvements – Improvements to underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechical mitigation, grading and installation of offsite and onsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity, and fiber optic internet service.

Vertical Improvements – Construction of building, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas and other improvements to be constructed or installed on or in connection with the development of the Project.

1. Single Family Element. Buyer shall design and construct approximately between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City's inclusionary housing ordinance as specified in the DDA.

a) The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.

b) All single-family homes and townhomes shall meet or exceed CA Title 24 requirements and be EnergyStar Rated.

c) Outdoor landscaping on the Single-Family Element shall utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.

d) Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project of the Agreement, including design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6m of the California Building Code)

2. Golf Course Element.

a) Buyer shall redesign and reconstruct a nine-hole links style golf course ("Golf Course Parcel").

b) The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course.

c) The existing north lake shall be reconfigured, mature trees (where feasible and appropriate), and the monarch butterfly roosting habitat shall remain.

d) Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code.

e) Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom.

f) A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City.

g) The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library.

h) The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain.

i) Any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.

j) The public improvements related to the Golf Course Element shall be subject to a Public Improvement Agreement.

k) Buyer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City, with input from applicable community groups.

l) The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively.

EXHIBIT D

SCHEDULE OF PERFORMANCE

Task	Time for Performance
1. Single Family Element	
Effective Date	_____, 2020
Opening of Escrow	5 business days from expiration of appeals periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment and Addendum to Shoreline Project EIR
Deposit due	3 business days from Opening of Escrow
Escrow Holder delivers a Preliminary Title Report for the Property	3 business days from Opening of Escrow
Due Diligence Contingency Period	90 days from Effective Date
Entitlements Contingency Date	270 days from Effective Date (subject to one 90 day extension)
Buyer and City enter Public Improvement Agreement for Single Family Element, and Buyer submits required security to City	Prior to Close of Escrow
Close of Escrow for Property occurs.	Within 90 days after first to occur of (a) receipt of Government Entitlements (subject to one 90 day extension), or (b) December 31, 2021
Commencement of construction of Horizontal Improvements	Within 90 days of receipt of City approval of first permit for Horizontal Improvements (demolition, encroachment, or grading), permit is issued and work begins
Completion of construction of Horizontal Improvements	Within 24 months of commencement of construction of Horizontal Improvements, work under demolition, encroachment and grading permits is given final approval Prior to Close of Escrow

Submittal of Building Permit applications for Vertical Construction for Single-Family Element	
2. Golf Course Element	
Buyer submits Golf Course Implementation Plan to City	90 days fromOpening of Escrow, or after termination of lease with the American Golf Corporation for that portion of land to be utilized for the Single-Family Element, whichever comes later
Buyer and City enter Public Improvement Agreement for Golf Course Element, and Buyer submits required security to City	Prior to Close of Escrow
Buyer commences construction of Golf Course Element	Within 90 days after receipt of City approval of first permit for Golf Course Element (demolition, encroachment and/or grading), permit is issued and work begins under such permit
Buyer substantially completes construction of Golf Course Element.	Within 30 months after commencement of construction of Golf Course Element, all major construction is complete and only minor work and/or maturation of landscaping remains, as accepted by the Directors of Engineering and Transportation and Public Works
Buyer may sell more than 132 completed residential units within the Single Family Element.	Upon substantial completion of the Golf Course Element

HOTEL GROUND LEASE AGREEMENT

Between

CITY OF SAN LEANDRO

("LANDLORD")

And

[CAL COAST ENTITY]

("TENANT")

TABLE OF CONTENTS

HOTEL GROUND LEASE AGREEMENT

THIS HOTEL GROUND LEASE AGREEMENT (hereinafter referred to as this "**Lease**") is entered into this _____day of_____, 202__ (the "**Effective Date**"), by and between the City of San Leandro, a California charter city ("**Landlord**" or "**City**"), and [Cal Coast Entity – Monarch Bay Hotel, LLC (Note - No Secretary of State record of Monarch Bay Hotel, LLC - entity not formed yet?)] ("**Tenant**").

RECITALS

A. The City and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. ("**Developer**"), have entered into that certain Disposition and Development Agreement, dated as of February 24, 2020 (the "**DDA**"), for the development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly described in the DDA (the "**Shoreline Property**").

B. City desires to advance the development of the Shoreline-Marina area to create new housing units, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base.

C. The DDA provides for the City to ground lease to the Developer or its affiliate a portion of the Shoreline Property for the development of a hotel with between 200 and 220 rooms, publicly accessible outdoor space, and ancillary food and beverage amenities (the "**Project**"). Section 1.4.1 of the DDA sets forth certain conditions to commencement of the ground lease which must be satisfied or waived by the City.

D. Landlord owns approximately _____ acres of land within the Shoreline Property located at _____ (the "**Property**"), as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference. The Property is depicted on the Site Map attached hereto as Exhibit B and incorporated herein by this reference.

E. Tenant desires to lease the Property from Landlord in order to build and operate the Project thereon.

F. The City has determined that the conditions to commencement of this Lease, as set forth in Section 1.4.1 of the DDA, have each been satisfied or waived by City. Landlord and Tenant now desire to enter into this Lease in order to carry out the Parties' obligations under the DDA with respect to the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 Definitions. Capitalized terms in this Lease shall have the following meanings:

1.1.1 "**ADA**" means the Americans with Disabilities Act. "**Affiliates**" has the meaning set forth in Section 8.1.3.

1.1.3 "**Anniversary Date**" has the meaning set forth in Section 22.13.1.

1.1.4 "**Annual Financial Statement**" has the meaning set forth in Section 3.3.1.

1.1.5 "**As-Is Condition**" means the condition of the Property as of the Effective Date.

1.1.6 "**Assessments**" has the meaning set forth in Section 4.2.3.

1.1.7 "**Audit Charge**" has the meaning set forth in Section 3.3.2.

1.1.8 "**Award**" has the meaning set forth in Section 12.1

1.1.9 "**Base Rent**" means the rent that is payable as set forth in Section 3.1.

1.1.10 "**Broke**r" has the meaning set forth in Section 24.1.

1.1.11 "**Concessionaire Gross Receipts**" means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue, except as otherwise provided below, from the Restaurant, concessionaire businesses or service providers which operate auxiliary facilities or provide ancillary services of the type ordinarily operated or provided by third-party hotel concessionaires or service providers, in accordance with Section 5.3(b) hereof (but excluding operation of the Hotel) (each, a "**Concessionaire**"). Concessionaire Gross Receipts will mean the amounts, whether received in money, in-kind consideration or otherwise, actually received by such Concessionaires or service providers. Concessionaire Gross Receipts expressly excludes state, county and City sales taxes or City transient occupancy taxes; the value of meals furnished to employees in the course of their employment; any service charge turned over to employees in lieu of such employees receiving tips or gratuities; any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale, and any charges for telephone or valet services.

1.1.12 "**Construction Period**" means the period of time from the Effective Date to the TCO Date.

1.1.13 "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said index is changed so that the base year differs from the base year used in the last Index published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in

order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised.

1.1.14 "**DDA**" has the meaning set forth in Recital A.

1.1.15 "**Default**" has the meaning set forth in Section 16.1.

1.1.16 "**Default Notice**" has the meaning set forth in Section 7.6.

1.1.17 "**Developer**" has the meaning set forth in Recital A.

1.1.18 "**Development Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.1.19 "**Effective Date**" has the meaning set forth in the preamble of this Lease.

1.1.20 "**Environmental Law(s)**" has the meaning set forth in Section 23.1 (b).

1.1.21 "**Extended Stay**" means hotel units constructed, kept, used, maintained, advertised, and/or held out to the public to be a place where temporary residence is offered for pay to persons for a period longer than typical hotel stays, and which may include cooking facilities in individual rooms or suites. Examples of Extended Stay Hotel Brands as of the date of this Lease include, without limitation, Hyatt House, Extended Stay America, Residence Inn, Candlewood Suites, Courtyard by Marriott, Hilton Garden Inn, and Homewood Suites.

1.1.22 "**FFR Plan**" has the meaning set forth in Section 9.5.

1.1.23 "**First Class Hotel**" means a high quality hotel which is constructed in accordance with the finishes, plans and specifications, and amenities required by the Hotel Brand approved by Landlord under which the Hotel is operating pursuant to Section 5.2, and which satisfies the operating standards of such Hotel Brand. First Class Hotel may include a limited service hotel and/or a full service hotel.

1.1.24 "**Force Majeure Events**" has the meaning set forth in Section 6.1.9.

1.1.25 "**Franchise Agreement**" has the meaning set forth in Section 5.2.

1.1.26 "**GAAP**" means Generally Accepted Accounting Principles.

1.1.27 "**Hazardous Substances**" has the meaning set forth in Section 23.1.

1.1.28 "**Horizontal Improvements**" is defined in the Scope of Development.

1.1.29 "**Hotel**" means the 200 – 220 room hotel facility to be constructed in accordance with the Scope of Development and continuously operated during the Term of this Lease as provided herein.

1.1.30 "**Hotel Brand**" means a brand of hotel run by a nationally recognized hotel company which has a national marketing and reservation system. Examples of Hotel

Brands as of the date of this Lease include, without limitation, Hyatt Place, Courtyard by Marriott, Hilton Garden Inn, Homewood Suites, and Aloft.

1.1.31 "**Hotel Gross Receipts**" means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue from any business carried on in whole or in part upon the Property, except as otherwise provided below, including without limitation gross revenue from room rentals, food and beverage (including Restaurant and bar, alcoholic and non-alcoholic beverages, and food prepared on the Property but consumed or delivered off the Property), meeting rooms, parking fees and charges, events occurring on the Property, kiosk rentals and other rentals, including on-command premium movie rentals, internet service connection fees, health club fees (including non-guest membership fees), spa revenues, gift shop revenues, Sublease rent, sale of goods, wares, merchandise, commodities, products and services, fees or rents for antennas, cell phone towers, billboards, automobile charging stations, and any and all other revenue of whatsoever kind or nature derived from the operation of the Hotel Facilities on the Property, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense. Hotel Gross Receipts expressly excludes Concessionaire Gross Receipts, state, county and City sales and use taxes or City transient occupancy taxes; the value of meals furnished to employees in the course of their employment; any service charge turned over to employees in lieu of such employees receiving tips or gratuities; any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale.

1.1.32 "**Improvements**" means the hotel buildings and associated parking, drive aisles, publicly accessible outdoor space, landscaping, lighting, and other improvements to be constructed by Tenant on the Property in accordance with the Scope of Development, and any other improvements which may be constructed on the Property by Tenant from time to time during the Term.

1.1.33 "**Increased Costs**" has the meaning set forth in Section 6.1.7.

1.1.34 "**Indemnitee**" has the meaning set forth in Section 8.1.2.

1.1.35 "**Institutional Investor**" has the meaning set forth in Section 7.3.1

1.1.36 "**Labor Peace Agreement**" means an agreement to be negotiated and entered between Tenant and/or its Subtenant(s) and any bona fide labor organization that, at a minimum, protects the Landlord's proprietary interests in the Property by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicable business. Each Labor Peace Agreement shall provide that the Tenant and/or Subtenant(s) shall not disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the Tenant's or Subtenant's employees, with the specific language to be negotiated and mutually agreed upon by the parties to the Labor Peace Agreement. Each Labor Peace Agreement shall provide a bona fide labor organization access at reasonable times to areas in which the Tenant's or Subtenant's employees work, for the purpose of meeting with employees to discuss their right to representation,

employment rights under state law, and terms and conditions of employment. Each Labor Peace Agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

1.1.37 "**Landlord**" has the meaning set forth in the first paragraph of this lease.

1.1.38 "**Landlord Default**" has the meaning set forth in Section 16.7.

1.1.39 "**Landlord's Estate**" means all of Landlord's right, title, and interest in and to (a) its fee estate in the Property, (b) its reversionary interest in the Improvements, and (c) all Base Rent and other benefits due Landlord hereunder.

1.1.40 "**Late Term Extensive Damage**" means any damage to the Improvements after the thirtieth (30th) Lease Year, whether insured or uninsured, if the reasonable cost to be incurred by Tenant to restore the Improvements to the condition required by Section 11.1 exceeds (i) thirty percent (30%) of the "replacement cost" (as defined below) of the Improvements if such damage occurs during the thirty-first (31st) Lease Year through the end of the sixty-fifth (65th) Lease Year; (ii) twenty percent (20%) of the replacement cost of the Improvements if such damage occurs during the sixty-sixth (66th) through eighty-first (81st) Lease Years; and (iii) ten percent (10%) of the replacement cost of the Improvements if such damage occurs after the eighty-second (82nd) Lease Year. For purposes of determining the extent of Late Term Extensive Damage, "replacement cost" means the actual cost of replacing the Improvements as of the date of casualty in accordance with applicable law, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), if applicable, construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscape restoration.

1.1.41 "**Lease**" has the meaning set forth in the first paragraph of this Lease.

1.1.42 "**Leasehold Mortgagee**" has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

1.1.43 "**Leasehold Mortgages**" has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

1.1.44 "**Lease Year**" means each January 1 to December 31 calendar year of the Term. The first Lease Year means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

1.1.45 "**Lender**" has the meaning set forth in Section 7.1 of this Lease.

1.1.46 "**Mello-Roos Act**" has the meaning set forth in Section 5.6.

1.1.47 "**Mezzanine Loan**" has the meaning set forth in Section 7.3.4.

1.1.48 "**Mezzanine Loan Requirements**" has the meaning set forth in Section 7.3.4.

1.1.49 "**Mezzanine Lender**" has the meaning set forth in Section 7.3.4.

1.1.50 "**Minimum Ground Rent**" has the meaning set forth in Section 3.1.1.1.

1.1.51 "**New Lease**" has the meaning set forth in Section 7.8.

1.1.52 "**Notice of Intended Taking**" has the meaning set forth in Section 12.1.

1.1.53 "**Notice of Termination**" has the meaning set forth in Section 7.8 of this Lease.

1.1.54 "**Operator**" has the meaning set forth in Section 5.2.

1.1.55 "**Partial Taking**" has the meaning set forth in Section 12.1.

1.1.56 "**Partial Year Rent Commencement Date**" has the meaning set forth in Section 3.1.1.1.

1.1.57 "**Participation Rent**" has the meaning set forth in Section 13.6.

1.1.58 "**Percentage Rent**" has the meaning set forth in Section 3.1.2 hereof.

1.1.59 "**Permitted Exceptions**" has the meaning set forth in Section 1.2.

1.1.60 "**Permitted Hazardous Substances**" has the meaning set forth in Section 23.2.

1.1.61 "**Permitted Transferee**" has the meaning set forth in Section 13.1.

1.1.62 "**Prevailing Wage Law**" has the meaning set forth in Section 6.1.6.

1.1.63 "**Project**" means the construction of the Improvements as set forth herein.

1.1.64 "**Project Labor Agreement**" means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects, with the specific language to be negotiated and mutually agreed upon by the parties to the Project Labor Agreement, and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

1.1.65 "**Property**" has the meaning set forth in Recital D.

1.1.66 "**Qualified Auditor**" has the meaning set forth in Section 3.3.1.

1.1.67 "**Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.1.68 "**Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.1.69 "**Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.1.70 "**Rehabilitation Plan**" has the meaning set forth in Section 9.5.

1.1.71 "**Rent Commencement Date**" has the meaning set forth in Section 3.1.1.2.

1.1.72 "**Reserve Account**" has the meaning set forth in Section 9.6.

1.1.73 "**Restaurant**" has the meaning set forth in Section 5.3.

1.1.74 "**Restoration Amount**" means three percent (3.0%) of the replacement cost of the Improvements immediately prior to the casualty. For purposes of calculating the Restoration Amount, "replacement cost" means the actual cost of replacing the Improvements in accordance with applicable law and the terms and conditions of this Lease, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscaping.

1.1.75 "**Schedule of Performance**" means the schedule attached hereto as Exhibit G.

1.1.76 "**Scope of Development**" means the description of the Improvements to be constructed by Tenant on the Property which is attached hereto as Exhibit F.

1.1.77 "**Security Instrument**" has the meaning set forth in Section 7.1 of this Lease.

1.1.78 "**Senior Recognized Leasehold Mortgage**" has the meaning set forth in Section 7.2.1.

1.1.79 "**Senior Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.1.80 "**Senior Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.1.81 "**Senior Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.1.82 "**Shoreline Property**" has the meaning set forth in Recital A.

1.1.83 "**Stabilization**" has the meaning set forth in Section 13.1.

1.1.84 "**Sublease**" has the meaning set forth in Section 13.5.

1.1.85 "**Substantial Taking**" has the meaning set forth in Section 12.1.

1.1.86 "**Subtenant**" has the meaning set forth in Section 13.5.

1.1.87 "**Taking**" has the meaning set forth in Section 12.1.

1.1.88 "**Taking Date**" has the meaning set forth in Section 12.1.

1.1.89 "**Taxes**" has the meaning set forth in Section 4.2.1.

1.1.90 "**TCO Date**" means the first day of the month immediately following the month in which a temporary certificate of occupancy ("TCO") for the entirety of the Improvements is issued by the City.

1.1.91 "**Tenant**" has the meaning set forth in the first paragraph of this Lease.

1.1.92 "**Tenant's Estate**" means all of Tenant's right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

1.1.93 "**Tenant's Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.1.94 "**Term**" has the meaning set forth in Section 2.3.1.

1.1.95 "**Termination Notice Period**" has the meaning set forth in Section 7.6.1.

1.1.96 "**Total Gross Receipts**" means the sum of the Hotel Gross Receipts and Concessionaire Gross Receipts received during a Lease Year.

1.1.97 "**Total Taking**" has the meaning set forth in Section 12.1.

1.1.98 "**Transfer**" has the meaning set forth in Section 13.2.

1.1.99 "**Transfer Request**" has the meaning set forth in Section 13.4.1.

1.1.100"**Uninsurable Loss**" means the cost to restore the Improvements to the condition required by and in accordance with Section 11.1 below, which is caused by: (i) earthquake; (ii) pollution liability; (iii) flood; or (iv) any other casualty for which Tenant is not otherwise required to obtain and maintain insurance coverage pursuant to this Lease. Notwithstanding the preceding, Uninsurable Loss shall not include (a) loss caused by flood, if the Property is located in a flood zone and flood insurance can be obtained at commercially reasonable rates, nor (b) loss caused by Tenant's release of Hazardous Substances on the Property or violation of its responsibilities pursuant to Section 23 hereof.

1.1.101"**Vertical Improvements**" is defined in the Scope of Development.

1.2 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, subject to the matters set forth on Exhibit C attached hereto and incorporated herein ("Permitted Exceptions"). Not

included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material as provided in Section 2.1.4 hereof.

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1 As-Is Condition. Landlord shall deliver possession of the Property to Tenant on the Effective Date, in its As-Is Condition, and Tenant hereby accepts the Property in its As-Is Condition. Neither the Landlord, nor any officer, employee, agent or representative of the Landlord, has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Property, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Property, or any other matter affecting the use, value, occupancy or enjoyment of the Property, the suitability of the Property for the uses permitted by this Lease, the suitability of the Property for the Project, construction of the Project, or construction or use of the Improvements on the Property, and Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Property is being leased in its As-Is Condition with respect to all matters. 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 Property, and has, to the extent it deemed necessary, independently investigated the condition of the Property, 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 except as provided in this Lease.

2.1.2 Construction of Development Work. Upon acceptance of possession of the Property, Tenant shall construct the Improvements and shall maintain, repair, replace and renovate the Improvements as required herein (collectively, "**Development Work**"). In performing the Development Work, Tenant shall comply with all of the requirements of Section 6 hereof. The time of Tenant's commencement and completion of the Development Work shall occur not later than the times set forth therefor in the Schedule of Performance (subject to the occurrence of any Force Majeure Events). For purposes of the Schedule of Performance, "commencement" of the Development Work means the commencement of construction of Horizontal Improvements (as defined in the Scope of Development), including any needed soil import or export, soil amending, soil compaction, borings, excavation, shoring, and any vertical improvements, including building foundations. For purposes of the Schedule of Performance, "completion" of construction means the time that a TCO is issued for the Vertical Improvements. As set forth in Section 6, Landlord shall cooperate with Tenant in obtaining any necessary permits. Landlord shall join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.1.3 Utility Services. Tenant shall be responsible, at its expense, for obtaining all electricity, water, sewer, gas, telephone and other utility services necessary for Tenant's intended use of the Property.

2.1.4 Landlord Reservation of Interests. Landlord reserves to itself the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Property, regardless of the depth below the surface at which any such substance may be found. Landlord or its successors and assigns, however, shall not have the right for any purpose to enter on, into, or through the surface or the first 500 feet of the subsurface of the Property in connection with this reservation. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Landlord's activities under this paragraph.

2.1.5 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord, without abatement, counterclaim, setoff or offset whatsoever, and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property which may arise or become due during the Lease Term, and which, except as otherwise provided in this Lease and any other agreement entered into in connection with this Lease, and except to the extent arising out of a breach of this Lease by Landlord, or arising out of the negligence or willful misconduct by Landlord or its agents, employees, or contractors, which but for execution hereof would or could have been payable by Landlord.

2.2 Fee Mortgages. Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property without the prior written approval of Tenant and its Lease Mortgagee, which approval shall not be unreasonably withheld or delayed. Such approval may be conditioned upon Landlord and its fee mortgagee entering into a subordination and non-displacement agreement with Tenant and its Lease Mortgagee.

2.3 Term.

2.3.1 Length of Initial Term. The initial term (the "**Initial Term**") of this Lease shall commence on the Effective Date, and shall expire fifty-five (55) years from the Effective Date, unless extended as set forth herein below.

2.3.2 Option Terms. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its material obligations under this Lease beyond any applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on two (2) occasions (each such right, an "**Extension Option**"), as follows:

2.3.2.1 Length of Option Terms. The first extension of the Term shall be for a period of thirty-four (34) years, and the second extension of the Term shall be for a period of ten (10) years (each such period of time, an "**Option Term**").

2.3.2.2 Exercise of Option Terms. Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than two (2) years, prior to the expiration of the Term. In the event Tenant has not timely sent written notice to Landlord of Tenant's exercise of either Extension Option, Landlord shall provide written notice to Tenant that it has not received written notice of Tenant's exercise of the applicable Extension Option, and Tenant shall have fifteen (15) days thereafter to deliver to Landlord written notice of Tenant's exercise of the applicable Extension Option. Such written notification shall include a certification of Tenant that Tenant is currently in material compliance with the Lease. Provided Tenant has properly and timely exercised an Extension Option, and further provided that Landlord has determined that Tenant is in material compliance with this Lease at the time of notification and at the time of commencement of the Option Term, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant and Landlord shall prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid by Tenant). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

2.3.2.3 Term. The Initial Term and Option Terms are collectively referred to herein as the "Term."

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts of Minimum Ground Rent and Percentage Rent ("Base Rent") during the time periods set forth below. An example of the following rent calculations is set forth in Exhibit H attached hereto.

3.1.1 Minimum Ground Rent.

3.1.1.1 On or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty-three (33) months after approval of the first Building Permit for Vertical Improvements for Developer Hotel Element ("**Rent Commencement Date**"), Tenant shall pay to Landlord, in advance, monthly minimum ground rent equal to the number of hotel rooms constructed or to be constructed in the Hotel in the Project, multiplied by Two Thousand Dollars ($2,000), and divided by twelve (12) ("**Minimum Ground Rent**"). In the event of a Taking

pursuant to Section 12 of this Lease, the Minimum Ground Rent shall be recalculated based upon the number of hotel rooms remaining in the Hotel after the Taking. All amounts shall be payable in advance on or before the first day of each calendar month. The first month's monthly Minimum Ground Rent shall be prorated to the number of days remaining in the month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Minimum Ground Rent, Tenant shall pay to Landlord (a) interest thereon equal at the rate of ten percent (10%) per annum on the delinquent amount per month from the date such sum was due and payable until paid, and (b) a late charge equal to five percent (5%) of the amount of the delinquent payment.

3.1.1.2 Upon January 1 of each new Lease Year (except for the first full Lease Year), the Minimum Ground Rent shall be increased by two percent (2%) of the Minimum Ground Rent then in effect.

3.1.1.3 Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70^{th}), eightieth (80^{th}) and ninetieth (90^{th}) Lease Years, the monthly amount of Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the monthly amount of Minimum Ground Rent then in effect, or (b) the total amount of Minimum Ground Rent plus Percentage Rent due and payable during the five Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing the total by twelve.

3.1.1.4 Upon January 1 of the thirtieth (30th) Lease Year, and at the commencement of the first and second Option Terms (the "Value Determination Dates"), the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the Minimum Ground Rent then in effect, or (b) the appraised fair market rental value of the Property. The fair market rental value of the Property shall be based upon the fair market value of the land, excluding the value of the Improvements, and shall be determined by appraisal as follows:

a. Appointment of Appraiser. For a period of thirty (30) days after notice from Landlord to Tenant, Landlord and Tenant shall use good faith efforts to jointly agree upon the appointment of a mutually acceptable MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1. The appraiser shall have not less than ten (10) years' experience appraising hotels and commercial properties in the San Francisco Bay Area. In the event that the parties are unable to jointly agree upon a mutually acceptable appraiser, Landlord and Tenant shall, within ten (10) days after the expiration of the thirty (30) day period, each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then

either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

b. Determination of Fair Market Rental Value.

(i) In the event that a single mutually acceptable appraiser has been appointed by the parties, within thirty (30) days after the appointment the appraiser shall commence to determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge its determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) In the event that three appraisers have been appointed by the parties, within thirty (30) days after the appointment of the third appraiser, the two appraisers directly appointed by the Parties shall each commence to independently determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(iii) The appraisers shall determine the fair market rental value of the Property as of the Value Determination Date as the date of value. Fair market rental value shall be determined for the Property only, and shall not include value attributable to the Improvements which are owned by Tenant during the Term of this Lease.

(iv) If the two appraisals arrive at different fair market rental values, the third appraiser shall select the appraisal which the third appraiser determines is closest to the fair market rental value of the Property, and such appraisal shall be deemed the fair market rental value of the Property as of the Value Determination Date.

(v) Each of the parties hereto shall (a) pay for the services of its own appointee, (b) pay one-half (l/2) of the fee charged by a mutually appointed appraiser and any appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisals.

3.1.2 Percentage Rent.

3.1.2.1 Upon the commencement of the second (2nd) Lease Year and the third (3rd) Lease Year, Tenant shall pay Landlord annual percentage rent ("**Percentage Rent**") equal to Three Percent (3%) of the sum of Total Gross Receipts, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous Lease Year.

3.1.2.2 Upon the commencement of the fourth (4th) Lease Year and the fifth (5th) Lease Year, Tenant shall pay Landlord annual Percentage Rent equal to Four Percent (4%) of the sum of Total Gross Receipts, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous Lease Year.

3.1.2.3 Upon the commencement of the sixth (6^{th}) Lease Year, and continuing thereafter, Tenant shall pay Landlord annual Percentage Rent equal to Five Percent

(5%) of the sum of Total Gross Receipts, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous Lease Year.

3.1.2.4 Within twenty (20) days after the close of each calendar month of the Term of this Lease, Tenant shall deliver to Landlord, in a form reasonably satisfactory to Landlord, an account of its Hotel Gross Receipts, Concessionaire Gross Receipts and Total Gross Receipts during the preceding month.

3.1.2.5 All payments of Percentage Rent shall be paid to Landlord on a monthly basis on or before the twentieth (20^{th}) day of each month based on the Total Gross Receipts for the preceding month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Percentage Rent, Tenant shall pay to Landlord (a) interest thereon at the rate of ten percent (10%) per annum on the delinquent amount per month from the date such sum was due and payable until paid, and (b) a late charge equal to five percent (5%) of the amount of the delinquent payment.

3.2 Maintenance of Records.

(a) Tenant shall at all times keep accurate and proper books, records and accounts required to determine Hotel Gross Receipts, Concessionaire Gross Receipts, Total Gross Receipts, and Percentage Rent, including a written explanation of income and expense report procedures and controls ("Records").

(b) Tenant shall keep all of its Records related to this Lease at its home office. Landlord may examine and audit the Records at any and all reasonable business times, subject to reasonable prior notice. If Landlord elects to audit the Records, Landlord shall use an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing hotel projects. Landlord and its auditors may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to examine and audit such Records, unless required under applicable law and in accordance with Section 3.4.3 below. In no event shall any information relating to the Concessionaires and Subtenants be publicly disclosed, except as required by applicable law and in accordance with Section 3.4.3 below. All Records, including any sales tax reports that Tenant and its Concessionaires and Subtenants may be required to furnish to any governmental agency, shall be open to the inspection of and copying (at Landlord's sole cost and expense) by Landlord, Landlord's auditor, or other authorized representative or agent of Landlord, who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing hotel projects, at all reasonable times during business hours, subject to reasonable prior notice. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and Subtenants and to minimize interference with the day-to-day operation of Landlord and/or the Property in exercising its rights hereunder.

3.3 Annual Statements by Tenant, Verification of Records, Computation, Payment of Percentage Rent

3.3.1 On or before March 1 of each Lease Year during the Lease Term, Tenant shall submit to Landlord an "Annual Financial Statement" which shall include a

breakdown, in line item detail, of Tenant's calculation of Total Gross Receipts, Hotel Gross Receipts, Concessionaire Gross Receipts, and Percentage Rent payable for the prior Lease Year. Each Annual Financial Statement shall be reviewed by an independent certified public accountant or by an authorized officer of Tenant, and shall contain an expressed written opinion of such certified public accountant or officer that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with GAAP. Tenant shall also certify to Landlord that each Annual Financial Statement is accurate and consistent in all material respects with its Records. Landlord may, through its representatives, to inspect, audit or perform an examination of any Annual Financial Statement and supporting documentation utilized in the creation thereof at any time, and Tenant shall provide reasonable access to all of its books and records as provided herein, using an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing hotel projects ("**Qualified Auditor**"), subject to reasonable prior notice. Records must be supported by reasonable source documents. Tenant shall file with the State of California not less frequently than once each calendar quarter during the term of this Lease a periodic allocation schedule showing sales and use tax derived from Total Gross Sales during such period.

3.3.2 Tenant shall use good faith, diligent and commercially reasonable efforts to obtain calculations of Concessionaire Gross Receipts from the Restaurant and its Concessionaires, and to obtain calculations of Hotel Gross Receipts from its Subtenants and Assignees. All Subleases and agreements with Assignees and Concessionaires shall require timely submission of such information to Tenant in order for Tenant to report such figures as required by this Lease, shall impose late fees for failure to timely supply such information, and shall permit Landlord to directly enforce such obligations if Tenant is unsuccessful in obtaining such information from the Restaurant, Concessionaires, Subtenants and/or Assignees. Any late fees collected from Subtenants an Assignees shall be payable to Landlord as additional rent.

3.3.3 If any audit or examination conducted by Landlord discloses that the payable Percentage Rent reported by Tenant for any calendar year was understated by more than three percent (3%), Tenant shall promptly pay to Landlord the actual reasonable costs incurred by Landlord for such audit or examination (the "Audit Charge") in addition to any amounts due as Percentage Rent; otherwise Landlord shall bear all costs of such audit or examination.

3.3.4 Landlord's billings for the Audit Charge shall be sufficiently detailed with reasonable backup information such as supporting paid invoices, so that Tenant may determine the fees for the various participants in the audit or examination for whom Tenant is required to pay. Prior to Tenant's obligation to pay any Audit Charge, Landlord shall have provided Tenant with the audit or examination report which is the basis for such Audit Charge, access to documents supporting such audit or examination, and a reasonable opportunity to review and discuss the audit or examination with Landlord and the auditor.

3.4 Acceptance Not Waiver; Retention of Records.

Landlord's acceptance of any money paid by Tenant under this Lease, whether shown by any Annual Financial Statement furnished by Tenant or otherwise specified in this Lease, shall not

constitute an admission of the accuracy or the sufficiency of the amount of such payment. Landlord may, at any time within three (3) years after the receipt of any such payment, question the sufficiency of the amount thereof and/or the accuracy of any underlying Annual Financial Statement furnished by Tenant.

3.4.1 Tenant shall retain, for five (5) years after submission to Landlord of any such Annual Financial Statement, all of Tenant's Records relating to the information shown by any such Annual Financial Statement, and shall make them available to Landlord for examination to the extent as provided above during that period. Tenant shall use commercially reasonable efforts to require that all its Concessionaires and Subtenants keep, maintain and retain Records of their business activities conducted within the Project for such five (5) year period, which Records shall be made available to Landlord, Landlord's auditor, or other authorized representative or agent of Landlord for inspection and copying (at Landlord's expense) as provided above. Notwithstanding the foregoing, Tenant shall not be responsible for the records of any Subtenant or Concessionaire.

3.4.2 Tenant shall also furnish Landlord all information reasonably requested by Landlord directly relating to the costs, expenses, earnings and profits of Tenant in connection with Tenant's operations conducted on or connected with the Property. Landlord may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to such information, unless required under the Public Records Act or other applicable law and in accordance with Section 3.4.3 below, and the conditions set forth above with requests for information shall apply.

3.4.3 Landlord covenants to keep and to cause its auditor(s) to keep the results of such audit strictly confidential except to the extent disclosure is legally required by the Public Records Act or other applicable law, or if discoverable in litigation between the parties. If Landlord receives a request for such information it shall immediately notify Tenant of such request and deliver to Tenant copies of all correspondence received by Landlord relating to such request, and afford Tenant an opportunity to contest such request.

4. OTHER EXPENSES

4.1 Tenant Payments. During the term of this Lease, Tenant shall pay the following:

4.1.1 Utilities. From and after the Effective Date, Tenant shall pay all charges for electricity, water, gas, telephone and all other utility services used on the Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.1.2 Taxes and Assessments.

4.1.2.1 Pursuant to Revenue & Taxation Code Section 107.6, Landlord hereby advises Tenant that the leasehold interest in the Property conveyed to Tenant by this Lease will be subject to property taxation, and that it is Tenant's obligation under this Lease to pay or cause to be paid all of such property taxes levied on Tenant's interests in the Property. Tenant acknowledges that it understands that property taxes will be levied on the Property

despite the Landlord's ownership of fee title to the Property and any exemptions Landlord is entitled to and receives as a result of public entity ownership of the Property.

4.1.2.2 The term "Taxes," as used herein, means all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, including community facilities district special taxes, but excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Effective Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.1.2.3 The term "Assessments," as used herein, means all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Effective Date and continuing throughout the Term.

4.1.2.4 Tenant covenants and agrees to pay or cause to be paid before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personal property as may be from time to time situated within the Property and the Improvements.

4.1.2.5 Tenant shall pay any business license fees imposed upon Tenant in connection with the operation of the Improvements.

4.1.2.6 Tenant shall be responsible for the collection, remittance and reporting of all transient occupancy taxes from Hotel guests in accordance with Section 2.10 of the City Municipal Code.

4.2 Payment Date and Proof. All payments by Tenant for Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

4.3 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount

and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.11 below.

4.4 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.4.1 Payment of Base Rent. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall remain in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach.

4.4.2 Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant. Nothing in this Lease shall require tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any such law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest or that bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

5.1 Use. Tenant shall use the Property solely for the purposes of constructing, maintaining and operating the Improvements as a First Class Hotel and Concessionaires.

5.2 Operation of Hotel. Upon the City's issuance of a Certificate of Occupancy for the Improvements and throughout the remainder of the Term of this Lease, the Tenant shall continuously without interruption operate one or two First Class Hotels in the Improvements on the Property, with a cumulative total of 200 to 220 hotel rooms available for rent to the public (collectively, the "**Hotel**"). The Hotel shall not enter into Extended Stay contracts or otherwise permit occupancy of rooms for periods of

more than thirty (30) days. Tenant anticipates that the Hotel may consist of two distinct hotels which share common facilities such as a lobby. Tenant shall have the responsibility, subject to Force Majeure Events, to keep the Hotel and the Property open to the public and operating twenty-four (24) hours per day, seven (7) days per week throughout the term of this Lease, including any extensions hereof, subject to closures (i) following a casualty or condemnation or other loss, (ii) following any environmental release requiring remediation, (iii) if required by law or court order for any reason, (iv) as necessary during any partial or complete renovation of the Hotel, or (v) matters caused by Force Majeure Events. In the event of a closure as set forth above, Tenant shall close only that portion of the Hotel which is necessitated by the causative event, and shall use all reasonable efforts to reopen the Hotel or the closed portion of the Hotel as soon as reasonably possible following any such closure. The Tenant shall provide at its own cost any and all equipment, fixtures, furniture and furnishings necessary for the operation of a First Class Hotel. Tenant shall be responsible for hiring and training all personnel necessary to maintain the Hotel as a First Class Hotel, or shall cause a professional hotel management company to do so. The Hotel shall at all times be operated pursuant to a franchise, management and/or or lease agreement ("**Franchise Agreement**") with a lessee, franchisee, manager and/or licensee ("**Operator**") which has been approved by Landlord in its reasonable discretion, operating under a Hotel Brand approved by Landlord in its reasonable discretion. All Franchise Agreements shall expire or be cancellable upon the expiration or earlier termination of this Lease. In the event Tenant desires to use a different Operator or Hotel Brand than the Operator or Hotel Brand which has been approved by the Landlord, Tenant shall request Landlord's approval of any such alternate Operator or Hotel Brand by written notice to Landlord, which notice shall describe the proposed Operator and/or Hotel Brand and contain detailed information with respect to the qualifications of the proposed Operator and/or Hotel Brand. The Landlord shall reasonably consider such request, taking into consideration the performance of the present hotel operation and the quality and classification of the proposed alternate hotel operation.

5.3 Operation of Restaurant and Concessionaires.

a. Restaurant. Tenant shall operate or cause another entity to operate a restaurant of between two thousand (2,000) and five thousand (5,000) square feet within the Hotel at all times during the operation of the Hotel (the "**Restaurant**"). The Restaurant shall be designed to serve both hotel guests and outside customers, and may be operated as a full service sit-down restaurant, casual dining with counter ordering, or other style of service, and may include alcohol service, takeout and/or delivery service. Prior to commencing the initial operation of the Restaurant, and prior to any proposed changes in the identity or the operation of the Restaurant, Landlord shall approve the identity of the Restaurant and the operator of the Restaurant, which approval shall not be unreasonably withheld or delayed. Tenant shall request Landlord's approval of the Restaurant and its operator, and any changes thereto, by providing written notice to Landlord, which notice shall describe the proposed Restaurant and its operator and contain detailed information describing the Restaurant and the qualifications and financial strength of the proposed Restaurant operator. The Landlord shall reasonably consider such request, taking into consideration the Restaurant concept and its suitability for the Hotel, the

performance of the Restaurant concept in other locations, and the experience and financial strength of the proposed operator. Lessee's Sublease of the approved Restaurant shall be approved by Lessor as provided in Section 13.5 hereof.

b. Concessionaires. Tenant may operate or allow other entities to operate on the Property other businesses and facilities ancillary to the operation of the Hotel (the "**Concessionaires**"). The Concessionaires shall be of similar quality as the Hotel, and may include without limitation such businesses as restaurants and food and beverage service, barber and beauty shops, auto rentals, airline ticket sales counters, and on-command or other movie rentals, internet service connection, health clubs, spas and gift shops.

5.4 Labor Peace Agreement. Prior to the Effective Date of the Lease, and throughout the Term of this Lease, Tenant shall negotiate in good faith towards, shall enter into and shall remain a party to and in full compliance with at least one Labor Peace Agreement with respect to the Hotel.

5.5 CC&Rs. Tenant agrees to join and participate in the Shoreline Business Association, and any organization that is organized, formed or sponsored by Landlord for substantially all businesses in the Shoreline-Marina area to pay for their fair share of maintenance, capital replacement reserves, and/or promotion of the Shoreline area and basin, which could include, without limitation, a property owners' association, business improvement district or other form of organization. The boundaries of the area subject to such organization shall be determined by Landlord or the participants in such organization.

5.6 CFD and Public Financing. Landlord and Tenant shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "**Mello-Roos Act**"). Special taxes derived from the District may be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District. Public area maintenance may include maintenance to public streets, parking lots, park, trail, boat launch, building(s), the harbor basin, and the pedestrian bridge. Such maintenance may be related to hardscape, landscape, and irrigation; lighting; site amenities (picnic tables, bbqs, public art, etc.); stormwater facilities; rodent and pest control; aeration fountains; and riprap. Reserves and capital expenditures may be utilized to make improvements and adaptation for sea level rise, including installation of additional rip rap or a seawall, as well as capital improvements to public areas, such as road replacement, infrastructure upgrades, and amenity replacement. The final scope of the Community Facilities District shall be subject to the Local Goals and Policies and Rate and Method of Apportionment Boundary Map, as adopted by the applicable landowners. The Rate and Method of Apportionment Map shall detail, among other things, how the special tax is levied, maximum special tax rates, and method of apportionment.

Landlord and Tenant shall also cooperate with one another in considering the use of Statewide Communities Infrastructure Program ("SCIP") financing of public improvements and Property Assessed Clean Energy Financing ("PACE") of energy improvements.

5.7 Easements. Tenant agrees that an easement shall be recorded on the Property allowing the public to use certain designated parking spaces located adjacent to Monarch Bay Park, with rights of ingress and egress thereto. The days and hours of public use of such designated parking spaces shall be as determined by the mutual agreement of Landlord and Tenant. Tenant further agrees that an easement shall be recorded on the Property allowing users of the Developer Restaurant Element and the Market Element (as those terms are defined in the DDA) to utilize parking on the Property and to provide for joint access between the parcels.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1 Construction of Improvements. Tenant shall construct the Improvements in accordance with the Scope of Development, and in accordance with all building and other permits that may be issued in connection therewith. Tenant shall submit all construction plans, and commence and complete all construction of the Improvements, and shall satisfy all other obligations and conditions of this Lease, within the times established therefor in the Schedule of Performance and the text of this Lease, subject to Force Majeure Events pursuant to Section 6.1.9 hereof. Once construction of the Improvements is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than ninety (90) days. During the course of construction and prior to issuance of the final TCO for the Improvements, Tenant shall provide monthly reports to Landlord of the progress of construction. The Improvements shall include all of the improvements contained in the approved construction plans and drawings, including without limitation the Hotel, sidewalks, plazas, landscaping, and parking. The construction of the Improvements shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Tenant.

6.1.2 Construction Management Plan. Prior to issuance of permits for construction of the Improvements, Tenant shall submit to Landlord for its approval, which shall not be unreasonably withheld, a Construction Management Plan, which addresses the phasing of construction, construction traffic and delivery of soil and building materials, noise issues, and other related issues. The Construction Management Plan shall include a provision for personnel responsible for receiving and addressing noise and traffic inquiries and complaints from the community.

6.1.3 Landlord's Cooperation in Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Improvements. Such cooperative efforts may include Landlord's joinder in any application

for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord's actual and reasonable third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions) within thirty (30) days after Landlord delivers an itemized statement of costs to Tenant. Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Property and operation and other use of such Improvements on the Property; and that Landlord's duty to cooperate and Landlord's approvals under this Lease do not in any way modify or limit the exercise of Landlord's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.4 Construction Contract. Tenant shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Improvements with a general contractor reasonably acceptable to the City, which general contractor shall be duly licensed in the State and shall have significant experience in organizing and contracting public-private development projects of the type and scale similar to the Project.

6.1.5 Construction Requirements. No development or construction on the Property shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of "as built" plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements.

6.1.6 Compliance with Laws. Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the ADA, Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. The design, construction and operation of the Improvements shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Project and the Shoreline Project. This Lease does not provide Tenant any vested rights to construct the Improvements in accordance with the existing policies, rules and regulations of the City, or to construct the Improvements subject only to the existing conditions of approval which may have been previously approved by the City, except as Tenant may already have obtained vested rights to develop the Improvements in accordance with a Development Agreement between City and Tenant or a vesting tentative map.

6.1.7 Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Tenant and its contractors and subcontractors shall

pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Improvements as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., any applicable federal labor laws and standards, and implementing regulations, and perform all other applicable obligations, including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, and compliance with all regulations and statutory requirements pertaining thereto, all as may be amended from time to time (the "**Prevailing Wage Law**"). Tenant shall periodically, upon request of Landlord, certify to Landlord that, to its knowledge, it is in compliance with the requirements of this paragraph.

Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Landlord and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively. the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Improvements. Tenant's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

6.1.8 Project Labor Agreement. Prior to the Effective Date of the Lease, and throughout the term of construction of the Improvements, Tenant shall negotiate, enter into, remain a party to and comply with at least one Project Labor Agreement with respect to the construction of the Improvements.

6.1.9 Indemnity. Tenant shall indemnify, protect, defend and hold harmless the Landlord and its officers, employees, contractors and agents, with counsel reasonably acceptable to the Landlord, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction, development, and/or operation of the Improvements, results or arises in any way from any of the following: (a) the noncompliance by Tenant with any applicable local, state and/or federal law, including, without limitation, any

applicable federal and/or state labor laws (including, without limitation, the Prevailing Wage Law); (b) Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Tenant to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the construction of the Improvements, as between Landlord and Tenant, Tenant shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 6.1.7, has the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Lease and shall continue after completion of the construction of the Improvements by the Tenant.

6.1.10 Performance and Payment Bonds.

6.1.10.1 Prior to commencement of any construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as obligee and shall be in a form acceptable to the City Attorney. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of contractor's ability to commence and complete construction of the Project in the form of subguard insurance, an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

6.1.11 Force Majeure. Performance by either party hereunder shall not be deemed to be in default, and the time within which a party shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, delays of governmental agencies, changes in local, state or federal laws or regulations, without limitation of Landlord's obligations under this Lease, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, fire, floods, earthquakes, unavoidable casualties, litigation involving this Lease, or bankruptcy, insolvency or defaults of lenders or equity investors. ("**Force Majeure Events**"). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twenty-four (24) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Lease to the

contrary, delays due to inability to obtain financing, recession or other general economic conditions, adverse market conditions, adverse interest rates, and/or the lack of funds or financing to complete the Improvements, shall not constitute Force Majeure Events; provided that Landlord may approve extensions of time for such reasons upon the request of Tenant, in Tenant's sole discretion.

6.2 Fixtures and Equipment. In constructing the Improvements upon the Property, Tenant and its Subtenants may place or install in the Project such trade fixtures and equipment as Tenant or its Subtenants shall deem reasonably desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its Subtenants placed by Tenant or its Subtenants on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its Subtenants at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or Subtenants do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within thirty (30) days following the end of the Term, Landlord may as its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord. For purposes of this Lease, the personal property, trade fixtures and equipment described in this Section 6.2 shall not include those major building components or fixtures necessary for operation of the basic building systems such as, but not limited to, the elevators, plumbing, sanitary fixtures, lighting fixtures, electrical fixtures, and the heating and central air-cooling systems.

6.3 Mechanics and Labor Liens. Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens, asserted by reason of contracts made by Tenant, to stand against the Landlord's fee interest in the Property, to Landlord's fee simple estate in reversion of the Improvements, nor against Tenant's leasehold interest therein for Work or labor done, services performed, or material used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or Subtenants. Tenant shall cause any such claim of lien to be fully discharged within (30) days after the date of filing thereof, provided, however, that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall post an undertaking as may be required or permitted by law

or is otherwise sufficient to prevent the lien, claim of encumbrance from attaching to the fee interest in the Property. Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation results therefrom, discharges said lien. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Property, Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws. Landlord shall have the right at all reasonable times and places after at least ten (10) days advance notice to post, and as appropriate to keep posted, any notices on the Property which Landlord may deem reasonably necessary for the protection of Landlord's interest in the Property from mechanic's liens or other claims. Tenant shall give Landlord at least ten (10) days prior written notice of the commencement of any work to be done upon the Property under this Section, in order to enable Landlord to post such notices. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO MECHANICS' OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.

6.4 Development Rights. Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay).

6.5 Hold Harmless. Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind of description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to be the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall

require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or Improvements shall be acquired as required by applicable laws, ordinances or regulations including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Term of this Lease, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein (but excluding personal property and trade fixtures which Tenant is permitted by Section 6.2 to remove from the Improvements) shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, upon expiration or termination of this Lease, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Thirty (30) days prior to the expiration of the Term, Tenant shall deliver copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Subject to each and all of the terms and conditions listed in Paragraphs (a) – (d) below, Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon, and to refinance such mortgages, pledges and assignments, by way of one or more "Leasehold Mortgages" (as that term is defined below) (which may be of different priority and exist at the same time), and any and all collateral security agreements

from time to time required by the holder of a Leasehold Mortgage (a "**Leasehold Mortgagee**"), including collateral assignments of this Lease, any Subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Leasehold Mortgage" below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more "Mezzanine Loans" as defined below, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Mezzanine Loan" below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined is sometimes referred to herein as a "Security Instrument", and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a "Lender". In no event shall the fee interest of Landlord in the Property, residual interest of Landlord in the Improvements, or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

(a) Prior to the issuance of a TCO, Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited in purpose to and the principal amount of all such Leasehold Mortgages and Mezzanine Loans shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, and operation of the Improvements.

(b) After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of the fair market rental value of the Property (land) and the value of Tenant's fee ownership of the Improvements; provided, that such requirement shall not result in a default with respect to any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO, nor shall such requirement prohibit Tenant from refinancing any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of a TCO as long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO and Tenant does not receive a payment of net proceeds from the refinancing. After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of eighty-five percent (85%) of the fair market value of the Project, determined at the time the loan is made, and, for any refinancing which occurs after the third anniversary of the TCO, Tenant shall also be required to maintain no less than a 1.20 debt coverage ratio for the refinancing of the Project Improvements. For construction financing, permanent financing, or any later financing, Tenant shall have the right, without obtaining Landlord's consent, to assign or pledge Tenant's interest under this Lease and in the Property and Improvements, as security to any lender or such lender's successors or assigns (collectively, "Lender") who has advanced funds to Tenant pursuant to a promissory note and/or other agreement ("Note") secured by a deed of trust or mortgage (collectively, "Trust Deed"). Tenant shall notify Landlord thirty (30) days prior to refinancing any Leasehold Mortgage or Mezzanine Loan if the principal amount of

such refinancing will exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage and Mezzanine Loan, and/or if Tenant will receive a payment of net proceeds from the refinancing, and shall provide Landlord a copy of loan documents for the proposed Leasehold Mortgage or Mezzanine Loan. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the value of Tenant's leasehold interest in the Property and the value of the Improvements, and to review and approve any Leasehold Mortgage or Mezzanine Loan and related loan documents that require Landlord's approval, which approval shall not be unreasonably withheld or delayed, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys. Notwithstanding the foregoing, for the period from the Effective Date until the third anniversary of the TCO, a Lender may increase the amount of its original loan to Borrower to an amount in excess of the limitations set forth above, without Landlord's consent, if the additional advances are used to pay liens against the Tenant's interest in the Property and Improvements, or costs incurred in connection with the construction of the Improvements or operation of the Hotel.

(c) Any permitted Leasehold Mortgages and Mezzanine Loans entered into by Tenant are to be originated only by Institutional Investors (as defined in Section 7.3 hereof) approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Leasehold Mortgagee or Mezzanine Lender shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage or Mezzanine Loan.

7.2 Notice to Landlord.

7.2.1 If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "Recognized Leasehold Mortgagee." The most senior recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees, shall be referred to in this Lease, and be entitled to the rights of, the "**Senior Recognized Leasehold Mortgagee**;" and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the "**Senior Recognized Leasehold Mortgage**," provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most Senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with

such notice furnishes to Landlord a copy of the applicable Security Instrument shall be deemed a "**Recognized Mezzanine Lender**". Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a "**Recognized Lender**". The most senior Recognized Mezzanine Lender from time to time, based upon such notices from such Recognized Mezzanine Lender or a notice from the Senior Recognized Mezzanine Lender designating another Recognized Lender as the "**Senior Recognized Mezzanine Lender**", shall so long as the Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the "**Senior Recognized Mezzanine Lender**". The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the "**Senior Recognized Lenders**."

7.2.2 In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner; provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.3 Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1. above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.4 Tenant and each Recognized Lender shall give Landlord written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender's rights hereunder in any manner whatsoever.

7.3 Definitions.

7.3.1 The term "**Institutional Investor**" as used in Section 7 shall refer to any entity with assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made, and which is a (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing, or (ix) such other lender as may be approved by Landlord in writing in advance, which approval shall not be unreasonably withheld. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2 The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3 The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4 The term "Mezzanine Loan" means one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the "**Mezzanine Loan Requirements**"): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Investor (each a "**Mezzanine Lender**"); (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Senior Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided, however, that nothing in this Section 7.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1 Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord's intent to so terminate this Lease (a "**Default Notice**") at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination (as such time period may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or sixty (60) day period (each such period a "**Termination Notice Period**"), any Senior Recognized Lender shall:

7.6.1.1 notify Landlord of such Senior Recognized Lender's desire to nullify such notice;

7.6.1.2 pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and

7.6.1.3 comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with by such Senior Recognized Lender within the notice period, provided, however, (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender's initial cure period shall commence upon the later of the end of Tenant's cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and (ii) provided, further, that such Senior Recognized Lender shall not be required during such sixty (60) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

7.6.1.4 Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notice of a change of Senior Recognized Lender ownership has been given to Landlord pursuant

to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1 If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice shall be extended for a period of sixty (60) days, provided that such Senior Recognized Lender shall during such sixty (60) day period:

7.7.2 Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant' s interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

7.7.3 If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.4 If at the end of such sixty (60) day period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the Term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, and this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.5 If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring

the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.6 For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however, that following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1), Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.7 If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.8 Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within sixty (60) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, or if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section 7.6.1, Landlord shall provide each Senior Recognized Lender with written notice that this Lease has been terminated ("**Notice of Termination**"), together with a statement of all sums which would at that time be due under this Lease, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("**New Lease**") of the Property with the Senior Recognized Lender for the remainder of the Term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1 Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2 Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3 Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord' s Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4 If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a New Lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5 Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such New Lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the New Lease simultaneously with the delivery of such New Lease.

7.8.6 The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7 In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Senior Recognized Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefor, issued by a responsible title insurance company doing business within the State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including, but not limited to, the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of and agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such

interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

7.13 Legal Proceedings. Landlord shall give each Recognized Lender prompt notice of the commencement of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Recognized Lenders not intervening after receipt of notice of the proceedings. In addition to the notice requirements in Section 7.2.4, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.

7.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 Estoppel Certificate. Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord' s fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E

stating to the best of such person' s knowledge after a commercially reasonable inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

7.16 Notices. Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above, and those from each Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.

7.17 Erroneous Payments. No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided the Recognized Lender shall have made demand therefor not later than one year after the date of its payment.

7.18 Amendment of Lease. Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.

7.19 Certain Tenant Rights. The right, if any, of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel this Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and any exercise of the foregoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat this Lease as terminated in the event of

the Landlord' s bankruptcy; any such rights are limited to those provided under the terms of this Lease and applicable law.

7.20 Limitation on Liability. Notwithstanding anything to the contrary in this Lease, no Recognized Lender or its assigns shall have any liability under this Lease beyond its interest in this Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to, Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Base Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1 Tenant shall indemnify, defend and save harmless Landlord and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "**Indemnitees**") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Tenant, its Subtenants, invitees, agents, employees, guests, customers, licensees or permittees, except as may arise solely out of the willful or grossly negligent act of the Indemnitees. Landlord and Tenant agree that this provision shall not require Tenant to indemnify, defend and save the Indemnitees harmless from the Indemnitees' gross negligence or willful misconduct, if any.

8.1.2 All provisions of this Lease pursuant to which the Tenant agrees to indemnify the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages caused by or resulting from the sole negligence of the Indemnitees. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3 Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date during the Term of this Lease. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without

limiting the foregoing, neither Landlord nor any of the Indemnitees shall be liable for and, except as otherwise provided in Section 11.1.1, there shall be no abatement of Base Rent for, (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California, with an A.M. Bests' rating of no less than A:VII, reasonably satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1 Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars ($5,000,000) each occurrence; Ten Million Dollars ($10,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2 Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3 Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars ($1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8.1 below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4 Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5 Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6 Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Property, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1 Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2 Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord, except after thirty (30) days

prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3 Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4 Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

8.4.5 Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

8.4.6 Be provided by insurance carriers with an A.M. Best rating of not less than A:VII.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.11 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 Proceeds. All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be paid over to Tenant.

9. REPAIRS AND MAINTENANCE

9.1 Acceptance of Property. EXCEPT AS OTHERWISE PROVIDED HEREIN, TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS, WHERE IS, IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 Tenant's Maintenance Obligations. During the Term hereof, Tenant agrees to keep and maintain the Improvements and the Property, and every part thereof, including without limitation, all buildings, all exterior facades, all sidewalks, all exterior areas, any appurtenances and fixtures, the structural elements of the buildings, all parking facilities, roofs, walls, plumbing, heating, ventilation, air conditioning, plazas, and landscaping, at Tenant's sole cost and expense, in good repair, in a neat, clean, safe, and orderly condition, in accordance with the standard of maintenance of prudent owners of high quality, First Class Hotels within the East Bay Area region, in accordance with any property improvement plan required by any Franchise Agreement or lender, and in compliance with in conformity with the City Municipal Code and all applicable laws. Tenant agrees to perform all day-to-day maintenance, repairs and replacements reasonably necessary to maintain and preserve the Improvements and the Property, and to provide administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are reasonably necessary for the maintenance of the Improvements. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Property. Tenant hereby waives all rights to make repairs or to cause any work to be performed at the expense of Landlord as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

9.3 Landlord's Inspections. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof. Landlord may, after reasonable advance notice, enter upon the Property, or any portion thereof, from time to time, solely for the purpose of inspecting the Property or a suspected breach of this Lease by Tenant that reasonably requires entry upon the Property. In so doing, Landlord shall use reasonable efforts to minimize disruption to Tenant or its Subtenants. Landlord shall not be liable to Tenant or its Subtenants, or any person or entity claiming through Tenant or its Subtenants, or to the occupant of any portion of the Property for any loss, damage or harm arising out of Landlord's exercise of the rights of entry reserved herein, except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors, officers or employees.

9.4 Landlord's Repairs. If Tenant fails to make repairs or replacements as required in this Lease and such failure has a material adverse impact on the operation of the Property, after the expiration of any applicable notice and cure period, Landlord may once again notify Tenant of said failure in writing, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 9.4 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH THIRTY (30) DAY PERIOD AND DILIGENTLY PROSECUTED THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 9.4 OF THE LEASE." If Tenant then fails to make the repairs or replacements or commence the repairs or replacements as provided above, within such

ten (10) business day period, Landlord may make such repairs and replacements at Tenant's expense. Tenant shall reimburse Landlord for the actual and reasonable costs thereof within thirty (30) days after Landlord's notice specifying such costs together with a written invoice therefor. Such costs may include, without limitation, the reasonably necessary cost of design, labor, material, equipment, the value of services provided by Landlord's employees in the actual performance of the repairs and replacements, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Landlord. If Landlord makes such repairs or replacements, Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, loss or liability of any kind arising out of or connected in any way with such work, including, but not limited to claims by Tenant, its officers, employees, agents, Subtenants and the patrons or visitors of Tenant or its Subtenants except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors and employees.

9.5 Capital Reinvestment. Tenant shall perform the work set forth on the Minimum Rehabilitation and Replacement Work attached hereto as Exhibit J, within the times set forth therein; provided that if the Franchise Agreement for the Hotel requires that such work be performed at different time periods, the timing requirements of the Franchise Agreement shall control. In addition, Tenant shall annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for rehabilitation of the Improvements ("**Rehabilitation Plan**"). Each Rehabilitation Plan shall describe what work is necessary to maintain the structural integrity of the Improvements, and keep the Improvements in a commercially reasonable condition which is sufficient to operate a First Class Hotel therein, and shall set forth a detailed program of expenditures to be undertaken by Tenant within such five year period, broken down by Lease Year. Tenant shall perform the work set forth in each approved Rehabilitation Plan within the times set forth therein. During the 14th and 24th Lease Years, and every five years thereafter, Tenant shall obtain a structural analysis of the Improvements from a licensed structural engineer, and shall incorporate the findings and recommendations of each such structural analysis in the Rehabilitation Plan. Tenant shall also annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for renovation and replacement of furniture, fixtures and equipment ("**FFR Plan**"). Each FFR Plan shall determine what furniture, fixtures and equipment are necessary to maintain the Hotel as a First Class Hotel, and shall set forth a detailed program of expenditures for furniture, fixtures and equipment broken down by calendar year. Tenant shall perform the renovation and replacement set forth in each approved FFR Plan within the times set forth therein.

9.6 Reserve Account. Tenant shall establish and maintain a capital reserve account at all times during the Term of the Lease ("**Reserve Account**"). The funds to be placed and maintained in the Reserve Account during the first Lease Year shall be not less than Two Percent (2%) of projected Total Gross Receipts for the first (1st) Lease Year. The funds to be placed and maintained in the Reserve Account during the second (2nd) Lease Year shall be not less than Three Percent (3%) of actual Total Gross Receipts for the first Lease Year. The funds to be placed and maintained in the Reserve Account during the third (3rd) Lease Year and all subsequent Lease Years

shall be not less than Four Percent (4%) of actual Total Gross Receipts for the preceding Lease Year. Notwithstanding the foregoing, if the lender or the Franchise Agreement for the Hotel requires a larger minimum deposit into the Reserve Account, Tenant shall maintain such larger required amount in the Reserve Account. The funds in the Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Project fixtures and equipment in accordance with the current approved Rehabilitation Plan and FFR Plan, and capital repairs to and replacement of the Project with a long useful life and which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Reserve Account does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Tenant shall submit to Landlord an accounting for the Reserve Account.

9.7 Condition at End of Lease. Upon vacating the Property at the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and cleanliness required to be maintained by Tenant during the Term of this Lease, wear and tear and casualty excepted, and shall peaceably surrender the same to Landlord. On the date Tenant is required by this section to surrender possession, Tenant shall deliver to Landlord such proper and executed instruments in recordable form, releasing, quitclaiming and conveying to Landlord all right, title and interest of Tenant and any other party claiming by or through Tenant or Tenant's Estate in and to the Property and/or the Improvements, including, without limitation, such documents necessary for Landlord to demonstrate to a title company that this Lease no longer encumbers the Property and Improvements, and that title to the Improvements shall have vested in Landlord, free and clear of all liens, encumbrances or title exceptions, other than the Permitted Title Exceptions, exceptions to title not otherwise created by or through Tenant, and title exceptions approved by Landlord in writing. All provisions of this section shall survive any termination of this Lease.

10. QUIET POSSESSION

10.1 Quiet and Peaceful Possession. Landlord covenants that it is has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of 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 Property by Tenant, Tenant shall have quiet and peaceful possession of the Property during the entire Term of this Lease. However, except as provided in this Lease, Landlord shall in no event be liable in damages 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 gross negligence or willful misconduct of

Landlord or its officers, agents or employees, in violation of its obligations under this Lease.

10.2 Other Activities in Shoreline Marina Area. Tenant acknowledges that from time to time during the term of this Lease, and at such times and intervals as may be determined by Landlord in its reasonable discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by the authority of Landlord within the Shoreline Marina area. Landlord agrees that such activities shall be performed during such hours and durations that are reasonable for such activities. Tenant acknowledges that said activities and related operations may be necessary and for the benefit of Tenant, its Subtenants, its guests and customers, other tenants and the public, and that the conduct of such activities shall not be deemed to have disturbed or interfered with the possession and use of the Property by Tenant or anyone claiming under Tenant, or to have caused Tenant to be evicted, either actually or constructively, from the Property, and shall, under no circumstances, entitle Tenant or others claiming under or through Tenant to claim or recover incidental or consequential damages from Landlord on account of such activities.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) Tenant's Duty to Restore. Subject to Section 11.1(b) below, if any Improvements are damaged by fire, other peril or any other cause during the Lease Term, then Tenant, at its sole cost and expense, shall, within three (3) years after the date of casualty, or such shorter period of time as is reasonably necessary for the restoration (subject to delays caused by Force Majeure Events), restore the Leasehold Improvements in compliance with and to the extent permitted by all then applicable laws and this Lease shall remain in full force and effect, without abatement of Base Rent or other charges, except to the extent of rental loss insurance proceeds paid to Landlord. All insurance proceeds payable as a result of such casualty shall be applied in the following order of priority:

i. First, as provided by any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

ii. Second, to Tenant for the payment of all costs and expenses to complete the restoration of the Improvements required of Tenant pursuant to this subsection; and

iii. Third, the remainder of insurance proceeds, if any, shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (ii) above shall be deemed to be held in trust for the benefit of Landlord and Tenant by the recipient for the purpose of restoration of the Improvements

(b) Tenant's Termination Rights. Notwithstanding anything to the contrary in this Lease:

(i) Election Not to Reconstruct. If an Uninsurable Loss in excess of the Restoration Amount or any Late Term Extensive Damage occurs, then Tenant, by delivery of written notice to Landlord within six (6) months after the occurrence of the damage, may elect not to reconstruct the Improvements, in which case Tenant, at its sole cost, shall remove all debris; restore the Property to a safe condition in compliance with all applicable laws; and maintain such Improvements which are not damaged in the condition required by this Lease. Following such election, this Lease shall continue to remain in full force and effect, without abatement of Base Rent or other charges. Tenant's failure to make an election in writing within six (6) months after the date of the occurrence of the damage shall constitute Tenant's affirmative election not to restore the damaged Improvements pursuant to Section 11.1(a) above. All insurance proceeds payable as a result of such casualty with regard to Late Term Extensive Damage which Tenant elects not to reconstruct as provided hereinabove shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to Tenant for the payment of all costs and expenses to complete the demolitions and/or restorations required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all Rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (B) above shall be deemed to be held in trust for the purposes and uses described therein.

Notwithstanding the foregoing, Tenant shall be responsible for repairing any damage to Improvements caused by an Uninsurable Loss if the Uninsurable Loss is less than the Restoration Amount.

(c) Infeasibility. Notwithstanding Section 11.1(a), if reconstruction of the Improvements following any casualty is physically infeasible because of physical conditions of the Property, or if the City or any other governmental authority cannot legally grant the permits and approvals for repair or restoration of the Improvements so that the Hotel shall continue to have not less than the original number of guest rooms, plus facilities substantially equivalent to those existing prior to the casualty and reasonably desirable for the reconstructed Hotel taking into consideration any reduction in guest rooms, and in any case sufficient to maintain the Hotel operating standards set forth herein (the "**Minimum Restoration Level**"), then Tenant may terminate this Lease as of the date set forth in its written notice to Landlord so stating. If the City or any governmental authority can legally grant permits and approvals for repair and restoration of the Leasehold Improvements so that the total capacity of the Hotel after restoration will be at least the Minimum Restoration Level but less than the total capacity of the Hotel originally approved by the City land use entitlements, then Minimum Ground Rent shall thereafter be reduced to reflect the number of guest rooms in the Hotel. Landlord shall cooperate with Tenant and use good faith efforts to have permits and approvals for repair granted for the highest

number of hotel guest rooms legally available, up to the guest rooms originally approved by the City land use entitlements, but Landlord shall have the right to require that the Improvements contain the amenities required by this Lease, subject to reduction in size and/or capacity as specified in this Section 11.1(c). If Tenant elects to terminate this Lease pursuant to this section, Tenant, at its sole cost, shall, prior to the effective date of the termination remove all debris from the Property, restore any Improvements not removed, remove all safety hazards from the Property and restore the Property to a safe condition in compliance with all applicable laws. Subject to Tenant's completion of its obligations in the immediately preceding sentence, upon the termination date set forth in Tenant's written notice to Landlord of its election to terminate: (i) all Minimum Ground Rent and other sums due pursuant to this Lease shall be prorated as of the date of termination and paid by Tenant; (ii) this Lease shall expire and terminate; and (iii) neither Landlord nor Tenant shall have any further obligations hereunder, except for those obligations which have accrued prior to the date of termination or which are intended to survive termination of the Lease. All insurance proceeds payable as a result of such damage and Tenant's election to terminate shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to the payment of all expenses incurred by Tenant in completing the demolition and/or restoration required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

(d) General Provisions. Landlord shall not be required to repair any injury or damage to the Improvements on the Property. Landlord and Tenant hereby waive the provisions of (i) Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of Law from time to time in effect during the term of this Lease and relating to the effect on leases of partial or total destruction of leased premises; and (ii) Sections 1941 and 1942 of the Civil Code, providing for repairs to and of the Property. Landlord and Tenant agree that their respective rights upon any damage or destruction of the Improvements shall be those specifically set forth in this Article 11.

12. CONDEMNATION

12.1 Definitions. As used in this Article, the following words have following meanings:

12.1.1 "**Award**" means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

12.1.2 "**Taking**" means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary

transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

12.1.3 "**Taking Date**": means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

12.1.4 "**Total Taking**": means the taking of the title to all of the Property and the Tenant's Estate.

12.1.5 "**Substantial Taking**" means the Taking of the fee title to a portion of the Property or title to Tenant's Estate, or both, if one or more of the following conditions result:

12.1.5.1 the portion of the Property and/or Tenant's Estate not so taken cannot be repaired or reconstructed, as to constitute a Hotel capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

12.1.5.2 such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

12.1.5.3 the cost of repairing or replacing the Improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

12.1.6 "**Partial Taking**" means any Taking of title that is not either a Total or a Substantial Taking.

12.1.7 "**Notice of Intended Taking**" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives a Notice of Intended Taking, notify Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i)

Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of Improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment and Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the present value of Tenant's Estate, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of Tenant's Estate shall take into account and shall be determined subject to any permitted Subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property as Tenant deems appropriate so as to make them an operable whole to the extent allowed by governmental laws and restrictions.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than three (3) months, (i) this Lease shall continue in full force and effect, (ii) Tenant shall continue to comply with Tenant's obligations

under this Lease not rendered physically impossible by such Taking, (iii) neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and (iv) Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such three (3) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1 The party receiving any notice of the following kinds shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) Notice of an intended Taking; (b) Service of any legal process relating to condemnation of the Property or the Improvements; (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2 The party receiving any notice, Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, Landlord, Tenant and any Leasehold Mortgagee shall attempt to agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFERS

13.1 No Transfer Without Landlord's Consent. The qualifications and identity of Tenant are of particular concern to Landlord. It is because of those qualifications and identity that Landlord has entered into this Lease with Tenant. Except as otherwise provided below, during the Term of this Lease, (a) no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, (b)

Tenant shall not make any total or partial sale, transfer, conveyance, assignment, Sublease, or subdivision of the whole or any part of the Property or the Improvements thereon (excluding deeds of trusts and mortgages), and (c) there shall not be a change in the controlling interest of Tenant, without the prior written approval of Landlord, except as expressly permitted below. Prior to Stabilization (as herein defined), Landlord may disapprove a request for a Transfer in its sole and absolute discretion except as expressly permitted below. For purposes hereof, **"**Stabilization**"** means the point at which the Hotel has reached sixty-five percent (65%) average monthly occupancy for three consecutive one-month periods. After Stabilization, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Tenant's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to finance the Transfer and operate and manage a project of this size, in sufficient detail to enable Landlord to evaluate the proposed transferee pursuant to the criteria set forth in this Section 13.1 and as reasonably determined by Landlord. Landlord shall evaluate each proposed transferee on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 13.1 applies, which Landlord reasonably determines does not possess these qualifications. Notwithstanding any provision in this Section 13 to the contrary, in no event shall Tenant make any Transfer which would or could likely be effective beyond the Term (including extensions thereof) without the prior written consent of the Landlord. A Sublease or an assignment and assumption agreement in form reasonably satisfactory to Landlord shall also be required for all proposed Transfers. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease, provided that the assigning Tenant shall retain all indemnification obligations pursuant to this Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, **"**Permitted Transferee**"** means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Tenant's obligations under this Lease following completion of the Project, and (ii) that possesses the financial resources typical of owners of similar projects.

13.2 Definition of Transfer. For purposes of this Lease, **"Transfer"** means any sale, lease, Sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord's consent, (ii) Affiliate Transfers, (iii) Leasehold Mortgages, and (iv) Subleases (as defined in Section 13.5 hereof).

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1 the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.3 a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as security for a Mezzanine Loan; or

13.3.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the- counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Effective Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.6 any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1 Tenant shall give Landlord ninety (90) days prior written notice of the proposed Transfer setting forth therein (i) the identity of the proposed transferee; and (ii) the proposed transferee's proposed use of the Property (the "**Transfer Request**"). Within thirty (30) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within thirty (30) days of the receipt of the Transfer Request, Tenant may provide Landlord a second Transfer Request notice which states in bold that Landlord's failure to approve or disapprove the proposed transfer within fifteen (15) days of the date of receipt of the second Transfer Request notice will result in the proposed

transfer being deemed approved by Landlord. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the second Transfer Request notice, Landlord shall be deemed to have approved the proposed Transfer.

13.4.2 The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord, which shall be in the form of a Sublease when the Permitted Transferee is a Subtenant. Upon consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer, which shall be in the form of a memorandum of Sublease when the Permitted Transferee is a Subtenant.

13.4.3 Tenant shall pay Landlord Participation Rent in the amount of two percent (2%) of the Gross Sales Proceeds of such Transfer pursuant to Section 13.6 hereof, concurrently with the closing of such Transfer.

13.4.4 No uncured Default shall exist hereunder on the date of Transfer.

13.5 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.5.1 Subleases for the Restaurant shall require the prior approval of the Landlord. Prior to requesting Landlord approval of a proposed Sublease, Tenant shall submit to Landlord information regarding the relevant experience and financial condition of the proposed subtenants and its personnel. Landlord's approval shall not unreasonably be withheld or delayed, and shall be based upon such factors as the relevant experience and financial condition of the proposed subtenants and its personnel. Subleases for Concessionaires within the Hotel (other than the Restaurant) shall not require prior approval of the Landlord.

13.5.2 Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the Subtenant to attorn to Landlord upon a Default by Tenant hereunder and notice to Subtenant that Tenant has defaulted under this Lease and Subtenant is instructed to make Subtenant's rental payments to Landlord.

13.5.3 Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the Subtenant to take no action in contravention of the terms of this Lease.

13.5.4 Each Sublease is of a duration not greater than the Term of this Lease.

13.5.5 Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such Subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.5.6 Each Sublease shall contain reasonable rules and regulations concerning prohibited uses of the Subleased premises.

13.6 Participation Rent from Transfer Proceeds. Upon any sale, transfer or assignment of any portion of Tenant's interest in this Lease or the Property to a third party or third parties (except for Subleases), Landlord shall receive **"Participation Rent"** in the amount of two percent (2%) of **"Gross Sales Proceeds"** of all such sales, transfers and assignments retroactively. "Gross Sales Proceeds" means the gross consideration received by the transferor or any affiliate as a result of a transfer, without deductions for costs or expenses relating to the sale, transfer or assignment. Notwithstanding anything to the contrary contained herein, Participation Rent will not be due and owing for (i) financing or refinancing or equity financing and any foreclosure or deed in lieu of foreclosure in connection with any financing, refinancing or equity financing, (ii) any "key money" contribution or similar payment by a hotel operator, or (iii) the direct or indirect sale of assets, merger, consolidation or upper tier transfers of interests in a parent or affiliate which owns directly or indirectly, an interest in Tenant or any entity holding an interest in the Lease, so long as there is no payment or distribution of consideration in connection with such transaction. An example of Participation Rent calculations is set forth in Exhibit H attached hereto.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. [DELETED]

15. INSOLVENCY

15.1 Landlord's Remedies. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. DEFAULT

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (each, a "**Default**") under this Lease:

16.1.1 Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) days after written notice of such default has been received by Tenant; or

16.1.2 Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been received by Tenant. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith and with reasonable diligence prosecutes the cure of such default to completion.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1 Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2 Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been earned under this Lease after such termination up to the date of such award (if this Lease were

not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom (including, but not limited to those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amounts referred to above shall be determined in accordance with Civil Code Section 1951.2(b) or successor statute.

16.3.3 Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1, unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

16.4 Costs. If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

16.5 Cumulative Remedies. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. A party's liability for damages under this Lease shall be limited to actual damages sustained and shall not include any consequential, indirect or punitive damages.

16.6 Waiver of Default. No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.

16.7 Landlord Default and Tenant Remedies. Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "**Landlord Default**": (a) if such failure can reasonably be cured within thirty (30) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such thirty (30) day period; or (b) if such failure cannot reasonably be cured within said thirty (30) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

17. LANDLORD MAY INSPECT THE PROPERTY

17.1 Advance Notice for Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

18.1 Terms Upon Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to One Hundred Fifty Percent (150%) of the amount of Base Rent due for the last month of the term of this Lease.

19. NOTICES

19.1 Address for Notices. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect

to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service, provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

[Entity Name – Monarch Bay Hotel, LLC]
11755 Wilshire Blvd., Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copy to:

Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

And the address of Landlord is:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copy to:
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

20. SUCCESSORS

20.1 Binding on Successors and Assigns. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

21.1 Rights Upon Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Nondiscrimination. Tenant covenants by and for itself and any successors in interest, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease,

sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, Subtenants, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

22.2 Compliance with Law. Tenant agrees, at its sole cost and expense, to itself comply, and to use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements, with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities pertaining to the Property and the Improvements, as well as operations conducted thereon, and to faithfully observe and use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements with, in the use of the Property and the Improvements with all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, Tenant shall use good faith efforts to prevent Concessionaires and Subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by Concessionaires and Subtenants of the Property and Improvements. The judgment of any court of competent jurisdiction, or the admission of Tenant or any Concessionaire, Subtenant or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that the Concessionaire, Subtenant or permittee has violated any such ordinance or statute in the use of the Property or the Improvements shall be conclusive of that fact as between Landlord and Tenant, or such Concessionaire, Subtenant or permittee.

22.3 Conflict of Interest. No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or

given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

22.4 Further Actions and Instruments; City Manager Authority. Each of the parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Lease and the satisfaction of the conditions of this Lease. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Lease to carry out the intent and to fulfill the provisions of this Lease or to evidence or consummate the transactions contemplated by this Lease. Landlord hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Lease on behalf of the Landlord so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Landlord as specified herein, or reduce the revenue earned or to be earned by Landlord, as may be necessary or proper to satisfy the purpose and intent of this Lease. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Landlord to do so. The City Manager may delegate some or all of his or her powers and duties under this Lease to one or more management level employees of the City.

22.5 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.6 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.

22.7 Extensions of Time. Times of performance under this Lease may be extended in writing by the mutual agreement of Landlord and Tenant, as applicable. The City Manager (or designee) shall have the authority in his or her sole and absolute discretion on behalf of Landlord to approve extensions of time not to exceed a cumulative total of ninety (90) days.

22.8 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.

22.9 Cumulative Remedies. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

22.10 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.

22.11 Reimbursement to Landlord. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.

22.12 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid. Specifically, without limitation, this Lease supersedes the DDA with respect to the terms and conditions of the Landlord's ground lease of the Property to the Tenant. In the event of any inconsistency between the terms and conditions of this Lease and the terms and conditions of the DDA with respect to the Property, the terms and conditions of this Lease shall prevail.

22.13 Escalation. The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Effective Date and every tenth (10th) anniversary date thereafter ("**Anniversary Date**") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.

22.14 Language. The word "Tenant" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.

22.15 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.16 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.17 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.18 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.19 Survival. All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.20 Recordation. A memorandum of lease in the form attached hereto as Exhibit D shall be promptly executed and acknowledged by the Parties and recorded by Tenant in the county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.21 Net Lease

22.21.1 No Liability for Landlord Taxes. Nothing herein contained shall be construed so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

22.21.2 No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.22 Limitation of Liability. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach

or default by Landlord) do not constitute personal obligations of the individual officers or employees of Landlord, and Tenant shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its officers, employees, contractors, consultants, attorneys, volunteers, or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief, or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease except as specifically provided herein. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to punitive, consequential or special damages arising out of or relating to this Lease, including, but not limited to, punitive, consequential or special damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

22.23 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substances" means all of the following:

23.1.1 Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste" or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("**CERCLA**"); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("**RCRA**"); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or

common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

23.1.2 any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

23.1.3 Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

23.1.4 Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

23.1.5 Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

23.2 The term **"Hazardous Substances**" shall include the following **"Permitted Hazardous Substances:"** all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by Subtenants under Subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

23.3 "Environmental Law(s)" means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.4 Environmental Inspections. Tenant has had an opportunity, prior to the Effective Date of this Lease, to engage its own environmental consultant to make such investigations of the Property as Tenant has deemed necessary, and Tenant has approved the environmental condition of the Property.

23.5 Presence and Use of Hazardous Substances. Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its Subtenants and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its Subtenants and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.6 Cleanup Costs, Default and Indemnification.

23.6.1 Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

23.6.2 Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord (as well as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

23.6.3 Upon and after the Commencement Date of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, which release, use, generation, discharge, storage or disposal occurs after the Commencement Date, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property, which use, generation, release, discharge, storage, disposal or transportation occurs after the Commencement Date, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Landlord, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Tenant's obligations under this Section 23.6 shall survive the expiration of this Lease.

23.7 Duty to Prevent Hazardous Materials Contamination. Tenant shall take all commercially reasonable precautions to prevent the release of any Hazardous

Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

23.8 Right of Entry. Notwithstanding any other term or provision of this Lease, in the event Landlord in good faith has reason to believe that a violation of applicable Governmental Regulations as determined by a final non-appeal order, with respect to Hazardous Materials on the Property Tenant shall, subject to the rights of Subtenants, permit Landlord or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials and Hazardous Materials Contamination in violation of Governmental Requirements as determined by a final non-appealable order on or affecting the Property, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials Contamination when Tenant has failed to do so after notice from Landlord and an opportunity to cure such deficiency, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 23 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) BUSINESS DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) BUSINESS DAY PERIOD AND DILIGENTLY PROSECUTE THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 23 OF THE LEASE." All actual third party costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and Subtenants and to minimize interference with the day to day operation of the Property in exercising its rights under this Section 23.

23.9 Environmental Inquiries. Tenant shall notify Landlord, and provide to Landlord a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Tenant shall, as soon as reasonably possible after the release, furnish to Landlord a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Landlord, Tenant shall furnish to Landlord a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and

reports including, without limitation, those reports and other matters which may be characterized as confidential

23.10 Storage or Handling of Hazardous Materials. Tenant, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its Concessionaires and Subtenants to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Tenant and/or any of its Concessionaires and Subtenants will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Tenant shall promptly notify Landlord in writing. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Landlord in its reasonable good faith judgment, Landlord may require Tenant, at Tenant's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property in violation of Governmental Requirements. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Landlord, in Landlord's reasonable good faith discretion. Tenant's obligations hereunder shall survive the termination of this Lease.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

24.1 Warranty of No Brokers. Landlord and Tenant each represents and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction. Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by Landlord and Tenant. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration or other termination of this Lease, and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

LANDLORD:

CITY OF SAN LEANDRO
a California charter city

By: _____
Jeff Kay
City Manager

ATTEST:

_____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity – Monarch Bay Hotel LLC]

By: _____
Edward J. Miller
Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a political corporation, recorded on November 22, 1960 in Reel 211 at Image 738, Official Records of said County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;
Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34’02” West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46’01”, for an arc length of 26.95 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 55°45’39” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southwesterly along said curve, through a central angle of 51°03’40”, for an arc length of 24.95 feet;
- South 85°26’24” West, 51.31 feet to the TRUE POINT OF BEGINNING of this description;

Thence leaving said point the following courses and distances:

- South 85°26’24” West 407.42 feet;
- North 04°25’13” West, 176.84 feet;
- South 85°26’24” West, 113.80 feet;
- North 04°25’13” West, 0.20 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 180.00 feet, with a radial line that bears South 57°29’56” East;

- Northerly along said curve, through a central angle of 36°55’17”, for an arc length of 115.99 feet;
- North 04°25’13” West, 52.42 feet;
- North 85°34’47” East, 15.00 feet;
- North 04°25’13” West, 141.33 feet;
- North 85°34’47” East, 14.00 feet;
- North 04°25’13” West, 125.32 feet;
- North 25°36’23” East, 28.93 feet;
- North 64°57’42” East, 400.39 feet to the southwesterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the East, having a radius of 436.23 feet, with a radial line that bears North 69°54’00” West;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southerly along said curve, through a central angle of 00°48’28”, for an arc length of 6.15 feet to the beginning of a non-tangent curve, concave Easterly, having a radius of 610.00 feet, with a radial line that bears North 70°42’07” West;
- Southerly along said curve, through a central angle of 58°48’34”, for an arc length of 626.12 feet;
- South 39°30’41” East, 20.54 feet to the beginning of a curve to the right, having a radius of 558.00 feet;
- Southeasterly along said curve, through a central angle of 04°13’06”, for an arc length of 41.08 feet;

Thence leaving said southwesterly line of said Monarch Bay Drive, the following courses and distances:

- South 54°23’55” West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46’01”, for an arc length of 26.51 feet;
- South 06°22’06” East, 84.86 feet to the TRUE POINT OF BEGINNING of this description.

Containing 266,193 square feet or 6.111 acres, more or less.

EXHIBIT B

MAP OF PROPERTY

[To Be Attached]

EXHIBIT C

PERMITTED EXCEPTIONS

[To Be Inserted]

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code Sections 6103 and 27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is hereby entered into as of _____, 202_ by and between the CITY OF SAN LEANDRO, a California charter city and municipal corporation (the "**Landlord**"), and [Cal Coast Entity - Monarch Bay Hotel LLC] (the "**Tenant**").

RECITALS

A. Landlord and Tenant have entered into a "Ground Lease" dated concurrently herewith for those certain parcels of real property which are legally described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**"). A copy of the Ground Lease is available for public inspection at Landlord's office at 835 E. 14th Street, San Leandro, California. The term of the Ground Lease is fifty-five (55) years, with options to extend the term for thirty-four (34) years and ten (10) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of Alameda County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to the Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

LANDLORD:

CITY OF SAN LEANDRO,
a California charter city and municipal corporation

By: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity - Monarch Bay Hotel LLC]

By: _____

By: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a political corporation, recorded on November 22, 1960 in Reel 211 at Image 738, Official Records of said County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;
Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34’02” West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46’01”, for an arc length of 26.95 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 55°45’39” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southwesterly along said curve, through a central angle of 51°03’40”, for an arc length of 24.95 feet;
- South 85°26’24” West, 51.31 feet to the TRUE POINT OF BEGINNING of this description;

Thence leaving said point the following courses and distances:

- South 85°26’24” West 407.42 feet;
- North 04°25’13” West, 176.84 feet;
- South 85°26’24” West, 113.80 feet;

- North 04°25’13” West, 0.20 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 180.00 feet, with a radial line that bears South 57°29’56” East;
- Northerly along said curve, through a central angle of 36°55’17”, for an arc length of 115.99 feet;
- North 04°25’13” West, 52.42 feet;
- North 85°34’47” East, 15.00 feet;
- North 04°25’13” West, 141.33 feet;
- North 85°34’47” East, 14.00 feet;
- North 04°25’13” West, 125.32 feet;
- North 25°36’23” East, 28.93 feet;
- North 64°57’42” East, 400.39 feet to the southwesterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the East, having a radius of 436.23 feet, with a radial line that bears North 69°54’00” West;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southerly along said curve, through a central angle of 00°48’28”, for an arc length of 6.15 feet to the beginning of a non-tangent curve, concave Easterly, having a radius of 610.00 feet, with a radial line that bears North 70°42’07” West;
- Southerly along said curve, through a central angle of 58°48’34”, for an arc length of 626.12 feet;
- South 39°30’41” East, 20.54 feet to the beginning of a curve to the right, having a radius of 558.00 feet;
- Southeasterly along said curve, through a central angle of 04°13’06”, for an arc length of 41.08 feet;

Thence leaving said southwesterly line of said Monarch Bay Drive, the following courses and distances:

- South 54°23’55” West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46’01”, for an arc length of 26.51 feet;
- South 06°22’06” East, 84.86 feet to the TRUE POINT OF BEGINNING of this description.

Containing 266,193 square feet or 6.111 acres, more or less.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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 E

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: Ground Lease dated _____, ___ (the "Ground Lease") by and between the City Of San Leandro, a California charter city and municipal corporation ("**Landlord**"), and [Cal Coast Entity - Monarch Bay Hotel LLC] ("Tenant"), covering certain real property located in San Leandro, California and described in Exhibit A attached hereto and made a part hereof (the "**Property**").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "Instrument") is executed and delivered as of _____, _____, by _____, in connection with _____. Capitalized terms used herein have the meanings set forth in the Ground Lease unless otherwise defined herein. The undersigned hereby certifies, declares and agrees as follows:

1. Ground Lease. Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented or amended, orally or in writing or in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease [or, if there have been defaults, stating the nature of the defaults]. Except for the Ground Lease and the Disposition and Development Agreement between Landlord and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as CC Development LLC, dated as of February 24, 2020 [state any other such agreements, if any], there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on [insert date], and is scheduled to terminate on [insert date]. Tenant has the right to extend the term of the Ground Lease for an extended term of thirty-four (34) years and an extended term of ten (10) years, subject to conditions set forth in the Ground Lease.

3. **Rent.** No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.

4. Deposits. Tenant does not make any type of escrow deposits with Landlord. Landlord holds no security deposit from Tenant.

5. No Bankruptcy. No bankruptcy proceedings, whether voluntary or otherwise, are pending or, to Landlord's actual knowledge, threatened against Landlord.

6. No Violations; Condemnation. The undersigned has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. The undersigned has not received any written notice that Landlord, Tenant or [identify management company, if any] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act) [state exceptions, if any].

7. [Fee Encumbrances. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.] [Delete if inapplicable]

8. Insurance Coverage. As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.

9. [Leasehold Mortgage; Leasehold Mortgagee. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee," for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.] [**Conform to transaction**]

10. [Notice and Cure Rights. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6 of the Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [**Conform to transaction**]

[name]

[address]

With a copy to:

[name]

[address]

11. **Miscellaneous.** If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of the Ground Lease shall prevail. The captions of the sections of this Instrument are for convenience only and shall not have any interpretive meaning.

12. **Counterparts.** This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date first written above.

By: _____

Name: _____

Title: _____

EXHIBIT A TO GROUND LEASE ESTOPPEL CERTIFICATE

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a political corporation, recorded on November 22, 1960 in Reel 211 at Image 738, Official Records of said County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;
Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34’02” West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46’01”, for an arc length of 26.95 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 55°45’39” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southwesterly along said curve, through a central angle of 51°03’40”, for an arc length of 24.95 feet;
- South 85°26’24” West, 51.31 feet to the TRUE POINT OF BEGINNING of this description;

Thence leaving said point the following courses and distances:

- South 85°26’24” West 407.42 feet;
- North 04°25’13” West, 176.84 feet;
- South 85°26’24” West, 113.80 feet;
- North 04°25’13” West, 0.20 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 180.00 feet, with a radial line that bears South 57°29’56” East;
- Northerly along said curve, through a central angle of 36°55’17”, for an arc length of 115.99 feet;

- North 04°25’13” West, 52.42 feet;
- North 85°34’47” East, 15.00 feet;
- North 04°25’13” West, 141.33 feet;
- North 85°34’47” East, 14.00 feet;
- North 04°25’13” West, 125.32 feet;
- North 25°36’23” East, 28.93 feet;
- North 64°57’42” East, 400.39 feet to the southwesterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the East, having a radius of 436.23 feet, with a radial line that bears North 69°54’00” West;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southerly along said curve, through a central angle of 00°48’28”, for an arc length of 6.15 feet to the beginning of a non-tangent curve, concave Easterly, having a radius of 610.00 feet, with a radial line that bears North 70°42’07” West;
- Southerly along said curve, through a central angle of 58°48’34”, for an arc length of 626.12 feet;
- South 39°30’41” East, 20.54 feet to the beginning of a curve to the right, having a radius of 558.00 feet;
- Southeasterly along said curve, through a central angle of 04°13’06”, for an arc length of 41.08 feet;

Thence leaving said southwesterly line of said Monarch Bay Drive, the following courses and distances:

- South 54°23’55” West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46’01”, for an arc length of 26.51 feet;
- South 06°22’06” East, 84.86 feet to the TRUE POINT OF BEGINNING of this description.

Containing 266,193 square feet or 6.111 acres, more or less.

EXHIBIT F

SCOPE OF DEVELOPMENT

For the purposes of this Lease, the following definitions shall apply:

Horizontal Improvements – Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements – Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

Developer Hotel Element

a) Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel that has between 200 and 220 rooms.

b) The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby.

c) The Hotel Parcel shall include publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.

d) Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.

e) Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto. The days and hours of public use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.

f) Developer further agrees that an easement shall be recorded on the Developer Hotel Parcel allowing users of the Developer Restaurant Element (parcel J) and the Market Element (parcel K) to utilize parking on the Developer Hotel Parcel and to provide for joint access between the parcels.

g) The Developer Hotel Element shall include a full-service restaurant of approximately 5,000 square-foot, which the Developer or Developer Hotel Ground Lease Subtenant may sublease to an independent third-party operator, subject to the prior approval of the City and the requirements of the Developer Hotel Ground Lease.

h) The term of the existing lease for the El Torito restaurant occupying the building on[BK2] the Developer Hotel Parcel is currently on a month-to-month basis (the "Existing Restaurant

Lease"). The City has the right under the Existing Restaurant Lease to terminate the lease upon at least thirty (30) days' notice to the tenant.

i) Developer shall give at least sixty (60) days' notice to City of Developer's intended date for signing and commencement of the Developer Hotel Ground Lease in order to provide City sufficient time for termination of the Existing Restaurant Lease and relocation of the existing tenant. City shall be responsible for determining and providing any relocation assistance required under applicable law to be provided to the tenant of the Existing Restaurant Lease, if any is so required.

j) Developer shall obtain a Leadership in Energy and Environmental Design (LEED) Certified rating for Building Design and Construction from the U.S. Green Building Council (USGBC) for the Developer Hotel Element.

k) Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project as outlined in Section 1.4.15 of the Agreement, including design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6m of the California Building Code).

EXHIBIT "G"

SCHEDULE OF PERFORMANCE

Commencement of construction of Horizontal Improvements for the Developer Hotel Element	Within 90 days of Effective Date, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Hotel Element	Within 18 months of commencement of construction of Horizontal Improvements, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Hotel Element	Within 90 days of approval of first Building Permit for Vertical Improvements (e.g., foundation), permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for the Developer Hotel.	Within 33 months after approval of first Building Permit for Vertical Improvements
Developer Hotel opens for business to the public	Within 60 days after receipt of TCO
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after approval of first Building Permit for Vertical Improvements

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It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Ground Lease, including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the Parties' sole and absolute discretion.

EXHIBIT H

EXAMPLES OF RENT CALCULATIONS*

The parties acknowledge that this Exhibit H reflects hypothetical values for purposes of illustration only and that the values shown in this exhibit in no way reflect what the actual amounts or anticipated amounts are or will be. Further, the parties acknowledge that if there is a conflict between the examples shown in this Exhibit H and the terms set forth in the body of the Lease, the terms set forth in the body of the Lease prevail.

EXAMPLES:

Base Rent – Section 3.1

The number of hotel rooms that will be the subject of this Lease is unknown. For that reason, the dollar amount of the Minimum Ground Rent is unknown. The definition of Minimum Ground Rent is a formula for how to solve for the Minimum Ground Rent due on the Rent Commencement Date (and once the number of hotel rooms is known).

"Rent Commencement Date" means on or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty (30) months after the Effective Date.

"Lease Year" means each January 1 to December 31 calendar year of the Term. The first Lease Year (Lease Year 1) means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

"Minimum Ground Rent" means (i) $2,000 per hotel room; (ii) multiplied by the number of hotel rooms, and (iii) divided by 12 to determine the monthly Minimum Ground Rent.

Initial Partial Year Prior to Lease Year 1 (i.e. Stub Period)

> "Minimum Ground Rent" for the Stub Period means an amount determined by multiplying the number of days in the Stub Period by the result obtained by dividing the Annual Minimum Ground Rent by 365. Stub Period commences with the Rent Commencement Date and continues until January 1 of the first Lease Year (Lease Year 1).
>
> EXAMPLE
>
> To solve for the Minimum Ground Rent that applies during the Stub Period:
>
> 1. Divide the Annual Minimum Ground Rent by 365
>
> 2. Multiply the result by the number of days in the Stub Period.

- If the Annual Minimum Ground Rent is $400,000 and there are 75 days in the Stub Period, the Minimum Ground Rent for the Stub Period is $82,191.78. [($400,000/365) x 75]

Beginning Lease Year 1

Once you know the Minimum Ground Rent, no further calculations are necessary to determine the Minimum Ground Rent that applies for Lease Year 1.

Subsequent Lease Years

Beginning Lease Year 2, Minimum Ground Rent increases by 2.0% and every year thereafter by 2%.

EXAMPLE

"Minimum Ground Rent" means . . . for each subsequent twelve-month period that is not an Adjusted Rent Period, an amount equal to (x) the prior year's Minimum Ground Rent plus (y) the result obtained by multiplying the prior year's Minimum Ground Rent by 0.02 . . .

To solve for the increase in Minimum Ground Rent from Year 1 to Year 2:

1. Multiply the Minimum Ground Rent for Year 1 by 0.02.

2. Add the result to the Minimum Ground Rent for Year 1.

    - If the Minimum Ground Rent for Year 1 is $400,0000, Minimum Ground Rent for Year 2 will increase by 2.%, to $408,000. [$400,000 + ($400,000 x .02)]

    - In each subsequent twelve-month period, Minimum Ground Rent will increase by 2.0%. Following each Adjusted Rent Period, Minimum Ground Rent will continue to increase by 2.0% annually until the next Rent Adjustment Date.

Full Rent (Minimum Ground Rent and Percentage Rent)

Rent is always paid in advance. Because percentage rent is determined based on financial results, the tenant is required to pay Minimum Ground Rent in advance (either monthly or annually) and to subsequently make a "catch up" payment based on Total Gross Receipts derived over the rental period. That means, the Full Rent due for any particular period is the sum of the Minimum Ground Rent and the Percentage Rent due for that period.

"Total Gross Receipts" means the sum of the Hotel Gross Receipts and Concessionaire Gross Receipts received during a Lease Year.

Tenant shall pay the following rent . . . beginning on the Rent Commencement Date and continuing through the remaining Lease Term, the Full Rent will be the Minimum Ground Rent over the relevant period plus the Percentage Rent, if any, over the relevant period (the "Full Rent").

To calculate the Full Rent for a particular period:

1. Determine the Annual Minimum Ground Rent for the relevant period

2. Determine the Percentage Rent for the relevant period.

    - Prior to the second (2nd) Lease Year, there is no annual percentage rent ("**Percentage Rent**").

    - Upon the commencement of the second (2nd) Lease Year and the third (3rd) Lease Year, calculate the annual percentage rent ("**Percentage Rent**") equal to Three Percent (3%) of the Total Gross Receipts.

    - Upon the commencement of the fourth (4th) Lease Year and the fifth (5th) Lease Year, calculate the annual Percentage Rent equal to Four Percent (4%) of the Total Gross Receipts.

    - Upon the commencement of the sixth (6^{th}) Lease Year, and continuing thereafter, calculate the annual Percentage Rent equal to Five Percent (5%) of the Total Gross Receipts

3. To determine the Full Rent for a particular period, add the Annual Minimum Ground Rent for the relevant period to amount that the Percentage Rent exceeds the Annual Minimum Ground Rent for the same period.

    EXAMPLE

    - If the Annual Minimum Ground Rent is $450,000, the Percentage Rent for the same period is $600,000, then the Full Rent will equal $600,000. (450,000+ [($600,000-450,000) = $150,000] = $600,000)

Minimum Ground Rent – Adjustment in Lease Years 10. 20, 40, 50, 60, 70, 80 and 90 – Section 3.1

Adjusting Minimum Ground Rent is an effort to lessen the difference between Minimum Ground Rent and Full Rent, which would otherwise increase over time.

"Adjusted Minimum Ground Rent" Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70^{th}), eightieth (80^{th}) and ninetieth (90^{th}) Lease Years, the monthly amount of Minimum Ground Rent shall be adjusted to the higher of the

following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%), or (b) the total amount of Full Rent (Minimum Ground Rent plus Percentage Rent) due and payable during the five (5) Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing by twelve.

EXAMPLE 1

Assuming the Full Rent is $600,000 in 2025, $610,000 in 2026, $630,000 in 2027, $650,000 in 2028, and $680,000 in 2029 and further assuming that the Minimum Ground Rent paid in 2029 is $450,000, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2023, 2024 and 2025:

Year	Full Rent
2025	$ 600,000
2026	$ 610,000
2027	$ 630,000
2028	$ 650,000
2029	$ 680,000
Total	$3,170,000
Average (÷ by 5)	$ 634,000

2. Calculate 70% of the average Full Rent:

   $ 634,000 x .7 = $443,800

3. Multiply the prior year's Minimum Ground Rent by 0.02.

   $450,000 x .02 = $ 9,000

4. Add the result to the prior year's Minimum Ground Rent.

   $450,000 + $ 9,000 = $ 459,000

5. Conclusion: The Adjusted Minimum Ground Rent for 2030 will be $459,000 because 70% of the average Full Periodic Rent is lower than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be $38,250 ($459,000÷ by 12).

EXAMPLE 2

Assuming the Full Rent is $700,000 in 2025, $710,000 in 2026, $730,000 in 2027, $750,000 in 2028, and $780,000 in 2029 and further assuming that the Minimum Ground Rent paid in 2029 is $450,000, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2023, 2024 and 2025:

Year	Full Rent
2025	$ 700,000
2026	$ 710,000
2027	$ 730,000
2028	$ 750,000
2029	$ 780,000
Total	$3,670,000
Average (÷ by 5)	$ 734,000

2. Calculate 70% of the average Full Rent:

   $ 734,000 x .7 = $513,800

3. Multiply the prior year's Minimum Ground Rent by 0.02.

   $450,000 x .02 = $ 9,000

4. Add the result to the prior year's Minimum Ground Rent.

   $450,000 + $ 9,000 = $ 459,000

5. Conclusion: The Adjusted Minimum Ground Rent for 2030 will be $513,800 because 70% of the average Full Periodic Rent is higher than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be $42,816.67 ($513,800 ÷ by 12).

Participation Rent from Transfer Proceeds – Section 13.6

Participation Rent is paid in the event of a Transfer.

To solve for Participation Rent:

1. Determine Gross Sales Proceeds. If the consideration for the Transfer is a combination of cash, a note and shares of stock, the Gross Sales Proceeds would equal:

Cash	$ 50,000,000
Face Value of Note	$ 10,000,000
Value of Stock	$ 5,000,000
Gross Sales Proceeds	$65,000,000

2. Multiply the Gross Sales Proceeds by .02. If Gross Sales Proceeds equal $65,000,000, the Participation Rent will be $1,300,000. ($65,000,000 x .02)

EXHIBIT I

[Deleted]

EXHIBIT J

MINIMUM REHABILITATION AND REPLACEMENT REQUIREMENTS*

Rehabilitation/Replacement Events	**Maximum Interval Between Rehabilitation/Replacement Events**
1. Exterior Painting and Restaining	5 Years
2. Interior Repainting and Restaining	5 Years
3. Replacement of Carpets a. Guest Rooms b. General Use Areas	 5 Years 5 Years
4. Replacement of Furnishings a. Guest Rooms b. General Use Areas	 5 Years 5 Years
5. Seal Coat Parking Areas	5 Years
6. Replacement of Roof	20 Years
7. Replacement of HVAC Units	15 Years
8. Renovation of Elevators	15 Years
9. Repair or Replacement of Damaged or Inoperative Equipment	Within 90 days after request by Landlord

*If the Franchise Agreement (as approved by City pursuant to Section 5.2 of the DDA) contains shorter or stricter time requirements for such purposes, the Franchise Agreement shall be controlling.

City may approve a different interval for any rehabilitation/replacement event if, in its sole judgment, such change will not materially detract from the quality of maintenance of physical facilities on the leased premises.

3065446.11

Exhibit N

MULTIFAMILY GROUND LEASE AGREEMENT

Between

CITY OF SAN LEANDRO

(“LANDLORD”)

And

[CAL COAST ENTITY]

(“TENANT”)

TABLE OF CONTENTS

Page

MULTIFAMILY GROUND LEASE AGREEMENT

THIS MULTIFAMILY GROUND LEASE AGREEMENT (hereinafter referred to as this "Lease") is made and entered into this _____day of_____, 202__ (the "Effective Date"), by and between the City of San Leandro, a California charter city and municipal corporation ("Landlord" or "City"), and [Insert Cal Coast Entity] ("Tenant").

RECITALS

A. The City and Cal Coast Companies, LLC, a Delaware limited liability company doing business in California as Cal Coast Developer, Inc. ("Developer"), have entered into a Disposition and Development Agreement, dated as of February 24, 2020 (the "DDA"), for the development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly described in the DDA (the "Shoreline Property").

B. City desires to advance the development of the Shoreline-Marina area to create new housing units, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base.

C. Section 1.4.4 of the DDA provides for the City to ground lease to the Developer or its affiliate a portion of the Shoreline Property for the development of a Class A Multifamily Apartment Project with approximately 285 apartment units, and associated parking, entry drive aisle, landscaping, [**insert description of public improvements such as Bay Trail and vehicular access**], lighting and all site utilities, including but not limited to fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City (the "Project"). Section 1.4.4 of the DDA sets forth certain conditions to commencement of the ground lease which must be satisfied or waived by the City.

D. Landlord owns approximately _____ acres of land within the Shoreline Property located at _____ ("Property"), the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference. The Property is depicted on the Site Map attached hereto as Exhibit B and incorporated herein by this reference.

E. Tenant desires to lease the Property from Landlord in order to build and operate the Project thereon.

F. The City has determined that the conditions to commencement of this Lease, as set forth in Section 1.4.1 of the DDA, have each been satisfied or waived by City. Landlord and Tenant now desire to enter into this Lease in order to carry out the Parties' obligations under the DDA with respect to the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 Definitions. Capitalized terms in this Lease shall have the following meanings.

1.1.1 "**ADA**" means the Americans with Disabilities Act.

1.1.9 "**Affiliates**" has the meaning set forth in Section 8.1.3.

1.1.10 "**Anniversary Date**" has the meaning set forth in Section 22.13.1.

1.1.11 "**Annual Financial Statement**" has the meaning set forth in Section 3.3.1.

1.1.12 "**As-Is Condition**" means the condition of the Property as of the Effective Date.

1.1.13 "**Assessments**" has the meaning set forth in Section 4.2.3.

1.1.14 "**Audit Charge**" has the meaning set forth in Section 3.3.2.

1.1.15 "**Award**" has the meaning set forth in Section 12.1

1.1.16 "**Base Rent**" means the rent that is payable as set forth in Section 3.1.

1.1.17 "**Broke**r" has the meaning set forth in Section 24.1.

1.1.18 "**Class A Multifamily Apartment Project**" means a high quality multifamily apartment project which is constructed in accordance with the finishes, plans and specifications, and amenities approved by Landlord pursuant to Section 6, and which offers high quality accommodations, service and physical atmosphere consistent with other multifamily housing projects in the market area of the Project designated as Class A in accordance with property grading standards generally prevailing in the industry. A Class A Multifamily Apartment Project commands rents within the range of other Class A rents in the market area, is well merchandised with attractive landscaping, an attractive rental office and/or club building, high-end exterior and interior amenities consistent with other Class A products in the market, and high quality construction with the highest quality materials.

1.1.19 "**Concessionaire**" means third-party concessionaires or service providers which operate auxiliary facilities or provide ancillary services of the type ordinarily operated or provided by third-party apartment concessionaires or service providers, such as, but not limited to, laundry facilities, vending machines, and snack bars.

1.1.20 "**Construction Period**" means the period of time from the Effective Date to the TCO Date.

1.1.21 "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said index is changed so that the base year differs from the base year used in the last Index

published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised.

1.1.22 "**DDA**" has the meaning set forth in Recital A.

1.1.23 "**Default**" has the meaning set forth in Section 16.1.

1.1.24 "**Default Notice**" has the meaning set forth in Section 7.6.

1.1.25 "**Developer**" has the meaning set forth in Recital A.

1.1.26 "**Development Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.1.27 "**Effective Date**" has the meaning set forth in the preamble of this Lease.

1.1.28 "**Environmental Law(s)**" has the meaning set forth in Section 23.1 (b).

1.1.29 "**FFR Plan**" has the meaning set forth in Section 9.5.

1.1.30 "**Force Majeure Events**" shall have the meaning set forth in Section 6.1.9.

1.1.31 "**GAAP**" means Generally Accepted Accounting Principles.

1.1.32 "**Gross Receipts**" means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue, except as otherwise provided below, from apartment unit rentals, rents and other payments paid to Tenant by Concessionaires, gross revenues generated from parking, laundry, vending machines and other revenue-generating uses, originating, transacted, or performed in whole or in part, within the Property, and any and all other revenue of whatsoever kind or nature derived from the operation of the Project on the Property, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense. Gross Receipts expressly excludes state, county and City sales and use taxes; and any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale.

1.1.33 "**Hazardous Substances**" has the meaning set forth in Section 23.1.

1.1.34 "**Horizontal Improvements**" is defined in the Scope of Development.

1.1.35 "**Improvements**" means the Project buildings and associated parking, drive aisles, publicly accessible outdoor space, landscaping, lighting, above-ground and underground utilities, [**add applicable public improvements**] and other improvements to be constructed by Tenant on the Property in accordance with the Scope of Development, and any other improvements which may be constructed on the Property by Tenant from time to time during the Term.

1.1.36 "**Increased Costs**" has the meaning set forth in Section 6.1.7.

1.1.37 "**Indemnitee**" has the meaning set forth in Section 8.1.2.

1.1.38 "**Institutional Investor**" has the meaning set forth in Section 7.3.1

1.1.39 "**Landlord**" has the meaning set forth in the first paragraph of this lease.

1.1.40 "**Landlord Default**" has the meaning set forth in Section 16.7.

1.1.41 "**Landlord's Estate**" means all of Landlord's right, title, and interest in and to (a) its fee estate in the Property, (b) its reversionary interest in the Improvements, and (c) all Base Rent and other benefits due Landlord hereunder.

1.1.42 "**Late Term Extensive Damage**" means any damage to the Improvements after the thirtieth (30th) Lease Year, whether insured or uninsured, if the reasonable cost to be incurred by Tenant to restore the Improvements to the condition required by Section 11.1 exceeds (i) thirty percent (30%) of the "replacement cost" (as defined below) of the Improvements if such damage occurs during the thirty-first (31st) Lease Year through the end of the sixty-fifth (65th) Lease Year; (ii) twenty percent (20%) of the replacement cost of the Improvements if such damage occurs during the sixty-sixth (66th) through eighty-first (81st) Lease Years; and (iii) ten percent (10%) of the replacement cost of the Improvements if such damage occurs after the eighty-second (82nd) Lease Year. For purposes of determining the extent of Late Term Extensive Damage, "replacement cost" means the actual cost of replacing the Improvements as of the date of casualty in accordance with applicable law, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), if applicable, construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscape restoration.

1.1.43 "**Lease**" has the meaning set forth in the first paragraph of this Lease.

1.1.44 "**Leasehold Mortgagee**" has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

1.1.45 "**Leasehold Mortgages**" has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

1.1.46 "**Lease Year**" means each January 1 to December 31 calendar year of the Term. The first Lease Year means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

1.1.47 "**Lender**" has the meaning set forth in Section 7.1 of this Lease.

1.1.48 "**Mello-Roos Act**" has the meaning set forth in Section 5.4.

1.1.49 "**Mezzanine Loan**" has the meaning set forth in Section 7.3.4.

1.1.50 "**Mezzanine Loan Requirements**" has the meaning set forth in Section 7.3.4.

1.1.51 "**Mezzanine Lender**" has the meaning set forth in Section 7.3.4.

1.1.52 "**Minimum Ground Rent**" has the meaning set forth in Section 3.1.1.1.

1.1.53 "**New Lease**" has the meaning set forth in Section 7.8.

1.1.54 "**Notice of Intended Taking**" has the meaning set forth in Section 12.1.

1.1.55 "**Notice of Termination**" has the meaning set forth in Section 7.8 of this Lease.

1.1.56 "**Operator**" has the meaning set forth in Section 5.2.

1.1.57 "**Partial Taking**" has the meaning set forth in Section 12.1.

1.1.58 "**Partial Year Rent Commencement Date**" has the meaning set forth in Section 3.1.1.1.

1.1.59 "**Participation Rent**" has the meaning set forth in Section 13.6.

1.1.60 "**Percentage Rent**" has the meaning set forth in Section 3.1.2 hereof.

1.1.61 "**Permitted Exceptions**" has the meaning set forth in Section 1.2.

1.1.62 "**Permitted Hazardous Substances**" has the meaning set forth in Section 23.2.

1.1.63 "**Permitted Transferee**" has the meaning set forth in Section 13.1.

1.1.64 "**Prevailing Wage Law**" has the meaning set forth in Section 6.1.6.

1.1.65 "**Project**" means the 285 unit multifamily apartment project facility to be constructed in accordance with the Scope of Development and continuously operated during the Term of this Lease as provided herein.

1.1.66 "**Project Labor Agreement**" means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

1.1.67 "**Property**" has the meaning set forth in Recital D.

1.1.68 "**Qualified Auditor**" has the meaning set forth in Section 3.3.1.

1.1.69 "**Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.1.70 "**Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.1.71 "**Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.1.72 "**Rehabilitation Plan**" has the meaning set forth in Section 9.5.

1.1.73 "**Rent Commencement Date**" has the meaning set forth in Section 3.1.1.2.

1.1.74 "**Reserve Account**" has the meaning set forth in Section 9.6.

1.1.75 "**Restoration Amount**" means three percent (3.0%) of the replacement cost of the Improvements immediately prior to the casualty. For purposes of calculating the Restoration Amount, "replacement cost" means the actual cost of replacing the Improvements in accordance with applicable law and the terms and conditions of this Lease, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscaping.

1.1.76 "**Schedule of Performance**" means the schedule attached hereto as Exhibit G.

1.1.77 "**Scope of Development**" means the description of the Improvements to be constructed by Tenant on the Property which is attached hereto as Exhibit F.

1.1.78 "**Security Instrument**" has the meaning set forth in Section 7.1 of this Lease.

1.1.79 "**Senior Recognized Leasehold Mortgage**" has the meaning set forth in Section 7.2.1.

1.1.80 "**Senior Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.1.81 "**Senior Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.1.82 "**Senior Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.1.83 "**Shoreline Property**" has the meaning set forth in Recital A.

1.1.84 "**Stabilization**" has the meaning set forth in Section 13.1.

1.1.85 "**Sublease**" has the meaning set forth in Section 13.5.

1.1.86 "**Substantial Taking**" has the meaning set forth in Section 12.1.

1.1.87 "**Subtenant**" means a tenant of an apartment unit within the Project.

1.1.88 "**Taking**" has the meaning set forth in Section 12.1.

1.1.89 "**Taking Date**" has the meaning set forth in Section 12.1.

1.1.90 "**Taxes**" has the meaning set forth in Section 4.2.1.

1.1.91 "**TCO Date**" means the first day of the month immediately following the month in which a temporary certificate of occupancy ("TCO") for the entirety of the Improvements is issued by the City.

1.1.92 "**Tenant**" has the meaning set forth in the first paragraph of this Lease.

1.1.93 "**Tenant's Estate**" means all of Tenant's right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

1.1.94 "**Tenant's Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.1.95 "**Term**" has the meaning set forth in Section 2.3.1.

1.1.96 "**Termination Notice Period**" has the meaning set forth in Section 7.6.1.

1.1.97 "**Total Taking**" has the meaning set forth in Section 12.1.

1.1.98 "**Transfer**" has the meaning set forth in Section 13.2.

1.1.99 "**Transfer Request**" has the meaning set forth in Section 13.4.1.

1.1.100 "**Uninsurable Loss**" means the cost to restore the Improvements to the condition required by and in accordance with Section 11.1 below, which is caused by: (i) earthquake; (ii) pollution liability; (iii) flood; or (iv) any other casualty for which Tenant is not otherwise required to obtain and maintain insurance coverage pursuant to this Lease. Notwithstanding the preceding, Uninsurable Loss shall not include (a) loss caused by flood, if the Property is located in a flood zone and flood insurance can be obtained at commercially reasonable rates, nor (b) loss caused by Tenant's release of Hazardous Substances on the Property or violation of its responsibilities pursuant to Section 23 hereof.

1.1.101 "**Vertical Improvements**" is defined in the Scope of Development.

1.2 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, subject to the matters set forth on Exhibit C attached hereto and incorporated herein ("Permitted Exceptions"). Not included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material as provided in Section 2.1.4 hereof.

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1 As-Is Condition. Landlord shall deliver possession of the Property to Tenant on the Effective Date, in its As-Is Condition, and Tenant hereby accepts the Property in its As-Is Condition. Neither the Landlord, nor any officer, employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Property, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Property, or any other matter, affecting the use, value, occupancy or enjoyment of the Property, the suitability of the Property for the uses permitted by this Lease, the suitability of the Property for the Project, construction of the Project, or construction or use of the Improvements on the Property, and Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Property is being leased in its As-Is Condition with respect to all matters. 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 Property, and has, to the extent it deemed necessary, independently investigated the condition of the Property, 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 except as provided in this Lease.

2.1.2 Construction of Development Work. Upon acceptance of possession of the Property, Tenant shall construct the Improvements and shall maintain, repair, replace and renovate the Improvements as required herein (collectively, "Development Work"). In performing the Development Work, Tenant shall comply with all of the requirements of Section 6 hereof. The time of Tenant's commencement and completion of the Development Work shall occur not later than the times set forth therefor in the Schedule of Performance (subject to the occurrence of any Force Majeure Events). For purposes of the Schedule of Performance, "commencement" of the Development Work means the commencement of grading and the City's issuance of a grading permit. For purposes of the Schedule of Performance, "completion" of construction means the time that a TCO is issued for the Vertical Improvements. As set forth in Section 6, Landlord shall cooperate with Tenant in obtaining any necessary permits. Landlord

shall have approval over and shall, as needed, join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.1.3 Utility Services. Tenant shall be responsible, at its expense, for obtaining all electricity, water, sewer, gas, telephone and other utility services necessary for Tenant's intended use of the Property.

2.1.4 Landlord Reservation of Interests. Landlord reserves to itself the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Property, regardless of the depth below the surface at which any such substance may be found. Landlord or its successors and assigns, however, shall not have the right for any purpose to enter on, into, or through the surface or the first 500 feet of the subsurface of the Property in connection with this reservation. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Landlord's activities under this paragraph.

2.1.5 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord, without abatement, counterclaim, setoff or offset whatsoever, and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property which may arise or become due during the Lease Term, and which, except as otherwise provided in this Lease and any other agreement entered into in connection with this Lease, and except to the extent arising out of a breach of this Lease by Landlord, or arising out of the negligence or willful misconduct by Landlord or its agents, employees, or contractors, which but for execution hereof would or could have been payable by Landlord.

2.2 Fee Mortgages. Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property without the prior written approval of Tenant and its Lease Mortgagee, which approval shall not be unreasonably withheld or delayed. Such approval may be conditioned upon Landlord and its fee mortgagee entering into a subordination and non-displacement agreement with Tenant and its Lease Mortgagee.

2.3 Term.

2.3.1 Length of Initial Term. The initial term (the "Initial Term") of this Lease shall commence on the Effective Date, and shall expire fifty-five (55) years from the Effective Date, unless extended as set forth herein below.

2.3.2 Option Terms. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its obligations under this Lease beyond any

applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on two (2) occasions (each such right, an "Extension Option"), as follows:

2.3.2.1 Length of Option Terms. The first extension of the Term shall be for a period of thirty-four (34) years, and the second extension of the Term shall be for a period of ten (10) years (each such period of time, an "Option Term").

2.3.2.2 Exercise of Option Terms. Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than two (2) years, prior to the expiration of the Term. Such written notification shall include a certification of Tenant that Tenant is currently in compliance with the Lease. Provided Tenant has properly and timely exercised an Extension Option, and further provided that Landlord has determined that Tenant is in compliance with this Lease at the time of notification and at the time of commencement of the Option Term, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant and Landlord shall prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid by Tenant). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

2.3.2.3 Term. The Initial Term and Option Terms are collectively referred to herein as the "Term."

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts of Minimum Ground Rent and Percentage Rent ("Base Rent") during the time periods set forth below. An example of the following rent calculations is set forth in Exhibit H attached hereto.

3.1.1 Minimum Ground Rent.

3.1.1.1 On or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty (30) months after the date the building permit for the foundations is ready to be issued by the City ("Rent Commencement Date"), Tenant shall pay to Landlord, in advance, monthly minimum ground rent equal to the number of apartment units in the Project, multiplied by Three Thousand Dollars ($3,000), and divided by twelve (12) ("Minimum Ground Rent"). In the event of a Taking pursuant to Section 12 of this Lease, the Minimum Ground Rent shall be recalculated based upon the number of apartment units remaining in the Project after the Taking. All amounts shall be payable in advance on or before the first day of such calendar

month. The first month's monthly Minimum Ground Rent shall be prorated to the number of days remaining in such month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Minimum Ground Rent, Tenant shall pay to Landlord a late charge thereon equal to two percent (2%) of the delinquent amount per month from the date such sum was due and payable until paid.

3.1.1.2 Upon January 1 of each Lease Year beginning the fourth Lease Year, the Minimum Ground Rent shall be increased by two percent (2%) of the Minimum Ground Rent then in effect.

3.1.1.3 Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70^{th}), eightieth (80^{th}) and ninetieth (90^{th}) Lease Years, the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the monthly amount of Minimum Ground Rent then in effect, or (b) the total amount of Minimum Ground Rent plus Percentage Rent due and payable during the five Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing the total by twelve.

3.1.1.4 Upon January 1 of the thirtieth (30th) Lease Year, and at the commencement of the first and second Option Terms (the "Value Determination Dates"), the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%) of the Minimum Ground Rent then in effect, or (b) the appraised fair market rental value of the Tenant's interest in the Property. The fair market rental value of the Tenant's interest in the Property shall be based upon the fair market value of Tenant's leasehold interest in the land and not the value of Tenant's fee ownership of the Improvements, and shall be determined by appraisal as follows:

a. Appointment of Appraiser. For a period of thirty (30) days after notice from Landlord to Tenant, Landlord and Tenant shall use good faith efforts to jointly agree upon the appointment of a mutually acceptable MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1. The appraiser shall have not less than ten (10) years' experience appraising multifamily and commercial properties in the San Francisco Bay Area. In the event that the parties are unable to jointly agree upon a mutually acceptable appraiser, Landlord and Tenant shall, within ten (10) days after the expiration of the thirty (30) day period, each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

b. Determination of Fair Market Rental Value.

(i) In the event that a single mutually acceptable appraiser has been appointed by the parties, within thirty (30) days after the appointment the appraiser shall commence to determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge its determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) In the event that three appraisers have been appointed by the parties, within thirty (30) days after the appointment of the third appraiser, the two appraisers directly appointed by the Parties shall each commence to independently determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(iii) The appraisers shall determine the fair market rental value of the Property as of the Value Determination Date as the date of value. Fair market rental value shall be determined for the Property only, and shall not include value attributable to the Improvements which are owned by Tenant during the Term of this Lease.

(iv) If the two appraisals arrive at different fair market rental values, the third appraiser shall select the appraisal which the third appraiser determines is closest to the fair market rental value of the Property, and such appraisal shall be deemed the fair market rental value of the Property as of the Value Determination Date.

(v) Each of the parties hereto shall (a) pay for the services of its own appointee, (b) pay one-half (l/2) of the fee charged by a mutually appointed appraiser and any appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisals.

3.1.2 Percentage Rent.

3.1.2.1 Upon the commencement of the second (2nd) Lease Year, Tenant shall annually pay Landlord annual percentage rent ("Percentage Rent") equal to Ten Percent (10%) of the Gross Receipts, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous Lease Year. All payments of Percentage Rent shall be paid to Landlord on or before April 1 following the Lease Year upon which the Percentage Rent is calculated.

3.1.2.2 Within twenty (20) days after the close of each calendar month of the Term of this Lease, Tenant shall deliver to Landlord, in a form reasonably satisfactory to Landlord, an account of its Gross Receipts during the preceding month.

3.1.2.3 All payments of Percentage Rent shall be paid to Landlord on a monthly basis on or before the twentieth (20^{th}) day of each month based on the Gross Receipts for the preceding month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Percentage Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.2 Maintenance of Records.

(a) Tenant shall at all times keep accurate and proper books, records and accounts required to determine Gross Receipts and Percentage Rent, including a written explanation of income and expense report procedures and controls ("Records").

(b) Tenant shall keep all of its Records related to this Lease at its home office. Landlord may examine and audit the Records at any and all reasonable business times, subject to reasonable prior notice. If Landlord elects to audit the Records, Landlord shall use an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment projects. Landlord and its auditors may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to examine and audit such Records, unless required under applicable law and after providing notice to Tenant in accordance with Section 3.4.3 below. In no event shall any information relating to the Concessionaires be publicly disclosed, except as required by applicable law and after providing notice to Tenant in accordance with Section 3.4.3 below. All Records, including any sales tax reports that Tenant and its Concessionaires may be required to furnish to any governmental agency, shall be open to the inspection of and copying (at Landlord's sole cost and expense) by Landlord, Landlord's auditor, or other authorized representative or agent of Landlord, who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment projects, at all reasonable times during business hours, subject to reasonable prior notice. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and to minimize interference with the day-to-day operation of Landlord and/or the Property in exercising its rights hereunder.

3.3 Annual Statements by Tenant, Verification of Records, Computation, Payment of Percentage Rent

3.3.1 On or before March 1 of each Lease Year during the Lease Term, Tenant shall submit to Landlord an "Annual Financial Statement" which shall include a breakdown, in line item detail, of Tenant's calculation of Gross Receipts and Percentage Rent payable for the prior Lease Year. Each Annual Financial Statement shall be reviewed by an independent certified public accountant or by an authorized officer of Tenant, and shall contain an expressed written opinion of such certified public accountant or officer that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with GAAP. Tenant shall also certify to Landlord that each Annual Financial Statement is accurate and consistent in all material respects with its Records. Landlord may, through its representatives, audit or perform an examination of any Annual Financial Statement and supporting documentation utilized in the creation thereof at any time, and Tenant shall provide reasonable access to all of its books and records as provided herein, using an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing multifamily apartment project projects ("Qualified Auditor"), subject to reasonable prior notice. Records must be supported by reasonable source documents.

3.3.2 If any audit or examination conducted by Landlord discloses that the payable Percentage Rent reported by Tenant for any calendar year was understated by more than two percent (2%), Tenant shall promptly pay to Landlord the actual reasonable costs incurred by Landlord for such audit or examination (the "Audit Charge") in addition to any

amounts due as Percentage Rent; otherwise Landlord shall bear all costs of such audit or examination.

3.3.3 In the event Tenant fails to submit the Annual Financial Statement (together with the required written opinion) by the required time, Tenant shall pay to Landlord a late fee in the amount of One Hundred Dollars ($100) per day for each day after receipt by Landlord of written notice from Landlord of such failure until the Annual Financial Statement (together with the required written opinion) is submitted as required.

3.3.4 Landlord's billings for the Audit Charge shall be sufficiently detailed with reasonable backup information such as supporting paid invoices, so that Tenant may determine the fees for the various participants in the audit or examination for whom Tenant is required to pay. Prior to Tenant's obligation to pay any Audit Charge, Landlord shall have provided Tenant with the audit or examination report which is the basis for such Audit Charge, access to documents supporting such audit or examination, and a reasonable opportunity to review and discuss the audit or examination with Landlord and the auditor.

3.4 Acceptance Not Waiver; Retention of Records. Landlord's acceptance of any money paid by Tenant under this Lease, whether shown by any Annual Financial Statement furnished by Tenant or otherwise specified in this Lease, shall not constitute an admission of the accuracy or the sufficiency of the amount of such payment. Landlord may, at any time within three (3) years after the receipt of any such payment, question the sufficiency of the amount thereof and/or the accuracy of any underlying Annual Financial Statement furnished by Tenant.

3.4.1 Tenant shall retain, for five (5) years after submission to Landlord of any such Annual Financial Statement, all of Tenant's Records relating to the information shown by any such Annual Financial Statement, and shall make them available to Landlord for examination to the extent as provided above during that period. Tenant shall use commercially reasonable efforts to require that all its Concessionaires keep, maintain and retain Records of their business activities conducted within the Project for such five (5) year period, which Records shall be made available to Landlord, Landlord's auditor, or other authorized representative or agent of Landlord for inspection and copying (at Landlord's expense) as provided above. Notwithstanding the foregoing, Tenant shall not be responsible for the records of any Concessionaires.

3.4.2 Tenant shall also furnish Landlord all information reasonably requested by Landlord directly relating to the costs, expenses, earnings and profits of Tenant in connection with Tenant's operations conducted on or connected with the Property. Landlord may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to such information, unless required under the Public Records Act or other applicable law, and the conditions set forth above with requests for information shall apply.

3.4.3 Landlord covenants to keep and to cause its auditor(s) to keep the results of such audit strictly confidential except to the extent disclosure is legally required by the Public Records Act or other applicable law, or if discoverable in litigation between the parties. If Landlord receives a request for such information it shall immediately notify Tenant of such

request and deliver to Tenant copies of all correspondence received by Landlord relating to such request, and afford Tenant an opportunity to contest such request.

4. OTHER EXPENSES

4.1 Tenant Payments. During the term of this Lease, Tenant shall pay the following:

4.1.1 Utilities. From and after the Effective Date, Tenant shall pay all charges for electricity, water, gas, telephone, internet, cable, and all other utility services used on the Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.1.2 Taxes and Assessments.

4.1.2.1 Pursuant to Revenue & Taxation Code Section 107.6, Landlord hereby advises Tenant that the leasehold interest in the Property conveyed to Tenant by this Lease will be subject to property taxation, and that it is Tenant's obligation under this Lease to pay or cause to be paid all of such property taxes levied on Tenant's interests in the Property. Tenant acknowledges that it understands that property taxes will be levied on the Property despite the Landlord's ownership of fee title to the Property and any exemptions Landlord is entitled to and receives as a result of public entity ownership of the Property.

4.1.2.2 The term "Taxes," as used herein, means all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, including community facilities district special taxes, but excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Effective Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.1.2.3 The term "Assessments," as used herein, means all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Effective Date and continuing throughout the Term.

4.1.2.4 Tenant covenants and agrees to pay or cause to be paid before delinquency all personal property taxes, assessments and liens of every kind and nature upon all

personal property as may be from time to time situated within the Property and the Improvements.

4.1.2.5 Tenant shall pay any business license fees imposed upon Tenant in connection with the operation of the Improvements.

4.2 Payment Date and Proof. All payments by Tenant for Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

4.3 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.11 below.

4.4 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.4.1 Payment of Base Rent. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall remain in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach.

4.4.2 Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant. Nothing in this Lease shall require tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any such law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest or that bond or similar security be

provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

5.1 **Use.** Tenant shall use the Property solely for the purposes of constructing, maintaining and operating the Improvements as a Class A Multifamily Apartment Project.

5.2 **Operation of Project**. Upon the City's issuance of a Certificate of Occupancy for the Improvements and throughout the remainder of the Term of this Lease, the Tenant shall continuously without interruption operate a Class A Multifamily Apartment Project in the Improvements on the Property, with a cumulative total of 285 multifamily apartment units available for rent to the public (collectively, the "Project"). Tenant shall have the responsibility, subject to Force Majeure Events, to keep the Project continuously open and operating throughout the term of this Lease, including any extensions hereof, subject to closures (i) following a casualty or condemnation or other loss, (ii) following any environmental release requiring remediation, (iii) if required by law or court order for any reason, (iv) as necessary during any partial or complete renovation of the Project, or (v) matters caused by Force Majeure Events. In the event of a closure as set forth above, Tenant shall close only that portion of the Project which is necessitated by the causative event, and shall use all reasonable efforts to reopen the Project or the closed portion of the Project as soon as reasonably possible following any such closure. The Tenant shall provide at its own cost any and all equipment, fixtures, furniture and furnishings necessary for the operation of a Class A Multifamily Apartment Project. Tenant shall be responsible for hiring and training all personnel necessary to operate and maintain the Project as a Class A Multifamily Apartment Project, or shall cause a professional apartment management company to do so.

5.3 **CC&Rs.** Tenant agrees to join and participate in the Shoreline Business Association, and any organization that is organized, formed or sponsored by Landlord for substantially all businesses in the Shoreline-Marina area to pay for their fair share of maintenance, capital replacement reserves, and/or promotion of the Shoreline area and basin, which could include, without limitation, a property owners' association, business improvement district or other form of organization. The boundaries of the area subject to such organization shall be determined by Landlord or the participants in such organization. [**To be discussed**]

5.4 **CFD**. Landlord and Tenant shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "Mello-Roos Act"), which may be responsible for funding the maintenance of public roads, public entryways, landscaped areas, trails and parks, as provided in Section 1.5 of the DDA. [**To be discussed**]

5.5 Public Access Easements. Tenant shall reasonably approve such grants and easements for public improvements, public utilities and facilities, access roads and trails, and other facilities which required as a condition of City approval of the Project, or otherwise useful or necessary for the Development Work and the construction and operation of the Project.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1 Construction of Improvements. Tenant shall construct the Improvements in accordance with the Scope of Development, and in accordance with all building and other permits that may be issued in connection therewith. Tenant shall submit all construction plans, and commence and complete all construction of the Improvements, and shall satisfy all other obligations and conditions of this Lease, within the times established therefor in the Schedule of Performance and the text of this Lease, subject to Force Majeure Events pursuant to Section 6.1.9 hereof. Once construction of the Improvements is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than thirty (30) days. During the course of construction and prior to issuance of the final TCO for the Improvements, Tenant shall provide monthly reports to Landlord of the progress of construction. The Improvements shall include all of the improvements contained in the approved construction plans and drawings, including without limitation the Project, sidewalks, trails, plazas, landscaping, and parking. The construction of the Improvements shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Tenant.

6.1.2 Landlord's Cooperation in Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Improvements. Such cooperative efforts may include Landlord's joinder in any application for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord's actual and reasonable third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions) within thirty (30) days after Landlord delivers an itemized statement of costs to Tenant. Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Property and operation and other use of such Improvements on the Property; and that Landlord's duty to cooperate and Landlord's approvals under this Lease do not in any way modify or limit the exercise of Landlord's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.3 Construction Contract. Tenant shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Improvements with

a general contractor reasonably acceptable to the City, which general contractor shall be duly licensed in the State and shall have significant experience in organizing and contracting public-private development projects of the type and scale similar to the Project.

6.1.4 Construction Requirements. No development or construction on the Property shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of "as built" plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements.

6.1.5 Compliance with Laws. Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the ADA, Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. The design, construction and operation of the Improvements shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Project and the Shoreline Project. This Lease does not provide Tenant any vested rights to construct the Improvements in accordance with the existing policies, rules and regulations of the City, or to construct the Improvements subject only to the existing conditions of approval which may have been previously approved by the City, except as Tenant may already have obtained vested rights to develop the Improvements in accordance with a Development Agreement between City and Tenant or a vesting tentative map.

6.1.6 Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Tenant and its contractors and subcontractors shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Improvements as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., any applicable federal labor laws and standards, and implementing regulations, and perform all other applicable obligations, including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, and compliance with all regulations and statutory requirements pertaining thereto, all as may be amended from time to time (the "**Prevailing Wage Law**"). Tenant shall periodically, upon request of Landlord, certify to Landlord that, to its knowledge, it is in compliance with the requirements of this paragraph.

6.1.7 Indemnity. Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Landlord and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively. the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Improvements. Tenant's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

6.1.8 Project Labor Agreement. Prior to the Effective Date of the Lease, and throughout the term of construction of the Improvements, Tenant shall negotiate, enter into, remain a party to and comply with at least one Project Labor Agreement with respect to the construction of the Improvements.

6.1.9 Performance and Payment Bonds.

6.1.9.1 Prior to commencement of any construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as obligee and shall be in a form acceptable to the City Attorney. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of contractor's ability to commence and complete construction of the Project in the form of subguard insurance, an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

6.1.10 Force Majeure. Performance by either party hereunder shall not be deemed to be in default, and the time within which a party shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party

seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, unavoidable casualties, litigation involving this Lease or the land use approvals of the Improvements, or bankruptcy, insolvency or defaults of lenders or equity investors ("**Force Majeure Events**"). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twelve (12) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Lease to the contrary, delays due to inability to obtain financing, recession or other general economic conditions, adverse market conditions, adverse interest rates, and/or the lack of funds or financing to complete the Improvements, shall not constitute Force Majeure Events.

6.2 **Fixtures and Equipment.** In constructing the Improvements upon the Property, Tenant and its Concessionaires may place or install in the Project such trade fixtures and equipment as Tenant or its Concessionaires shall deem reasonably desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its Concessionaires (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Improvements) placed by Tenant or its Concessionaires on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its Concessionaires at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Improvements and all fixtures and equipment necessary for their operation and maintenance) constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or its Concessionaires do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within thirty (30) days following the end of the Term, Landlord may as its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

6.3 **Mechanics and Labor Liens.** Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens, asserted by reason of contracts

made by Tenant, to stand against the Landlord's fee interest in the Property, to Landlord's fee simple estate in reversion of the Improvements, nor against Tenant's leasehold interest therein for Work or labor done, services performed, or material used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or Concessionaires. Tenant shall cause any such claim of lien to be fully discharged within (30) days after the date of filing thereof, provided, however, that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall post an undertaking as may be required or permitted by law or is otherwise sufficient to prevent the lien, claim of encumbrance from attaching to the fee interest in the Property. Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation results therefrom, discharges said lien. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Property, Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws. Landlord shall have the right at all reasonable times and places after at least ten (10) days advance notice to post, and as appropriate to keep posted, any notices on the Property which Landlord may deem reasonably necessary for the protection of Landlord's interest in the Property from mechanic's liens or other claims. Tenant shall give Landlord at least ten (10) days prior written notice of the commencement of any work to be done upon the Property under this Section, in order to enable Landlord to post such notices. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO MECHANICS' OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.

6.4 Development Rights. Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay).

6.5 Hold Harmless. Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind of description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to be the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay

any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or Improvements shall be acquired as required by applicable laws, ordinances or regulations including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Term of this Lease, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, upon expiration or termination of this Lease, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Thirty (30) days prior to the expiration of the Term, Tenant shall deliver copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Subject to each and all of the terms and conditions listed in Paragraphs (a) – (d) below, Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon, and to refinance such mortgages, pledges and assignments, by way of one or more "Leasehold Mortgages" (as that term is defined below) (which may be of different priority and exist at the same time), and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a "Leasehold Mortgagee"), including collateral assignments of this Lease, any Subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Leasehold Mortgage" below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more "Mezzanine Loans" as defined below, and subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Mezzanine Loan" below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined is sometimes referred to herein as a "Security Instrument", and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a "Lender". In no event shall the fee interest of Landlord in the Property, residual interest of Landlord in the Improvements, or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

(a) Prior to the issuance of a TCO, Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited in purpose to and the principal amount of all such Leasehold Mortgages and Mezzanine Loans shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, and operation of the Improvements.

(b) After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of the fair market rental value of the Property (land) and the value of Tenant's fee ownership of the Improvements; provided, that such requirement shall not result in a default with respect to any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO, nor shall such requirement prohibit Tenant from refinancing any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of a TCO as long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO and Tenant does not receive a payment of net proceeds from the refinancing. Tenant shall obtain Landlord's written approval prior to refinancing any Leasehold Mortgage or Mezzanine Loan if the principal amount of such refinancing will exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage and

Mezzanine Loan, and/or if Tenant will receive a payment of net proceeds from the refinancing. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the fair market rental value of the Property and the value of the Improvements, and to review and approve any Leasehold Mortgage or Mezzanine Loan and related loan documents that require Landlord's approval, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys.

(c) Any permitted Leasehold Mortgages and Mezzanine Loans entered into by Tenant are to be originated only by Institutional Investors (as defined in Section 7.3 hereof) approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Leasehold Mortgagee or Mezzanine Lender shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage or Mezzanine Loan.

7.2 Notice to Landlord.

7.2.1 If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "Recognized Leasehold Mortgagee." The most senior recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees, shall be referred to in this Lease, and be entitled to the rights of, the "Senior Recognized Leasehold Mortgagee;" and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the "Senior Recognized Leasehold Mortgage," provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most Senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord a copy of the applicable Security Instrument shall be deemed a "Recognized Mezzanine Lender". Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a "Recognized Lender". The most senior Recognized Mezzanine Lender from time to time, based upon such notices from such Recognized Mezzanine Lender or a notice from the Senior Recognized Mezzanine Lender designating another Recognized Lender as the "Senior Recognized Mezzanine Lender", shall so long as the Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine

Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the "Senior Recognized Mezzanine Lender". The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the "Senior Recognized Lenders."

7.2.2 In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner; provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.3 Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1. above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.4 Tenant and each Recognized Lender shall give Landlord written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender's rights hereunder in any manner whatsoever.

7.3 Definitions.

7.3.1 The term "**Institutional Investor**" as used in Section 7 shall refer to any entity with assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made, and which is a (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing, or (ix) such other lender as may be approved by Landlord in writing in advance, which approval shall not be unreasonably withheld. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2 The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3 The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the

notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4 The term "Mezzanine Loan" means one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the "Mezzanine Loan Requirements"): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Investor (each a "Mezzanine Lender"); (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Senior Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided, however, that nothing in this Section 7.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1 Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord's intent to so terminate this Lease (a "**Default Notice**") at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination (as such time period

may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or sixty (60) day period (each such period a "**Termination Notice Period**"), any Senior Recognized Lender shall:

7.6.1.1 notify Landlord of such Senior Recognized Lender's desire to nullify such notice;

7.6.1.2 pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and

7.6.1.3 comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with by such Senior Recognized Lender within the notice period, provided, however, (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender's initial cure period shall commence upon the later of the end of Tenant's cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and (ii) provided, further, that such Senior Recognized Lender shall not be required during such sixty (60) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

7.6.1.4 Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notice of a change of Senior Recognized Lender ownership has been given to Landlord pursuant to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1 If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its

Default Notice shall be extended for a period of sixty (60) days, provided that such Senior Recognized Lender shall during such sixty (60) day period:

7.7.2 Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant' s interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

7.7.3 If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.4 If at the end of such sixty (60) day period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the Term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, and this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.5 If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.6 For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of

the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however, that following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1), Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.7 If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.8 Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within sixty (60) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, or if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section

7.6.1, Landlord shall provide each Senior Recognized Lender with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with the Senior Recognized Lender for the remainder of the Term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1 Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2 Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3 Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord' s Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4 If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a New Lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5 Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such New Lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant

with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the New Lease simultaneously with the delivery of such New Lease.

7.8.6 The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7 In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Senior Recognized Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefor, issued by a responsible title insurance company doing business within the State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including, but not limited to, the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of and agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant

hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

7.13 **Legal Proceedings**. Landlord shall give each Recognized Lender prompt notice of the commencement of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Recognized Lenders not intervening after receipt of notice of the proceedings. In addition to the notice requirements in Section 7.2.4, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.

7.14 **No Merger**. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 **Estoppel Certificate.** Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord' s fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E stating to the best of such person' s knowledge after a commercially reasonable inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by

the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

7.16 **Notices.** Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above, and those from each Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.

7.17 **Erroneous Payments**. No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided the Recognized Lender shall have made demand therefor not later than one year after the date of its payment.

7.18 **Amendment of Lease**. Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.

7.19 **Certain Tenant Rights**. The right, if any, of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel this Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and any exercise of the foregoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat this Lease as terminated in the event of the Landlord' s bankruptcy; any such rights are limited to those provided under the terms of this Lease and applicable law.

7.20 **Limitation on Liability.** Notwithstanding anything to the contrary in this Lease, no Recognized Lender or its assigns shall have any liability under this Lease beyond its interest in this Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to, Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Base Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1 Tenant shall indemnify, defend and save harmless Landlord and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "**Indemnitees**") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Tenant, its Concessionaires, invitees, agents, employees, guests, customers, licensees or permittees, except as may arise solely out of the willful or grossly negligent act of the Indemnitees. Landlord and Tenant agree that this provision shall not require Tenant to indemnify, defend and save the Indemnitees harmless from the Indemnitees' gross negligence or willful misconduct, if any.

8.1.2 All provisions of this Lease pursuant to which the Tenant agrees to indemnify the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages caused by or resulting from the sole negligence of the Indemnitees. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3 Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date during the Term of this Lease. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without limiting the foregoing, neither Landlord nor any of the Indemnitees shall be liable for and, except as otherwise provided in Section 11.1.1, there shall be no abatement of Base Rent for, (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent

or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. [**SUBJECT TO REVIEW OF CITY RISK MANAGEMENT**] Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1 Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars ($5,000,000) each occurrence; Ten Million Dollars ($10,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2 Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3 Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars ($1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8.1 below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4 Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5 Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6 Automobile Insurance. A Commercial Automobile Liability policy in the amount of Two Million Dollars ($2,000,000), combined single limit for bodily injury and property damage. Coverage shall include "Owned, Non-Owned and Hired" automobiles, which shall protect Tenant and Landlord from claims for such damages.

8.3.7 Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Property, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1 Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2 Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord, except after thirty (30) days prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3 Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4 Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

8.4.5 Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

8.4.6 Be provided by insurance carriers with an A.M. Best rating of not less than A:VII.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.11 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 Proceeds. All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be paid over to Tenant.

9. REPAIRS AND MAINTENANCE

9.1 Acceptance of Property. EXCEPT AS OTHERWISE PROVIDED HEREIN, TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS, WHERE IS, IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 Tenant's Maintenance Obligations. During the Term hereof, Tenant agrees to keep and maintain the Improvements and the Property, and every part thereof, including without limitation, all buildings, all exterior facades, all sidewalks, all exterior areas, any appurtenances and fixtures, the structural elements of the buildings, all parking facilities, roofs, walls, plumbing, heating, ventilation, air conditioning, plazas, and landscaping, at Tenant's sole cost and expense, in good repair, in a neat, clean, safe,

and orderly condition, in accordance with the standard of maintenance of prudent owners of high quality, Class A Multifamily Apartment Projects within the East Bay Area region, in accordance with any property improvement plan required by any lender, and in compliance with the City Municipal Code and all applicable laws. Tenant agrees to perform all day-to-day maintenance, repairs and replacements reasonably necessary to maintain and preserve the Improvements and the Property, and to provide administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are reasonably necessary for the maintenance of the Improvements. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Property. Tenant hereby waives all rights to make repairs or to cause any work to be performed at the expense of Landlord as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

9.3 Landlord's Inspections. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof. Landlord may, after reasonable advance notice, enter upon the Property, or any portion thereof, from time to time, solely for the purpose of inspecting the Property or a suspected breach of this Lease by Tenant that reasonably requires entry upon the Property. In so doing, Landlord shall use reasonable efforts to minimize disruption to Tenant or its Subtenants or Concessionaires. Landlord shall not be liable to Tenant or its Subtenants or Concessionaires, or any person or entity claiming through Tenant or its Subtenants or Concessionaires, or to the occupant of any portion of the Property for any loss, damage or harm arising out of Landlord's exercise of the rights of entry reserved herein, except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors, officers or employees.

9.4 Landlord's Repairs. If Tenant fails to make repairs or replacements as required in this Lease and such failure has a material adverse impact on the operation of the Property, after the expiration of any applicable notice and cure period, Landlord may once again notify Tenant of said failure in writing, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 9.4 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH THIRTY (30) DAY PERIOD AND DILIGENTLY PROSECUTED THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 9.4 OF THE LEASE." If Tenant then fails to make the repairs or replacements or commence the repairs or replacements as provided above, within such ten (10) business day period, Landlord may make such repairs and replacements at Tenant's expense. Tenant shall reimburse Landlord for the actual and reasonable costs thereof within thirty (30) days after Landlord's notice specifying such costs together with a written invoice therefor. Such costs may include, without limitation, the reasonably necessary cost of design, labor, material, equipment, the value of services provided by Landlord's employees in the actual performance of the repairs and

replacements, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Landlord. If Landlord makes such repairs or replacements, Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, loss or liability of any kind arising out of or connected in any way with such work, including, but not limited to claims by Tenant, its officers, employees, agents, Subtenants, Concessionaires and the patrons or visitors of Tenant or its Subtenants or Concessionaires except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors and employees.

9.5 Capital Reinvestment. Tenant shall annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for rehabilitation of the Improvements ("Rehabilitation Plan"). Each Rehabilitation Plan shall describe what work is necessary to maintain the structural integrity of the Improvements, and keep the Improvements in a commercially reasonable condition which is sufficient to operate a Class A Multifamily Apartment Project therein, and shall set forth a detailed program of expenditures to be undertaken by Tenant within such five year period, broken down by Lease Year. Tenant shall perform the work set forth in each approved Rehabilitation Plan within the times set forth therein. Tenant shall also annually prepare and submit to Landlord for Landlord's reasonable approval a five-year plan for renovation and replacement of furniture, fixtures and equipment in the common areas of the Project ("FFR Plan"). Each FFR Plan shall determine what furniture, fixtures and equipment are necessary in the common areas of the Project to maintain the Project as a Class A Multifamily Apartment Project, and shall set forth a detailed program of expenditures for furniture, fixtures and equipment broken down by calendar year. Tenant shall perform the renovation and replacement set forth in each approved FFR Plan within the times set forth therein.

9.6 Reserve Account. Tenant shall establish and maintain a capital reserve account at all times during the Term of the Lease ("Reserve Account"). The funds to be placed and maintained in the Reserve Account during each Lease Year shall be not less than the amount set forth in the approved Rehabilitation Plan for the current five year Rehabilitation Plan period. Notwithstanding the foregoing, if the lender requires a larger minimum deposit into the Reserve Account, Tenant shall maintain such larger required amount in the Reserve Account. The funds in the Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Project fixtures and equipment in accordance with the current approved Rehabilitation Plan and FFR Plan, and capital repairs to and replacement of the Project with a long useful life and which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Reserve Account does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Tenant shall submit to Landlord an accounting for the Reserve Account.

9.7 Condition at End of Lease. Upon vacating the Property at the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and

cleanliness required to be maintained by Tenant during the Term of this Lease, wear and tear and casualty excepted, and shall peaceably surrender the same to Landlord. On the date Tenant is required by this section to surrender possession, Tenant shall deliver to Landlord such proper and executed instruments in recordable form, releasing, quitclaiming and conveying to Landlord all right, title and interest of Tenant and any other party claiming by or through Tenant or Tenant's Estate in and to the Property and/or the Improvements, including, without limitation, such documents necessary for Landlord to demonstrate to a title company that this Lease no longer encumbers the Property and Improvements, and that title to the Improvements shall have vested in Landlord, free and clear of all liens, encumbrances or title exceptions, other than the Permitted Title Exceptions, exceptions to title not otherwise created by or through Tenant, and title exceptions approved by Landlord in writing. All provisions of this section shall survive any termination of this Lease.

10. QUIET POSSESSION

10.1 Quiet and Peaceful Possession. Landlord covenants that it is has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of 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 Property by Tenant, Tenant shall have quiet and peaceful possession of the Property during the entire Term of this Lease. However, except as provided in this Lease, Landlord shall in no event be liable in damages 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 gross negligence or willful misconduct of Landlord or its officers, agents or employees, in violation of its obligations under this Lease.

10.2 Other Activities in Shoreline Marina Area. Tenant acknowledges that from time to time during the term of this Lease, and at such times and intervals as may be determined by Landlord in its reasonable discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by the authority of Landlord within the Shoreline Marina area. Landlord agrees that such activities shall be performed during such hours and durations that are reasonable for such activities. Tenant acknowledges that said activities and related operations may be necessary and for the benefit of Tenant, its Subtenants, its guests and customers, other tenants and the public, and that the conduct of such activities shall not be deemed to have disturbed or interfered with the possession and use of the Property by Tenant or anyone claiming under Tenant, or to have caused Tenant to be evicted, either actually or constructively, from the Property, and shall, under no circumstances, entitle Tenant or others claiming under or through Tenant to claim or recover incidental or consequential damages from Landlord on account of such activities.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) Tenant's Duty to Restore. Subject to Section 11.1(b) below, if any Improvements are damaged by fire, other peril or any other cause during the Lease Term, then Tenant, at its sole cost and expense, shall, within three (3) years after the date of casualty, or such shorter period of time as is reasonably necessary for the restoration (subject to delays caused by Force Majeure Events), restore the Leasehold Improvements in compliance with and to the extent permitted by all then applicable laws and this Lease shall remain in full force and effect, without abatement of Base Rent or other charges, except to the extent of rental loss insurance proceeds paid to Landlord. All insurance proceeds payable as a result of such casualty shall be applied in the following order of priority:

i. First, as provided by any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

ii. Second, to Tenant for the payment of all costs and expenses to complete the restoration of the Improvements required of Tenant pursuant to this subsection; and

iii. Third, the remainder of insurance proceeds, if any, shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (ii) above shall be deemed to be held in trust for the benefit of Landlord and Tenant by the recipient for the purpose of restoration of the Improvements

(b) Tenant's Termination Rights. Notwithstanding anything to the contrary in this Lease:

(i) Election Not to Reconstruct. If an Uninsurable Loss in excess of the Restoration Amount or any Late Term Extensive Damage occurs, then Tenant, by delivery of written notice to Landlord within six (6) months after the occurrence of the damage, may elect not to reconstruct the Improvements, in which case Tenant, at its sole cost, shall remove all debris; restore the Property to a safe condition in compliance with all applicable laws; and maintain such Improvements which are not damaged in the condition required by this Lease. Following such election, this Lease shall continue to remain in full force and effect, without abatement of Base Rent or other charges. Tenant's failure to make an election in writing within six (6) months after the date of the occurrence of the damage shall constitute Tenant's affirmative election not to restore the damaged Improvements pursuant to Section 11.1(a) above. All insurance proceeds payable as a result of such casualty with regard to Late Term Extensive Damage which Tenant elects not to reconstruct as provided hereinabove shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to Tenant for the payment of all costs and expenses to complete the demolitions and/or restorations required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all Rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (B) above shall be deemed to be held in trust for the purposes and uses described therein.

Notwithstanding the foregoing, Tenant shall be responsible for repairing any damage to Improvements caused by an Uninsurable Loss if the Uninsurable Loss is less than the Restoration Amount.

(c) Infeasibility. Notwithstanding Section 11.1(a), if reconstruction of the Improvements following any casualty is physically infeasible because of physical conditions of the Property, or if the City or any other governmental authority cannot legally grant the permits and approvals for repair or restoration of the Improvements so that the Project shall continue to have not less than the original number of apartment units, plus facilities substantially equivalent to those existing prior to the casualty and reasonably desirable for the reconstructed Project taking into consideration any reduction in apartment units, and in any case sufficient to maintain the Class A Multifamily Apartment Project operating standards set forth herein (the "Minimum Restoration Level"), then Tenant may terminate this Lease as of the date set forth in its written notice to Landlord so stating. If the City or any governmental authority can legally grant permits and approvals for repair and restoration of the Improvements so that the total capacity of the Project after restoration will be at least the Minimum Restoration Level but less than the total capacity of the Project originally approved by the City land use entitlements, then Minimum Ground Rent shall thereafter be reduced to reflect the number of apartment units in the Project. Landlord shall cooperate with Tenant and use good faith efforts to have permits and approvals for repair granted for the highest number of apartment units legally available, up to the number of apartment units originally approved by the City land use entitlements, but Landlord shall have the right to require that the Improvements contain the amenities required by this Lease, subject to reduction in size and/or capacity as specified in this Section 11.1(c). If Tenant elects to terminate this Lease pursuant to this section, Tenant, at its sole cost, shall, prior to the effective date of the termination remove all debris from the Property, restore any Improvements not removed, remove all safety hazards from the Property and restore the Property to a safe condition in compliance with all applicable laws. Subject to Tenant's completion of its obligations in the immediately preceding sentence, upon the termination date set forth in Tenant's written notice to Landlord of its election to terminate: (i) all Minimum Ground Rent and other sums due pursuant to this Lease shall be prorated as of the date of termination and paid by Tenant; (ii) this Lease shall expire and terminate; and (iii) neither Landlord nor Tenant shall have any further obligations hereunder, except for those obligations which have accrued prior to the date of termination or which are intended to survive termination of the Lease. All insurance proceeds payable as a result of such damage and Tenant's election to terminate shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to the payment of all expenses incurred by Tenant in completing the demolition and/or restoration required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

(d) General Provisions. Landlord shall not be required to repair any injury or damage to the Improvements on the Property. Landlord and Tenant hereby waive the provisions of (i) Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of Law from time to time in effect during the term of this Lease and relating to the effect on leases of partial or total destruction of leased premises; and (ii) Sections 1941 and 1942 of the Civil Code, providing for repairs to and of the Property. Landlord and Tenant agree that their respective rights upon any damage or destruction of the Improvements shall be those specifically set forth in this Article 11.

12. CONDEMNATION

12.1 Definitions. As used in this Article, the following words have following meanings:

12.1.1 "Award" means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

12.1.2 "Taking" means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

12.1.3 "Taking Date": means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

12.1.4 "Total Taking": means the taking of the title to all of the Property and the Tenant's Estate.

12.1.5 "Substantial Taking" means the Taking of the fee title to a portion of the Property or title to Tenant's Estate, or both, if one or more of the following conditions result:

12.1.5.1 the portion of the Property and/or Tenant's Estate not so taken cannot be repaired or reconstructed, as to constitute a Class A Multifamily Apartment Project capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

12.1.5.2 such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

12.1.5.3 the cost of repairing or replacing the Improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

12.1.6 "Partial Taking" means any Taking of title that is not either a Total or a Substantial Taking.

12.1.7 "Notice of Intended Taking" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives a Notice of Intended Taking, notify Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of Improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment and Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the present value of Tenant's Estate, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this

Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of Tenant's Estate shall take into account and shall be determined subject to any permitted Subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property as Tenant deems appropriate so as to make them an operable whole to the extent allowed by governmental laws and restrictions.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than three (3) months, (i) this Lease shall continue in full force and effect, (ii) Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, (iii) neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and (iv) Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such three (3) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1 The party receiving any notice of the following kinds shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) Notice of an intended Taking; (b) Service of any legal process relating to condemnation of the Property or the Improvements; (c) Notice in connection with any proceedings or negotiations with respect to

such a condemnation; or (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2 The party receiving any notice, Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, Landlord, Tenant and any Leasehold Mortgagee shall attempt to agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFERS

13.1 No Transfer Without Landlord's Consent. The qualifications and identity of Tenant are of particular concern to Landlord. It is because of those qualifications and identity that Landlord has entered into this Lease with Tenant. Except as otherwise provided below, during the Term of this Lease, (a) no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, (b) Tenant shall not make any total or partial sale, transfer, conveyance, assignment, Sublease, or subdivision of the whole or any part of the Property or the Improvements thereon (excluding deeds of trusts and mortgages), and (c) there shall not be a change in the controlling interest of Tenant, without the prior written approval of Landlord, except as expressly permitted below. Prior to Stabilization (as herein defined), Landlord may disapprove a request for a Transfer in its sole and absolute discretion except as expressly permitted below. For purposes hereof, **"**Stabilization**"** means the point at which the Project has reached ninety-five percent (95%) occupancy for three consecutive one-month periods. After Stabilization, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Tenant's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to finance the Transfer and operate and manage a project of this size, in sufficient detail to enable Landlord to evaluate the proposed transferee pursuant to the criteria set forth in this Section 13.1 and as reasonably determined by Landlord. Landlord shall evaluate each proposed transferee

on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 13.1 applies, which Landlord reasonably determines does not possess these qualifications. Notwithstanding any provision in this Section 13 to the contrary, in no event shall Tenant make any Transfer which would or could likely be effective beyond the Term (including extensions thereof) without the prior written consent of the Landlord. A Sublease or an assignment and assumption agreement in form reasonably satisfactory to Landlord shall also be required for all proposed Transfers. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease, provided that the assigning Tenant shall retain all indemnification obligations pursuant to this Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, **"**Permitted Transferee**"** means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Tenant's obligations under this Lease following completion of the Project, and (ii) that possesses the financial resources typical of owners of similar projects.

13.2 Definition of Transfer. For purposes of this Lease, **"**Transfer**"** means any sale, lease, Sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord's consent, (ii) Affiliate Transfers, (iii) Leasehold Mortgages, and (iv) Subleases (as defined in Section 13.5 hereof).

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1 the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.3 a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of

the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as security for a Mezzanine Loan; or

13.3.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the- counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Effective Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.6 any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1 Tenant shall give Landlord ninety (90) days prior written notice of the proposed Transfer setting forth therein (i) the identity of the proposed transferee; and (ii) the proposed transferee's proposed use of the Property (the "**Transfer Request**"). Within thirty (30) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within thirty (30) days of the receipt of the Transfer Request, Tenant may provide Landlord a second Transfer Request notice which states in bold that Landlord's failure to approve or disapprove the proposed transfer within fifteen (15) days of the date of receipt of the second Transfer Request notice will result in the proposed transfer being deemed approved by Landlord. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the second Transfer Request notice, Landlord shall be deemed to have approved the proposed Transfer.

13.4.2 The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord, which shall be in the form of a Sublease when the Permitted Transferee is a Subtenant. Upon consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer, which shall be in the form of a memorandum of Sublease when the Permitted Transferee is a Subtenant.

13.4.3 Tenant shall pay Landlord Participation Rent in the amount of two percent (2%) of the Gross Sales Proceeds of such Transfer pursuant to Section 13.6 hereof, concurrently with the closing of such Transfer.

13.4.4 No uncured Default shall exist hereunder on the date of Transfer.

13.5 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.5.1 Subleases of individual apartment units within the Project shall not require prior approval of the Landlord.

13.5.2 Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the Subtenant to attorn to Landlord upon a Default by Tenant hereunder and notice to Subtenant that Tenant has defaulted under this Lease and Subtenant is instructed to make Subtenant's rental payments to Landlord.

13.5.3 Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the Subtenant to take no action in contravention of the terms of this Lease.

13.5.4 Each Sublease is of a duration not greater than the Term of this Lease.

13.5.5 Each Sublease shall be in compliance with all applicable laws.

13.5.6 Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such Subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.6 Participation Rent from Transfer Proceeds. Upon any sale, transfer or assignment of any portion of Tenant's interest in this Lease or the Property to a third party or third parties, Landlord shall receive **"Participation Rent"** in the amount of two percent (2%) of **"Gross Sales Proceeds"** of all such sales, transfers and assignments retroactively. "Gross Sales Proceeds" means the gross consideration received by the transferor or any affiliate as a result of a transfer, without deductions for costs or expenses relating to the sale, transfer or assignment. Notwithstanding anything to the contrary contained herein, Participation Rent will not be due and owing for (i) financing or refinancing or equity financing and any foreclosure or deed in lieu of foreclosure in connection with any financing, refinancing or equity financing, (ii) any "key money" contribution or similar payment by a Project operator, or (iii) the direct or indirect sale of assets, merger, consolidation or upper tier transfers of interests in a parent or affiliate which owns directly or indirectly, an interest in Tenant or any entity holding an interest in the Lease, so long as there is no payment or distribution of consideration in connection with such transaction. An example of Participation Rent calculations is set forth in Exhibit H attached hereto.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise

on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. [DELETED]

15. INSOLVENCY

15.1 Landlord's Remedies. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. DEFAULT

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (a "Default") under this Lease:

16.1.1 Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) days after written notice of such default has been received by Tenant; or

16.1.2 Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been received by Tenant. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith and with reasonable diligence prosecutes the cure of such default to completion, but in no event later than ninety (90) days after written notice of such default has been received by Tenant.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the

alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1 Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2 Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been earned under this Lease after such termination up to the date of such award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom (including, but not limited to those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amounts referred to above shall be determined in accordance with Civil Code Section 1951.2(b) or successor statute.

16.3.3 Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1,

unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

16.4 **Costs**. If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

16.5 **Cumulative Remedies**. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. A party's liability for damages under this Lease shall be limited to actual damages sustained and shall not include any consequential, indirect or punitive damages.

16.6 **Waiver of Default.** No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.

16.7 **Landlord Default and Tenant Remedies**. Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "Landlord Default": (a) if such failure can reasonably be cured within thirty (30) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such thirty (30) day period; or (b) if such failure cannot reasonably be cured within said thirty (30) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

17. LANDLORD MAY INSPECT THE PROPERTY

17.1 Advance Notice for Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

18.1 Terms Upon Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to One Hundred Fifty Percent (150%) of the amount of Base Rent due for the last month of the term of this Lease.

19. NOTICES

19.1 Address for Notices. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service, provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

[Entity Name]
11755 Wilshire Blvd., Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copy to:

Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

And the address of Landlord is:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copy to:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

20. SUCCESSORS

20.1 Binding on Successors and Assigns. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

21.1 Rights Upon Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Nondiscrimination. Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, Subtenants, Concessionaires, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

22.2 Compliance with Law. Tenant agrees, at its sole cost and expense, to itself comply, and to use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements, with all the requirements now in force, or which may hereafter be in force, of all municipal,

county, state and federal authorities pertaining to the Property and the Improvements, as well as operations conducted thereon, and to faithfully observe and use its commercially reasonable efforts to secure compliance by all contractors and Concessionaires and Subtenants of the Property and Improvements with, in the use of the Property and the Improvements with all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, Tenant shall use good faith efforts to prevent Concessionaires and Subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by Concessionaires and Subtenants of the Property and Improvements. The judgment of any court of competent jurisdiction, or the admission of Tenant or any Concessionaire, Subtenant or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that the Concessionaire, Subtenant or permittee has violated any such ordinance or statute in the use of the Property or the Improvements shall be conclusive of that fact as between Landlord and Tenant, or such Concessionaire, Subtenant or permittee.

22.3 Conflict of Interest. No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

22.4 Further Actions and Instruments; City Manager Authority. Each of the parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Lease and the satisfaction of the conditions of this Lease. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Lease to carry out the intent and to fulfill the provisions of this Lease or to evidence or consummate the transactions contemplated by this Lease. Landlord hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Lease on behalf of the Landlord so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Landlord as specified herein, or reduce the revenue earned or to be earned by Landlord, as may be necessary or proper to satisfy the purpose and intent of this Lease. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Landlord to do so. The City Manager may delegate some or all of his or her powers and duties under this Lease to one or more management level employees of the City.

22.5 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.6 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.

22.7 Extensions of Time. Times of performance under this Lease may be extended in writing by the mutual agreement of Landlord and Tenant, as applicable. The City Manager (or designee) shall have the authority in his or her sole and absolute discretion on behalf of Landlord to approve extensions of time not to exceed a cumulative total of ninety (90) days.

22.8 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.

22.9 Cumulative Remedies. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

22.10 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.

22.11 Late Charge and Interest. In the event Tenant fails to make any payment of Base Rent due hereunder upon the date due, Landlord shall be entitled to collect from Tenant a late charge equal to five percent (5%) of the amount of the delinquent payment. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.

22.12 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid. Specifically, without

limitation, this Lease supersedes the DDA with respect to the terms and conditions of the Landlord's ground lease of the Property to the Tenant. In the event of any inconsistency between the terms and conditions of this Lease and the terms and conditions of the DDA with respect to the Property, the terms and conditions of this Lease shall prevail.

22.13 Escalation. The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Effective Date and every tenth (10th) anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.

22.14 Language. The word "Tenant" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.

22.15 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.16 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.17 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.18 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.19 Survival. All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.20 Recordation. A memorandum of lease in the form attached hereto as Exhibit D shall be promptly executed and acknowledged by the Parties and recorded by Tenant in the

county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.21 Net Lease

22.22.1 No Liability for Landlord Taxes. Nothing herein contained shall be construed so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

22.22.2 No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.23 Limitation of Liability.

22.23.1 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual officers or employees of Landlord, and Tenant shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its officers, employees, contractors, consultants, attorneys, volunteers, or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief, or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to such damages arising out of or relating to this Lease, including, but not limited to, damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

22.24 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substances" means all of the following:

23.1.1 Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste" or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("CERCLA"); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("RCRA"); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

23.1.2 any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

23.1.3 Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

23.1.4 Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

23.1.5 Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

23.2 The term **"Hazardous Substances**" shall include the following **"Permitted Hazardous Substances:"** all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and

products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by Subtenants under Subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

23.3 **"Environmental Law(s)"** means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.4 **Environmental Inspections.** Tenant has had an opportunity, prior to the Effective Date of this Lease, to engage its own environmental consultant to make such investigations of the Property as Tenant has deemed necessary, and Tenant has approved the environmental condition of the Property.

23.5 **Presence and Use of Hazardous Substances.** Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its Subtenants and Concessionaires and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its Subtenants and Concessionaires and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.6 **Cleanup Costs, Default and Indemnification.**

23.6.1 Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

23.6.2 Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord (as well

as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

23.6.3 Upon and after the Commencement Date of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property occurring after the Commencement Date or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property arising after the Commencement Date, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Landlord, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Tenant's obligations under this Section 23.6 shall survive the expiration of this Lease.

23.7 Duty to Prevent Hazardous Materials Contamination. Tenant shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

23.8 Right of Entry. Notwithstanding any other term or provision of this Lease, in the event Landlord in good faith has reason to believe that a violation of applicable Governmental Regulations as determined by a final non-appeal order, with respect to Hazardous Materials on the Property Tenant shall, subject to the rights of Subtenants, permit Landlord or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials and Hazardous Materials Contamination in violation of Governmental Requirements as determined by a final non-appealable order on or affecting the Property, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials Contamination when Tenant has failed to do so after notice from Landlord and an opportunity to cure such deficiency, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 23 OF THE LEASE, AND IF TENANT FAILS

TO CURE SUCH DEFAULT WITHIN TEN (10) BUSINESS DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) BUSINESS DAY PERIOD AND DILIGENTLY PROSECUTE THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 23 OF THE LEASE." All actual third party costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Concessionaires and Subtenants and to minimize interference with the day to day operation of the Property in exercising its rights under this Section 23.

23.9 Environmental Inquiries. Tenant shall notify Landlord, and provide to Landlord a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Tenant shall, as soon as reasonably possible after the release, furnish to Landlord a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Landlord, Tenant shall furnish to Landlord a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential

23.10 Storage or Handling of Hazardous Materials. Tenant, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its Concessionaires and Subtenants to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Tenant and/or any of its Concessionaires and Subtenants will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Tenant shall promptly notify Landlord in writing. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Landlord in its reasonable good faith judgment, Landlord may require Tenant, at Tenant's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property in violation of Governmental Requirements. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Landlord, in Landlord's

reasonable good faith discretion. Tenant's obligations hereunder shall survive the termination of this Lease.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

24.1 Warranty of No Brokers. Landlord and Tenant each represents and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction, [except for (i) _____ who represented Tenant (**"**Broker**"**) and whose commission shall be paid by Tenant.] Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by Landlord and Tenant. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration or other termination of this Lease, and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

LANDLORD:

CITY OF SAN LEANDRO
a California charter city

By: _____
Jeff Kay
City Manager

ATTEST:

_____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____
Edward J. Miller
Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26’52” West, 53.79 feet;
- South 72°26’34” West, 239.33 feet;
- South 29°07’04” East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09’06”, for an arc length of 43.01 feet;
- North 68°43’50” East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04’04” West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55’36”, for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51’32” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39’07”, for an arc length of 54.27 feet; South 74°30’39” West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT B

MAP OF PROPERTY

[To Be Attached]

EXHIBIT C

PERMITTED EXCEPTIONS

[To Be Inserted]

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code Sections 6103 and 27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is hereby entered into as of _____, 202_ by and between the CITY OF SAN LEANDRO, a California charter city and municipal corporation (the "Landlord"), and [Cal Coast Entity] (the "Tenant").

RECITALS

A. Landlord and Tenant have entered into a "Ground Lease" dated concurrently herewith for those certain parcels of real property which are legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). A copy of the Ground Lease is available for public inspection at Landlord's office at 835 E. 14th Street, San Leandro, California. The term of the Ground Lease is fifty-five (55) years, with options to extend the term for thirty-four (34) years and ten (10) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of Alameda County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to the Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

LANDLORD:

CITY OF SAN LEANDRO,
a California charter city and municipal corporation

By: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____

By: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26’52” West, 53.79 feet;
- South 72°26’34” West, 239.33 feet;
- South 29°07’04” East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09’06”, for an arc length of 43.01 feet;
- North 68°43’50” East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04’04” West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55’36”, for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51’32” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39’07”, for an arc length of 54.27 feet; South 74°30’39” West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)

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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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 E

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: Ground Lease dated _____, ___ (the "Ground Lease") by and between the City Of San Leandro, a California charter city and municipal corporation ("Landlord"), and [Cal Coast Entity] ("Tenant"), covering certain real property located in San Leandro, California and described in Exhibit A attached hereto and made a part hereof (the "Property").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "Instrument") is executed and delivered as of _____, _____, by _____, in connection with _____. Capitalized terms used herein have the meanings set forth in the Ground Lease unless otherwise defined herein. The undersigned hereby certifies, declares and agrees as follows:

1. Ground Lease. Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented or amended, orally or in writing or in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease [or, if there have been defaults, stating the nature of the defaults]. Except for the Ground Lease and the Disposition and Development Agreement between Landlord and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as CC Development LLC, dated as of _____, 2020, [state any other such agreements, if any], there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on [insert date], and is scheduled to terminate on [insert date]. Tenant has the right to extend the term of the Ground Lease for an extended term of thirty-four (34) years and an extended term of ten (10) years, subject to conditions set forth in the Ground Lease.

3. **Rent.** No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.

4. Deposits. Tenant does not make any type of escrow deposits with Landlord. Landlord holds no security deposit from Tenant.

5. No Bankruptcy. No bankruptcy proceedings, whether voluntary or otherwise, are pending or, to Landlord's actual knowledge, threatened against Landlord.

6. No Violations; Condemnation. The undersigned has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. The undersigned has not received any written notice that Landlord, Tenant or [identify management company, if any] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act) [state exceptions, if any].

7. [Fee Encumbrances. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.] [Delete if inapplicable]

8. Insurance Coverage. As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.

9. [Leasehold Mortgage; Leasehold Mortgagee. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee," for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.] [**Conform to transaction**]

10. [Notice and Cure Rights. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6 of the Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [**Conform to transaction**]

[name]

[address]

With a copy to:

[name]

[address]

11. Miscellaneous. If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of the Ground Lease shall prevail. The captions of the sections of this Instrument are for convenience only and shall not have any interpretive meaning.

12. Counterparts. This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date first written above.

By: _____

Name: _____

Title: _____

EXHIBIT A TO GROUND LEASE ESTOPPEL CERTIFICATE

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26’52” West, 53.79 feet;
- South 72°26’34” West, 239.33 feet;
- South 29°07’04” East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09’06”, for an arc length of 43.01 feet;
- North 68°43’50” East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04’04” West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55’36”, for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51’32” East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39’07”, for an arc length of 54.27 feet; South 74°30’39” West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT F

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

Multifamily Element

a) Developer shall design and construct a multifamily residential development with approximately two hundred eighty-five (285) rental units ("Multifamily Element").
b) The Multifamily Element shall include parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
c) Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
d) The unit mix and any amenities are subject to the Project Approvals, as defined in Section 2.1 of the Agreement.
e) The Multifamily Element shall meet the objectives of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq*.) by paying a fee in-lieu of providing affordable rental units (the "Affordable Rental Housing In-Lieu Fee"). If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance.

EXHIBIT "G"

SCHEDULE OF PERFORMANCE

Multifamily Element	
All conditions precedent to commencement of Multifamily Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Multifamily Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Multifamily Lease
Approval of permits for Horizontal Improvements for the Multifamily Element (including grading, encroachment and demolition)	Prior to Effective Date of Multifamily Lease
Construction drawings for Vertical Improvements submitted for Building Permit review, accepted as complete and in plan check.	Prior to Effective Date of Multifamily Lease
Commencement of construction of Horizontal Improvements for the Multifamily Element	Within 90 days of Effective Date of Multifamily Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Multifamily Element	Within 18 months of commencement of construction of Horizontal Improvements for Multifamily Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Multifamily Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Multifamily Element (e.g., foundation), permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Multifamily Element	Within 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element, TCO is received

Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Ground Lease, including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the Parties' sole and absolute discretion.

EXHIBIT H

EXAMPLES OF RENT CALCULATIONS*

The parties acknowledge that this Exhibit H reflects hypothetical values for purposes of illustration only and that the values shown in this exhibit in no way reflect what the actual amounts or anticipated amounts are or will be. Further, the parties acknowledge that if there is a conflict between the examples shown in this Exhibit H and the terms set forth in the body of the Lease, the terms set forth in the body of the Lease prevail.

EXAMPLES:

Base Rent – Section 3.1

The number of apartment units that will be the subject of this Lease is unknown. For that reason, the dollar amount of the Minimum Ground Rent is unknown. The definition of Minimum Ground Rent is a formula for how to solve for the Minimum Ground Rent due on the Rent Commencement Date (and once the number of apartment units is known).

"Rent Commencement Date" means on or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) thirty (30) months after the Effective Date.

"Lease Year" means each January 1 to December 31 calendar year of the Term. The first Lease Year (Lease Year 1) means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

24.1.1.1 "Minimum Ground Rent" means (i) $3,000 per apartment unit; (ii) multiplied by the number of apartment units, and (iii) divided by 12 to determine the monthly Minimum Ground Rent.

Initial Partial Year Prior to Lease Year 1 (i.e. Stub Period)

> "Minimum Ground Rent" for the Stub Period means an amount determined by multiplying the number of days in the Stub Period by the result obtained by dividing the Annual Minimum Ground Rent by 365. Stub Period commences with the Rent Commencement Date and continues until January 1 of the first Lease Year (Lease Year 1).
>
> EXAMPLE
>
> To solve for the Minimum Ground Rent that applies during the Stub Period:
>
> 1. Divide the Annual Minimum Ground Rent by 365

2. Multiply the result by the number of days in the Stub Period.

    - If the Annual Minimum Ground Rent is $855,000 and there are 75 days in the Stub Period, the Minimum Ground Rent for the Stub Period is $175,685 [($855,000/365) x 75]

Beginning Lease Year 1

Once you know the Minimum Ground Rent, no further calculations are necessary to determine the Minimum Ground Rent that applies for Lease Year 1.

Subsequent Lease Years

Beginning Lease Year 2, Minimum Ground Rent increases by 2.0% and every year thereafter by 2%.

EXAMPLE

"Minimum Ground Rent" means . . . for each subsequent twelve-month period that is not an Adjusted Rent Period, an amount equal to (x) the prior year's Minimum Ground Rent plus (y) the result obtained by multiplying the prior year's Minimum Ground Rent by 0.02 . . .

To solve for the increase in Minimum Ground Rent from Year 1 to Year 2:

1. Multiply the Minimum Ground Rent for Year 1 by 0.02.

2. Add the result to the Minimum Ground Rent for Year 1.

    - If the Minimum Ground Rent for Year 1 is $855,0000, Minimum Ground Rent for Year 2 will increase by 2.0%, to $872,100. [$855,000 + ($855,000 x .02)]

    - In each subsequent twelve-month period, Minimum Ground Rent will increase by 2.0%. Following each Adjusted Rent Period, Minimum Ground Rent will continue to increase by 2.0% annually until the next Rent Adjustment Date.

Full Rent (Minimum Ground Rent and Percentage Rent)

Rent is always paid in advance. Because percentage rent is determined based on financial results, the tenant is required to pay Minimum Ground Rent in advance (either monthly or annually) and to subsequently make a "catch up" payment based on Total Gross Receipts derived over the rental period. That means, the Full Rent due for any particular period is the sum of the Minimum Ground Rent and the Percentage Rent due for that period.

"Total Gross Receipts" means the sum of the Apartment Gross Receipts and Concessionaire Gross Receipts received during a Lease Year.

Tenant shall pay the following rent . . . beginning on the Rent Commencement Date and continuing through the remaining Lease Term, the Full Rent will be the Minimum Ground Rent over the relevant period plus the Percentage Rent, if any, over the relevant period (the "Full Rent").

To calculate the Full Rent for a particular period:

1. Determine the Annual Minimum Ground Rent for the relevant period

2. Determine the Percentage Rent for the relevant period.

    - Prior to the second (2nd) Lease Year, there is no annual percentage rent ("**Percentage Rent**").

    - Upon the commencement of the second (2nd) Lease Year and continuing thereafter, calculate the annual Percentage Rent equal to Five Percent (10%) of the Total Gross Receipts

3. To determine the Full Rent for a particular period, add the Annual Minimum Ground Rent for the relevant period to amount that the Percentage Rent exceeds the Annual Minimum Ground Rent for the same period.

    EXAMPLE

    - If the Annual Minimum Ground Rent is $925,000, the Percentage Rent for the same period is $1,000,000, then the Full Rent will equal $1,000,000. (925,000+ [($1,000,000-925,000) = $75,000] = $1,000,000)

Minimum Ground Rent – Adjustment in Lease Years 10. 20, 40, 50, 60, 70, 80 and 90 – Section 3.1

Adjusting Minimum Ground Rent is an effort to lessen the difference between Minimum Ground Rent and Full Rent, which would otherwise increase over time.

"Adjusted Minimum Ground Rent" Upon January 1 of the tenth (10th), twentieth (20th), fortieth (40th), fiftieth (50th), sixtieth (60th), seventieth (70^{th}), eightieth (80^{th}) and ninetieth (90^{th}) Lease Years, the monthly amount of Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by two percent (2%), or (b) the total amount of Full Rent (Minimum Ground Rent plus Percentage Rent) due and payable during the five (5) Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing by twelve.

EXAMPLE 1

Assuming the Full Rent is $1,000,000 in 2025, $1,050,000 in 2026, $1,100,000 in 2027, $1,150,000 in 2028, and $1,200,000 in 2029 and further assuming that the Minimum Ground

Rent paid in 2029 is $1,001,769, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2025, 2026, 2027, 2028 and 2029:

Year	Full Rent
2025	$ 1,000,000
2026	$ 1,050,000
2027	$ 1,100,000
2028	$ 1,150,000
2029	$ 1,200,000
Total	$5,500,000
Average (÷ by 5)	$1,100,000

2. Calculate 70% of the average Full Rent:

   $1,100,000 x .7 = $770,000

3. Multiply the prior year's Minimum Ground Rent by 0.02.

   $1,001,769 x .02 = $ 20,035

4. Add the result to the prior year's Minimum Ground Rent.

   $1,001,769 + $ 20,035 = $ 1,021,804

5. Conclusion: The Adjusted Minimum Ground Rent for 2030 will be $1,021,804 because 70% of the average Full Periodic Rent is lower than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be $85,150.33 ($1,021,804 ÷ by 12).

Example 2

Assuming the Full Rent is $1,300,000 in 2025, $1,400,000 in 2026, $1,500,000 in 2027, $1,600,000 in 2028, and $1,700,000 in 2029 and further assuming that the Minimum Ground Rent paid in 2029 is $1,001,769, the Adjusted Minimum Ground Rent that will take effect on January 1, 2030, will be calculated as follows:

1. Calculate the average Full Periodic Rent for 2025, 2026, 2027, 2028 and 2029:

Year	Full Rent

2025	$1,300,000
2026	$1,400,000
2027	$1,500,000
2028	$1,600,000
2029	$1,700,000
Total	$7,500,000
Average (÷ by 5)	$1,500,000

2. Calculate 70% of the average Full Rent:

   $1,500,000 x .7 = $1,050,000

3. Multiply the prior year's Minimum Ground Rent by 0.02.

   $1,001,769 x .02 = $ 20,035

4. Add the result to the prior year's Minimum Ground Rent.

   $1,001,769 + $ 20,035 = $ 1,021,804

5. Conclusion: The Adjusted Minimum Ground Rent for 2030 will be $1,050,000 because 70% of the average Full Periodic Rent is higher than the prior year's Minimum Ground Rent plus 2%. The monthly Minimum Ground Rent would then be $87,500 ($1,050,000 ÷ by 12).

Participation Rent from Transfer Proceeds – Section 13.6

Participation Rent is paid in the event of a Transfer.

To solve for Participation Rent:

1. Determine Gross Sales Proceeds. If the consideration for the Transfer is a combination of cash, a note and shares of stock, the Gross Sales Proceeds would equal:

Cash	$ 150,000,000
Face Value of Note	$ 40,000,000
Value of Stock	$ 10,000,000
Gross Sales Proceeds	$ 200,000,000

2. Multiply the Gross Sales Proceeds by .02. If Gross Sales Proceeds equal $200,000,000, the Participation Rent will be $4,000,000. ($200,000,000 x .02)

Exhibit O

RESTAURANT GROUND LEASE AGREEMENT

Between

CITY OF SAN LEANDRO

(“LANDLORD”)

And

[CAL COAST ENTITY]

(“TENANT”)

TABLE OF CONTENTS

Page

RESTAURANT GROUND LEASE AGREEMENT

THIS RESTAURANT GROUND LEASE AGREEMENT (hereinafter referred to as this "Lease") is made and entered into this _____day of_____, 202__ (the "Effective Date"), by and between the City of San Leandro, a California charter city and municipal corporation ("Landlord" or "City"), and [Insert Cal Coast Entity] ("Tenant").

RECITALS

A. The City and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as Cal Coast Developer, Inc. ("Developer"), have entered into a Disposition and Development Agreement, dated as of _____, 2020 (the "DDA"), for the development of certain City-owned property consisting of approximately seventy (70) acres located within the City limits in the Shoreline-Marina area, as more particularly described in the DDA (the "Shoreline Property").

B. City desires to advance the development of the Shoreline-Marina area to create new housing units, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base.

C. Section 1.4.5 of the DDA provides for the City to ground lease to the Developer or its affiliate a portion of the Shoreline Property for the development of a two-story building in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor (the "Restaurant"), and associated parking, landscaping, lighting and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City (the "Project"). Section 1.4.5 of the DDA sets forth certain conditions to commencement of the ground lease which must be satisfied or waived by the City.

D. Landlord owns approximately _____ acres of land within the Shoreline Property located at _____ ("Property"), the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference. The Property is depicted on the Site Map attached hereto as Exhibit B and incorporated herein by this reference.

E. Tenant desires to lease the Property from Landlord in order to build and operate the Project thereon.

F. The City has determined that the conditions to commencement of this Lease, as set forth in Section 1.4.1 of the DDA, have each been satisfied or waived by City. Landlord and Tenant now desire to enter into this Lease in order to carry out the Parties' obligations under the DDA with respect to the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 Definitions. Capitalized terms in this Lease shall have the following meanings.

1.1.1 "**ADA**" means the Americans with Disabilities Act.

1.2.1 "**Affiliates**" has the meaning set forth in Section 8.1.3.

1.2.3 "**Anniversary Date**" has the meaning set forth in Section 22.13.1.

1.2.4 "**Annual Financial Statement**" has the meaning set forth in Section 3.3.1.

1.2.5 "**As-Is Condition**" means the condition of the Property as of the Effective Date.

1.2.6 "**Assessments**" has the meaning set forth in Section 4.2.3.

1.2.7 "**Audit Charge**" has the meaning set forth in Section 3.3.2.

1.2.8 "**Award**" has the meaning set forth in Section 12.1

1.2.9 "**Base Rent**" means the rent that is payable as set forth in Section 3.1.

1.2.10 "**Broke**r" has the meaning set forth in Section 24.1.

1.2.11 "**Construction Period**" means the period of time from the Effective Date to the TCO Date.

1.2.12 "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said index is changed so that the base year differs from the base year used in the last Index published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised.

1.2.13 "**DDA**" has the meaning set forth in Recital A.

1.2.14 "**Default**" has the meaning set forth in Section 16.1.

1.2.15 "**Default Notice**" has the meaning set forth in Section 7.6.

1.2.16 "**Developer**" has the meaning set forth in Recital A.

1.2.17 "**Development Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.2.18 "**Effective Date**" has the meaning set forth in the preamble of this Lease.

1.2.19 "**Environmental Law(s)**" has the meaning set forth in Section 23.1 (b).

1.2.20 "**Force Majeure Events**" shall have the meaning set forth in Section 6.1.9.

1.2.21 "**GAAP**" means Generally Accepted Accounting Principles.

1.2.22 "**Gross Receipts**" means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue, except as otherwise provided below, from food and beverage sales, catering, meeting room charges, charges for events occurring on the Property, banquet operations, parking fees and charges, kiosk rentals and other rentals, and any and all other revenue of whatsoever kind or nature derived from the operation of the Project on the Property, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense. "Food and beverage sales" shall mean the sale of prepared food and beverages, including alcoholic and non-alcoholic beverages, at any restaurant, bar, tavern, food stand, take away counter, quick serve, market, vending machine, or other retail food and/or beverage facility on the Property, including but not limited to food and beverages sold for off-premises consumption, to go and takeout sales, delivery, and catering. Gross Receipts expressly excludes state, county and City sales and use taxes, and any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale.

1.2.23 "**Hazardous Substances**" has the meaning set forth in Section 23.1.

1.2.24 "**Horizontal Improvements**" is defined in the Scope of Development.

1.2.25 "**Improvements**" means the Project buildings and associated parking, drive aisles, publicly accessible outdoor space, landscaping, lighting, and other improvements to be constructed by Tenant on the Property in accordance with the Scope of Development, and any other improvements which may be constructed on the Property by Tenant from time to time during the Term.

1.2.26 "**Increased Costs**" has the meaning set forth in Section 6.1.7.

1.2.27 "**Indemnitee**" has the meaning set forth in Section 8.1.2.

1.2.28 "**Indemnitor**" has the meaning set for in Section 8.1.2.

1.2.29 "**Institutional Investor**" has the meaning set forth in Section 7.3.1

1.2.30 "**Landlord**" has the meaning set forth in the first paragraph of this lease.

1.2.31 "**Landlord Default**" has the meaning set forth in Section 16.7.

1.2.32 "**Landlord's Estate**" means all of Landlord's right, title, and interest in and to (a) its fee estate in the Property, (b) its reversionary interest in the Improvements, and (c) all Base Rent and other benefits due Landlord hereunder.

1.2.33 "**Late Term Extensive Damage**" means any damage to the Improvements after the thirtieth (30th) Lease Year, whether insured or uninsured, if the reasonable cost to be incurred by Tenant to restore the Improvements to the condition required by Section 11.1 exceeds (i) thirty percent (30%) of the "replacement cost" (as defined below) of the Improvements if such damage occurs during the _____(__) Lease Year through the end of the _____(__) Lease Year; (ii) twenty percent (20%) of the replacement cost of the Improvements if such damage occurs during the _____(__) through _____(__) Lease Years; and (iii) ten percent (10%) of the replacement cost of the Improvements if such damage occurs after the _____(__) Lease Year. For purposes of determining the extent of Late Term Extensive Damage, "replacement cost" means the actual cost of replacing the Improvements as of the date of casualty in accordance with applicable law, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), if applicable, construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscape restoration.

1.2.34 "**Lease**" has the meaning set forth in the first paragraph of this Lease.

1.2.35 "**Leasehold Mortgagee**" has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

1.2.36 "**Leasehold Mortgages**" has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

1.2.37 "**Lease Year**" means each January 1 to December 31 calendar year of the Term. The first Lease Year means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

1.2.38 "**Lender**" has the meaning set forth in Section 7.1 of this Lease.

1.2.39 "**Mello-Roos Act**" has the meaning set forth in Section 5.4.

1.2.40 "**Mezzanine Loan**" has the meaning set forth in Section 7.3.4.

1.2.41 "**Mezzanine Loan Requirements**" has the meaning set forth in Section 7.3.4.

1.2.42 "**Mezzanine Lender**" has the meaning set forth in Section 7.3.4.

1.2.43 "**Minimum Ground Rent**" has the meaning set forth in Section 3.1.1.1.

1.2.44 "**New Lease**" has the meaning set forth in Section 7.8.

1.2.45 "**Notice of Intended Taking**" has the meaning set forth in Section 12.1.

1.2.46 "**Notice of Termination**" has the meaning set forth in Section 7.8 of this Lease.

1.2.47 "**Operator**" has the meaning set forth in Section 5.2.

1.2.48 "**Partial Taking**" has the meaning set forth in Section 12.1.

1.2.49 "**Partial Year Rent Commencement Date**" has the meaning set forth in Section 3.1.1.1.

1.2.50 "**Participation Rent**" has the meaning set forth in Section 13.6.

1.2.51 "**Percentage Rent**" has the meaning set forth in Section 3.1.2 hereof.

1.2.52 "**Permitted Exceptions**" has the meaning set forth in Section 1.2.

1.2.53 "**Permitted Hazardous Substances**" has the meaning set forth in Section 23.2.

1.2.54 "**Permitted Transferee**" has the meaning set forth in Section 13.1.

1.2.55 "**Prevailing Wage Law**" has the meaning set forth in Section 6.1.6.

1.2.56 "**Project**" means the Restaurant to be constructed in accordance with the Scope of Development and continuously operated during the Term of this Lease as provided herein.

1.2.57 "**Project Labor Agreement**" means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

1.2.58 "**Property**" has the meaning set forth in Recital D.

1.2.59 "**Qualified Auditor**" has the meaning set forth in Section 3.3.1.

1.2.60 "**Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.2.61 "**Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.2.62 "**Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.2.63 "**Rehabilitation Plan**" has the meaning set forth in Section 9.5.

1.2.64 "**Rent Commencement Date**" has the meaning set forth in Section 3.1.1.1.

1.2.65 "**Reserve Account**" has the meaning set forth in Section 9.6.

1.2.66 "**Restaurant**" means a high quality restaurant building and associated parking, landscaping, lighting and all site utilities, which is constructed in accordance with the finishes, plans and specifications, and amenities approved by Landlord pursuant to Section 6, in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City, and which offers high quality improvements consistent with other restaurants with sit-down table service in the market area of the Project. The Restaurant shall be a two-story building in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor.

1.2.67 "**Restoration Amount**" means three percent (3.0%) of the replacement cost of the Improvements immediately prior to the casualty. For purposes of calculating the Restoration Amount, "replacement cost" means the actual cost of replacing the Improvements in accordance with applicable law and the terms and conditions of this Lease, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscaping.

1.2.68 "**Schedule of Performance**" means the schedule attached hereto as Exhibit G.

1.2.69 "**Scope of Development**" means the description of the Improvements to be constructed by Tenant on the Property which is attached hereto as Exhibit F.

1.2.70 "**Security Instrument**" has the meaning set forth in Section 7.1 of this Lease.

1.2.71 "**Senior Recognized Leasehold Mortgage**" has the meaning set forth in Section 7.2.1.

1.2.72 "**Senior Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.2.73 "**Senior Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.2.74 "**Senior Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.2.75 "**Shoreline Property**" has the meaning set forth in Recital A.

1.2.76 "**Sublease**" has the meaning set forth in Section 13.5.

1.2.77 "**Substantial Taking**" has the meaning set forth in Section 12.1.

1.2.78 "**Subtenant**" means a tenant of all or a portion of the Project.

1.2.79 "**Taking**" has the meaning set forth in Section 12.1.

1.2.80 "**Taking Date**" has the meaning set forth in Section 12.1.

1.2.81 "**Taxes**" has the meaning set forth in Section 4.2.1.

1.2.82 "**TCO Date**" means the first day of the month immediately following the month in which a temporary certificate of occupancy ("TCO") for the entirety of the Improvements is issued by the City.

1.2.83 "**Tenant**" has the meaning set forth in the first paragraph of this Lease.

1.2.84 "**Tenant's Estate**" means all of Tenant's right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

1.2.85 "**Tenant's Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.2.86 "**Term**" has the meaning set forth in Section 2.3.1.

1.2.87 "**Termination Notice Period**" has the meaning set forth in Section 7.6.1.

1.2.88 "**Total Taking**" has the meaning set forth in Section 12.1.

1.2.89 "**Transfer**" has the meaning set forth in Section 13.2.

1.2.90 "**Transfer Request**" has the meaning set forth in Section 13.4.1.

1.2.91 "**Uninsurable Loss**" means the cost to restore the Improvements to the condition required by and in accordance with Section 11.1 below, which is caused by: (i) earthquake; (ii) pollution liability; (iii) flood; or (iv) any other casualty for which Tenant is not otherwise required to obtain and maintain insurance coverage pursuant to this Lease. Notwithstanding the preceding, Uninsurable Loss shall not include (a) loss caused by flood, if the Property is located in a flood zone and flood insurance can be obtained at commercially reasonable rates, nor (b) loss caused by Tenant's release of Hazardous Substances on the Property or violation of its responsibilities pursuant to Section 23 hereof.

1.2.92 "**Vertical Improvements**" is defined in the Scope of Development.

1.3 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, subject to the matters set forth on Exhibit C attached hereto and incorporated herein ("Permitted Exceptions"). Not

included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material as provided in Section 2.1.4 hereof.

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1 As-Is Condition. Landlord shall deliver possession of the Property to Tenant on the Effective Date, in its As-Is Condition, and Tenant hereby accepts the Property in its As-Is Condition. Neither the Landlord, nor any officer, employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Property, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Property, or any other matter, affecting the use, value, occupancy or enjoyment of the Property, the suitability of the Property for the uses permitted by this Lease, the suitability of the Property for the Project, construction of the Project, or construction or use of the Improvements on the Property, and Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Property is being leased in its As-Is Condition with respect to all matters. 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 Property, and has, to the extent it deemed necessary, independently investigated the condition of the Property, 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 except as provided in this Lease.

2.1.2 Construction of Development Work. Upon acceptance of possession of the Property, Tenant shall construct the Improvements and shall maintain, repair, replace and renovate the Improvements as required herein (collectively, "Development Work"). In performing the Development Work, Tenant shall comply with all of the requirements of Section 6 hereof. The time of Tenant's commencement and completion of the Development Work shall occur not later than the times set forth therefor in the Schedule of Performance (subject to the occurrence of any Force Majeure Events). For purposes of the Schedule of Performance, "commencement" of the Development Work means the commencement of grading pursuant to a grading permit issued by the City. For purposes of the Schedule of Performance, "completion" of construction means the time that a TCO is issued for the Vertical Improvements. As set forth in Section 6, Landlord shall cooperate with Tenant in obtaining any necessary permits. Landlord shall join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.1.3 Utility Services. Tenant shall be responsible, at its expense, for obtaining all electricity, water, sewer, gas, telephone and other utility services necessary for Tenant's intended use of the Property.

2.1.4 Landlord Reservation of Interests. Landlord reserves to itself the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Property, regardless of the depth below the surface at which any such substance may be found. Landlord or its successors and assigns, however, shall not have the right for any purpose to enter on, into, or through the surface or the first 500 feet of the subsurface of the Property in connection with this reservation. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Landlord's activities under this paragraph.

2.1.5 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord, without abatement, counterclaim, setoff or offset whatsoever, and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property which may arise or become due during the Lease Term, and which, except as otherwise provided in this Lease and any other agreement entered into in connection with this Lease, and except to the extent arising out of a breach of this Lease by Landlord, or arising out of the negligence or willful misconduct by Landlord or its agents, employees, or contractors, which but for execution hereof would or could have been payable by Landlord.

2.2 Fee Mortgages. Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property without the prior written approval of Tenant and its Lease Mortgagee, which approval shall not be unreasonably withheld or delayed. Such approval may be conditioned upon Landlord and its fee mortgagee entering into a subordination and non-displacement agreement with Tenant and its Lease Mortgagee.

2.3 Term.

2.3.1 Length of Initial Term. The initial term (the "Initial Term") of this Lease shall commence on the Effective Date, and shall expire thirty-four (34) years from the Effective Date, unless extended as set forth herein below.

2.3.2 Option Terms. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its obligations under this Lease beyond any applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on two (2) occasions (each such right, an "Extension Option"), as follows:

2.3.2.1 Length of Option Terms. The first extension of the Term shall be for a period of ten (10) years, and the second extension of the Term shall be for a period of six (6) years (each such period of time, an "Option Term").

2.3.2.2 Exercise of Option Terms. Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than two (2) years, prior to the expiration of the Term. Such written notification shall include a certification of Tenant that Tenant is currently in compliance with the Lease. Provided Tenant has properly and timely exercised an Extension Option, and further provided that Landlord has determined that Tenant is in compliance with this Lease at the time of notification and at the time of commencement of the Option Term, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant and Landlord shall prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid by Tenant). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

2.3.2.3 Term. The Initial Term and Option Terms are collectively referred to herein as the "Term."

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts of Minimum Ground Rent and Percentage Rent ("Base Rent") during the time periods set forth below. An example of the following rent calculations is set forth in Exhibit H attached hereto.

3.1.1 Minimum Ground Rent.

3.1.1.1 On or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) twenty-four (24) months after the Effective Date ("Rent Commencement Date"), Tenant shall pay to Landlord, in advance, minimum ground rent equal to Ten Thousand Dollars ($10,000) per month. In the event of a Taking pursuant to Section 12 of this Lease, the Minimum Ground Rent shall be recalculated based upon the percentage of square feet remaining in the Project after the Taking. All amounts shall be payable in advance on or before the first day of such calendar month. The first month's monthly Minimum Ground Rent shall be prorated to the number of days remaining in such month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Minimum Ground Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.1.1.2 Upon January 1 of each Lease Year beginning the second Lease Year, the Minimum Ground Rent shall be increased by three percent (3%) of the Minimum Ground Rent then in effect.

3.1.1.3 Upon January 1 of the tenth (10th), twentieth (20th), thirtieth (30th) and fortieth (40th) Lease Years, the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by three percent (3%) of the monthly amount of Minimum Ground Rent then in effect, or (b) the total amount of Minimum Ground Rent plus Percentage Rent due and payable during the five Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing the total by twelve.

3.1.1.4 Upon the commencement of the first and second Option Terms (the "Value Determination Dates"), the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the Minimum Ground Rent then in effect for the previous Lease Year, increased by three percent (3%) of the Minimum Ground Rent then in effect, or (b) the appraised fair market rental value of the Property. The fair market rental value of the Property shall be based upon the fair market value of Tenant's leasehold interest in the land and not the value of Tenant's fee ownership of the Improvements, and shall be determined by appraisal as follows:

a. Appointment of Appraiser. For a period of thirty (30) days after notice from Landlord to Tenant, Landlord and Tenant shall use good faith efforts to jointly agree upon the appointment of a mutually acceptable MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1. The appraiser shall have not less than ten (10) years' experience appraising restaurants and commercial properties in the San Francisco Bay Area. In the event that the parties are unable to jointly agree upon a mutually acceptable appraiser, Landlord and Tenant shall, within ten (10) days after the expiration of the thirty (30) day period, each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10) days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

b. Determination of Fair Market Rental Value.

(i) In the event that a single mutually acceptable appraiser has been appointed by the parties, within thirty (30) days after the appointment the appraiser shall commence to determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge its determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) In the event that three appraisers have been appointed by the parties, within thirty (30) days after the appointment of the third appraiser, the

two appraisers directly appointed by the Parties shall each commence to independently determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(iii) The appraisers shall determine the fair market rental value of the Property as of the Value Determination Date as the date of value. Fair market rental value shall be determined for the Property only, and shall not include value attributable to the Improvements which are owned by Tenant during the Term of this Lease.

(iv) If the two appraisals arrive at different fair market rental values, the third appraiser shall select the appraisal which the third appraiser determines is closest to the fair market rental value of the Property, and such appraisal shall be deemed the fair market rental value of the Property as of the Value Determination Date.

(v) Each of the parties hereto shall (a) pay for the services of its own appointee, (b) pay one-half (l/2) of the fee charged by a mutually appointed appraiser and any appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisals.

3.1.2 Percentage Rent.

3.1.2.1 Upon the commencement of the second (2nd) Lease Year, Tenant shall pay Landlord percentage rent ("Percentage Rent") equal to Five Percent (5%) of the Gross Receipts for the previous month, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous month.

3.1.2.2 All payments of Percentage Rent shall be paid to Landlord on a monthly basis on or before the twentieth (20^{th}) day of each month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Percentage Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.1.2.3 Within twenty (20) days after the close of each calendar month of the Term of this Lease, Tenant shall deliver to Landlord, in a form reasonably satisfactory to Landlord, an account of its Hotel Gross Receipts, Concessionaire Gross Receipts and Total Gross Receipts during the preceding month.

3.2 Maintenance of Records.

(a) Tenant shall at all times keep accurate and proper books, records and accounts required to determine Gross Receipts and Percentage Rent, including a written explanation of income and expense report procedures and controls ("Records").

(b) Tenant shall keep all of its Records related to this Lease at its home office. Landlord may examine and audit the Records at any and all reasonable business times, subject to reasonable prior notice. If Landlord elects to audit the Records, Landlord shall use an auditor who is a qualified independent certified public accountant or real estate consultant, in either case,

who is experienced in auditing restaurant projects. Landlord and its auditors may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to examine and audit such Records, unless required under applicable law and in accordance with Section 3.4.3 below. All Records, including any sales tax reports that Tenant and its Subtenant may be required to furnish to any governmental agency, shall be open to the inspection of and copying (at Landlord's sole cost and expense) by Landlord, Landlord's auditor, or other authorized representative or agent of Landlord, who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing commercial restaurants, at all reasonable times during business hours, subject to reasonable prior notice. Landlord shall use commercially reasonable efforts not to disrupt Tenant and to minimize interference with the day-to-day operation of Landlord and/or the Property in exercising its rights hereunder.

3.3 Annual Statements by Tenant, Verification of Records, Computation, Payment of Percentage Rent

3.3.1 On or before March 1 of each Lease Year during the Lease Term, Tenant shall submit to Landlord an "Annual Financial Statement" which shall include a breakdown, in line item detail, of Tenant's calculation of Gross Receipts and Percentage Rent payable for the prior Lease Year. Each Annual Financial Statement shall be reviewed by an independent certified public accountant or by an authorized officer of Tenant, and shall contain an expressed written opinion of such certified public accountant or officer that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with GAAP. Tenant shall also certify to Landlord that each Annual Financial Statement is accurate and consistent in all material respects with its Records. Landlord may, through its representatives, inspect, audit or perform an examination of any Annual Financial Statement and supporting documentation utilized in the creation thereof at any time, and Tenant shall provide reasonable access to all of its books and records as provided herein, using an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing commercial restaurants ("Qualified Auditor"), subject to reasonable prior notice. Records must be supported by reasonable source documents. Tenant shall file with the State of California not less frequently than once each calendar quarter during the term of this Lease a periodic allocation schedule showing sales and use tax derived from Total Gross Sales during such period.

3.3.2 In the event Tenant fails to submit the Annual Financial Statement (together with the required written opinion) by the required time, Tenant shall pay to Landlord a late fee in the amount of One Hundred Dollars ($100) per day for each day after receipt by Landlord of written notice from Landlord of such failure until the Annual Financial Statement (together with the required written opinion) is submitted as required.

3.3.3 If any audit or examination conducted by Landlord discloses that the payable Percentage Rent reported by Tenant for any calendar year was understated by more than two percent (2%), Tenant shall promptly pay to Landlord the actual reasonable costs incurred by Landlord for such audit or examination (the "Audit Charge") in addition to any amounts due as Percentage Rent; otherwise Landlord shall bear all costs of such audit or examination.

3.3.4 Landlord's billings for the Audit Charge shall be sufficiently detailed with reasonable backup information such as supporting paid invoices, so that Tenant may determine the fees for the various participants in the audit or examination for whom Tenant is required to pay. Prior to Tenant's obligation to pay any Audit Charge, Landlord shall have provided Tenant with the audit or examination report which is the basis for such Audit Charge, access to documents supporting such audit or examination, and a reasonable opportunity to review and discuss the audit or examination with Landlord and the auditor.

3.4 Acceptance Not Waiver; Retention of Records.

3.4.1 Landlord's acceptance of any money paid by Tenant under this Lease, whether shown by any Annual Financial Statement furnished by Tenant or otherwise specified in this Lease, shall not constitute an admission of the accuracy or the sufficiency of the amount of such payment. Landlord may, at any time within three (3) years after the receipt of any such payment, question the sufficiency of the amount thereof and/or the accuracy of any underlying Annual Financial Statement furnished by Tenant.

3.4.2 Tenant shall retain, for five (5) years after submission to Landlord of any such Annual Financial Statement, all of Tenant's Records relating to the information shown by any such Annual Financial Statement, and shall make them available to Landlord for examination to the extent as provided above during that period. Tenant shall use commercially reasonable efforts to require that its Subtenant keep, maintain and retain Records of its business activities conducted within the Project for such five (5) year period, which Records shall be made available to Landlord, Landlord's auditor, or other authorized representative or agent of Landlord for inspection and copying (at Landlord's expense) as provided above. Notwithstanding the foregoing, Tenant shall not be responsible for the records of any Subtenant.

3.4.3 Tenant shall also furnish Landlord all information reasonably requested by Landlord directly relating to the costs, expenses, earnings and profits of Tenant in connection with Tenant's operations conducted on or connected with the Property. Landlord may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to such information, unless required under the Public Records Act or other applicable law, and the conditions set forth above with requests for information shall apply.

3.4.4 Landlord covenants to keep and to cause its auditor(s) to keep the results of such audit strictly confidential except to the extent disclosure is legally required by the Public Records Act or other applicable law, or if discoverable in litigation between the parties. If Landlord receives a request for such information it shall immediately notify Tenant of such request and deliver to Tenant copies of all correspondence received by Landlord relating to such request, and afford Tenant an opportunity to contest such request.

4. OTHER EXPENSES

4.1 Tenant Payments. During the term of this Lease, Tenant shall pay the following:

4.1.1 Utilities. From and after the Effective Date, Tenant shall pay all charges for electricity, water, gas, telephone, internet, cable, and all other utility services used on the

Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.1.2 Taxes and Assessments.

4.1.2.1 Pursuant to Revenue & Taxation Code Section 107.6, Landlord hereby advises Tenant that the leasehold interest in the Property conveyed to Tenant by this Lease will be subject to property taxation, and that it is Tenant's obligation under this Lease to pay or cause to be paid all of such property taxes levied on Tenant's interests in the Property. Tenant acknowledges that it understands that property taxes will be levied on the Property despite the Landlord's ownership of fee title to the Property and any exemptions Landlord is entitled to and receives as a result of public entity ownership of the Property.

4.1.2.2 The term "Taxes," as used herein, means all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, including community facilities district special taxes, but excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Effective Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.1.2.3 The term "Assessments," as used herein, means all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Effective Date and continuing throughout the Term.

4.1.2.4 Tenant covenants and agrees to pay or cause to be paid before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personal property as may be from time to time situated within the Property and the Improvements.

4.1.2.5 Tenant shall pay any business license fees imposed upon Tenant in connection with the operation of the Improvements.

4.1.2.6 Tenant shall be responsible for the collection, remittance and reporting of all sales and use taxes from Restaurant customers in accordance with Section 2.1 of the City Municipal Code.

4.2 Payment Date and Proof. All payments by Tenant for Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

4.3 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.11 below.

4.4 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.4.1 Payment of Base Rent. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall remain in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach.

4.4.2 Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant. Nothing in this Lease shall require tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any such law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest or that bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

5.1 Use. Tenant shall use the Property solely for the purposes of constructing, maintaining and operating the Improvements as a Restaurant.

5.2 Operation of Project. Upon the City's issuance of a Certificate of Occupancy for the Improvements and throughout the remainder of the Term of this Lease, the Tenant shall continuously without interruption operate a Restaurant in the Improvements on the Property (the "Project"). Tenant shall have the responsibility, subject to Force Majeure Events, to keep the Project continuously open and operating throughout the term of this Lease, including any extensions hereof, subject to closures (i) following a casualty or condemnation or other loss, (ii) following any environmental release requiring remediation, (iii) if required by law or court order for any reason, (iv) as necessary during any partial or complete renovation of the Project, or (v) matters caused by Force Majeure Events. In the event of a closure as set forth above, Tenant shall close only that portion of the Project which is necessitated by the causative event, and shall use all reasonable efforts to reopen the Project or the closed portion of the Project as soon as reasonably possible following any such closure. The Tenant shall provide at its own cost any and all equipment, fixtures, furniture and furnishings necessary for the operation of a Restaurant. Tenant shall be responsible for hiring and training all personnel necessary to operate and maintain the Project as a Restaurant, or shall cause a professional commercial property management company to do so.

5.3 CC&Rs. Tenant agrees to join and participate in the Shoreline Business Association, and any organization that is organized, formed or sponsored by Landlord for substantially all businesses in the Shoreline-Marina area to pay for their fair share of maintenance, capital replacement reserves, and/or promotion of the Shoreline area and basin, which could include, without limitation, a property owners' association, business improvement district or other form of organization. The boundaries of the area subject to such organization shall be determined by Landlord or the participants in such organization.

5.4 CFD. Landlord and Tenant shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "Mello-Roos Act"), which may be responsible for funding the maintenance of public roads, public entryways, landscaped areas, trails and parks, as provided in Section 1.5 of the DDA.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1 Construction of Improvements. Tenant shall construct the Improvements in accordance with the Scope of Development, and in accordance with all building and other permits that may be issued in connection therewith. Tenant shall submit all construction plans, and commence and complete all construction of the Improvements, and shall satisfy all other obligations and conditions of this Lease, within the times established therefor in the Schedule of

Performance and the text of this Lease, subject to Force Majeure Events pursuant to Section 6.1.9 hereof. Once construction of the Improvements is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than thirty (30) days. During the course of construction and prior to issuance of the final TCO for the Improvements, Tenant shall provide monthly reports to Landlord of the progress of construction. The Improvements shall include all of the improvements contained in the approved construction plans and drawings, including without limitation the Project, sidewalks, plazas, landscaping, and parking. The construction of the Improvements shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Tenant.

6.1.2 Landlord's Cooperation in Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Improvements. Such cooperative efforts may include Landlord's joinder in any application for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord's actual and reasonable third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions) within thirty (30) days after Landlord delivers an itemized statement of costs to Tenant. Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Property and operation and other use of such Improvements on the Property; and that Landlord's duty to cooperate and Landlord's approvals under this Lease do not in any way modify or limit the exercise of Landlord's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.3 Construction Contract. Tenant shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Improvements with a general contractor reasonably acceptable to the City, which general contractor shall be duly licensed in the State and shall have significant experience in organizing and contracting public-private development projects of the type and scale similar to the Project.

6.1.4 Construction Requirements. No development or construction on the Property shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of "as built" plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements.

6.1.5 Compliance with Laws. Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the ADA, Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. The design, construction and operation of the Improvements shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Project and the Shoreline Project. This Lease does not provide Tenant any vested rights to construct the Improvements in accordance with the existing policies, rules and regulations of the City, or to construct the Improvements subject only to the existing conditions of approval which may have been previously approved by the City, except as Tenant may already have obtained vested rights to develop the Improvements in accordance with a Development Agreement between City and Tenant or a vesting tentative map.

6.1.6 Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Tenant and its contractors and subcontractors shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Improvements as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., any applicable federal labor laws and standards, and implementing regulations, and perform all other applicable obligations, including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, and compliance with all regulations and statutory requirements pertaining thereto, all as may be amended from time to time (the "**Prevailing Wage Law**"). Tenant shall periodically, upon request of Landlord, certify to Landlord that, to its knowledge, it is in compliance with the requirements of this paragraph.

6.1.7 Indemnity. Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Landlord and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively. the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold

harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Improvements. Tenant's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

6.1.8 Project Labor Agreement. Prior to the Effective Date of the Lease, and throughout the term of construction of the Improvements, Tenant shall negotiate, enter into, remain a party to and comply with at least one Project Labor Agreement with respect to the construction of the Improvements.

6.1.9 Performance and Payment Bonds.

6.1.9.1 Prior to commencement of any construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as obligee and shall be in a form acceptable to the City Attorney. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of contractor's ability to commence and complete construction of the Project in the form of subguard insurance, an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

6.1.10 Force Majeure. Performance by either party hereunder shall not be deemed to be in default, and the time within which a party shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, unavoidable casualties, litigation involving this Lease or the land use approvals of the Improvements, or bankruptcy, insolvency or defaults of lenders or equity investors ("**Force Majeure Events**"). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twelve (12) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Lease to the contrary, delays due to inability to obtain financing, recession or other general economic conditions, adverse market conditions, adverse interest rates, and/or the lack of funds or financing to complete the Improvements, shall not constitute Force Majeure Events.

6.2 Fixtures and Equipment. In constructing the Improvements upon the Property, Tenant and its Subtenant may place or install in the Project such trade fixtures and equipment as Tenant or its Subtenant shall deem reasonably desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its Subtenant (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Improvements) placed by Tenant or its Subtenant on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its Subtenant at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Improvements and all fixtures and equipment necessary for their operation and maintenance) constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or its Subtenant do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within thirty (30) days following the end of the Term, Landlord may as its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

6.3 Mechanics and Labor Liens. Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens, asserted by reason of contracts made by Tenant, to stand against the Landlord's fee interest in the Property, to Landlord's fee simple estate in reversion of the Improvements, nor against Tenant's leasehold interest therein for Work or labor done, services performed, or material used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or its Subtenant. Tenant shall cause any such claim of lien to be fully discharged within (30) days after the date of filing thereof, provided, however, that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall post an undertaking as may be required or permitted by law or is otherwise sufficient to prevent the lien, claim of encumbrance from attaching to the fee interest in the Property. Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation results therefrom, discharges said lien. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or

repair of or to the Property, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Property, Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws. Landlord shall have the right at all reasonable times and places after at least ten (10) days advance notice to post, and as appropriate to keep posted, any notices on the Property which Landlord may deem reasonably necessary for the protection of Landlord's interest in the Property from mechanic's liens or other claims. Tenant shall give Landlord at least ten (10) days prior written notice of the commencement of any work to be done upon the Property under this Section, in order to enable Landlord to post such notices. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO MECHANICS' OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.

6.4 Development Rights. Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay).

6.5 Hold Harmless. Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind of description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to be the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or

Improvements shall be acquired as required by applicable laws, ordinances or regulations including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Term of this Lease, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, upon expiration or termination of this Lease, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Thirty (30) days prior to the expiration of the Term, Tenant shall deliver copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Subject to each and all of the terms and conditions listed in Paragraphs (a) – (d) below, Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon, and to refinance such mortgages, pledges and assignments, by way of one or more "Leasehold Mortgages" (as that term is defined below) (which may be of different priority and exist at the same time), and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a "Leasehold Mortgagee"), including collateral assignments of this Lease, any Subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Leasehold Mortgage" below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more "Mezzanine Loans" as defined below, and subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and

subject to the limitations set forth in the definition of "Mezzanine Loan" below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined is sometimes referred to herein as a "Security Instrument", and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a "Lender". In no event shall the fee interest of Landlord in the Property, residual interest of Landlord in the Improvements, or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

(a) Prior to the issuance of a TCO, Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited in purpose to and the principal amount of all such Leasehold Mortgages and Mezzanine Loans shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, and operation of the Improvements.

(b) After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of the fair market rental value of the Property (land) and the value of Tenant's fee ownership of the Improvements; provided, that such requirement shall not result in a default with respect to any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO, nor shall such requirement prohibit Tenant from refinancing any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of a TCO as long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO and Tenant does not receive a payment of net proceeds from the refinancing. Tenant shall obtain Landlord's written approval prior to refinancing any Leasehold Mortgage or Mezzanine Loan if the principal amount of such refinancing will exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage and Mezzanine Loan, and/or if Tenant will receive a payment of net proceeds from the refinancing. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the value of Tenant's leasehold interest in the Property and the value of the Improvements, and to review and approve any Leasehold Mortgage or Mezzanine Loan and related loan documents that require Landlord's approval, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys.

(c) Any permitted Leasehold Mortgages and Mezzanine Loans entered into by Tenant are to be originated only by Institutional Investors (as defined in Section 7.3 hereof) approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Leasehold Mortgagee or Mezzanine Lender shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage or Mezzanine Loan.

7.2 Notice to Landlord.

7.2.1 If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "Recognized Leasehold Mortgagee." The most senior recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees, shall be referred to in this Lease, and be entitled to the rights of, the "Senior Recognized Leasehold Mortgagee;" and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the "Senior Recognized Leasehold Mortgage," provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most Senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord a copy of the applicable Security Instrument shall be deemed a "Recognized Mezzanine Lender". Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a "Recognized Lender". The most senior Recognized Mezzanine Lender from time to time, based upon such notices from such Recognized Mezzanine Lender or a notice from the Senior Recognized Mezzanine Lender designating another Recognized Lender as the "Senior Recognized Mezzanine Lender", shall so long as the Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the "Senior Recognized Mezzanine Lender". The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the "Senior Recognized Lenders."

7.2.2 In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner; provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.3 Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1. above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.4 Tenant and each Recognized Lender shall give Landlord written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender's rights hereunder in any manner whatsoever.

7.3 Definitions.

7.3.1 The term "**Institutional Investor**" as used in Section 7 shall refer to any entity with assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made, and which is a (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing, or (ix) such other lender as may be approved by Landlord in writing in advance, which approval shall not be unreasonably withheld. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2 The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3 The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4 The term "Mezzanine Loan" means one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the "Mezzanine Loan Requirements"): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Investor (each a "Mezzanine Lender"); (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Senior Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided,

however, that nothing in this Section 7.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1 Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord's intent to so terminate this Lease (a "**Default Notice**") at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination (as such time period may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or sixty (60) day period (each such period a "**Termination Notice Period**"), any Senior Recognized Lender shall:

7.6.1.1 notify Landlord of such Senior Recognized Lender's desire to nullify such notice;

7.6.1.2 pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and

7.6.1.3 comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with

by such Senior Recognized Lender within the notice period, provided, however, (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender's initial cure period shall commence upon the later of the end of Tenant's cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and (ii) provided, further, that such Senior Recognized Lender shall not be required during such sixty (60) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

7.6.1.4 Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notice of a change of Senior Recognized Lender ownership has been given to Landlord pursuant to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1 If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice shall be extended for a period of sixty (60) days, provided that such Senior Recognized Lender shall during such sixty (60) day period:

7.7.2 Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant' s interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

7.7.3 If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.4 If at the end of such sixty (60) day period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the Term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, and this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.5 If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.6 For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however, that following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1), Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.7 If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.8 Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 **New Lease**. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within sixty (60) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, or if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section 7.6.1, Landlord shall provide each Senior Recognized Lender with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with the Senior Recognized Lender for the remainder of the Term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1 Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2 Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such

termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3 Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord' s Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4 If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a New Lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5 Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such New Lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the New Lease simultaneously with the delivery of such New Lease.

7.8.6 The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7 In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Senior Recognized Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefor, issued by a responsible title insurance company doing business within the

State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including, but not limited to, the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of an agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

7.13 Legal Proceedings. Landlord shall give each Recognized Lender prompt notice of the commencement of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Recognized Lenders not intervening after receipt of notice of the proceedings. In addition to the notice requirements in Section 7.2.4, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.

7.14 **No Merger**. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 **Estoppel Certificate.** Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord' s fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E stating to the best of such person' s knowledge after a commercially reasonable inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

7.16 **Notices.** Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above, and those from each Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.

7.17 **Erroneous Payments**. No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the

return of any such payment or portion thereof, provided the Recognized Lender shall have made demand therefor not later than one year after the date of its payment.

7.18 Amendment of Lease. Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.

7.19 Certain Tenant Rights. The right, if any, of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel this Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and any exercise of the foregoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat this Lease as terminated in the event of the Landlord' s bankruptcy; any such rights are limited to those provided under the terms of this Lease and applicable law.

7.20 Limitation on Liability. Notwithstanding anything to the contrary in this Lease, no Recognized Lender or its assigns shall have any liability under this Lease beyond its interest in this Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to, Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Base Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1 Tenant shall indemnify, defend and save harmless Landlord and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "**Indemnitees**") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Tenant, its Subtenant, invitees, agents, employees, guests, customers, licensees or permittees, except as may arise solely out of the willful or grossly negligent act of the Indemnitees. Landlord and Tenant agree that this provision shall not require

Tenant to indemnify, defend and save the Indemnitees harmless from the Indemnitees' gross negligence or willful misconduct, if any.

8.1.2 All provisions of this Lease pursuant to which the Tenant agrees to indemnify the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages caused by or resulting from the sole negligence of the Indemnitees. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3 Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date during the Term of this Lease. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without limiting the foregoing, neither Landlord nor any of the Indemnitees shall be liable for and, except as otherwise provided in Section 11.1.1, there shall be no abatement of Base Rent for, (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. [SUBJECT TO REVIEW OF CITY RISK MANAGEMENT] Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1 Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances

thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars ($5,000,000) each occurrence; Ten Million Dollars ($10,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2 Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3 Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars ($1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8.1 below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4 Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5 Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6 Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Property, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or

endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1 Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2 Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord, except after thirty (30) days prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3 Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4 Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

8.4.5 Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

8.4.6 Be provided by insurance carriers with an A.M. Best rating of not less than A:VII.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.11 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such

waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 **Proceeds.** All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 **Application of Proceeds of Physical Damage Insurance**. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be paid over to Tenant.

9. REPAIRS AND MAINTENANCE

9.1 **Acceptance of Property**. EXCEPT AS OTHERWISE PROVIDED HEREIN, TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS, WHERE IS, IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 **Tenant's Maintenance Obligations**. During the Term hereof, Tenant agrees to keep and maintain the Improvements and the Property, and every part thereof, including without limitation, all buildings, all exterior facades, all sidewalks, all exterior areas, any appurtenances and fixtures, the structural elements of the buildings, all parking facilities, roofs, walls, plumbing, heating, ventilation, air conditioning, plazas, and landscaping, at Tenant's sole cost and expense, in good repair, in a neat, clean, safe, and orderly condition, in accordance with the standard of maintenance of prudent owners of high quality restaurants within the East Bay Area region, in accordance with any property improvement plan required by any lender, and in compliance with the City Municipal Code and all applicable laws. Tenant agrees to perform all day-to-day maintenance, repairs and replacements reasonably necessary to maintain and preserve the Improvements and the Property, and to provide administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are reasonably necessary for the maintenance of the Improvements. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Property. Tenant hereby waives all rights to make repairs or to cause any work to be performed at the expense of Landlord as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

9.3 **Landlord's Inspections.** Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof. Landlord may, after reasonable advance notice, enter upon the Property, or any portion thereof, from time to time, solely for the purpose of inspecting the Property or a suspected breach of this Lease by Tenant that reasonably requires entry upon the Property. In so

doing, Landlord shall use reasonable efforts to minimize disruption to Tenant or its Subtenants. Landlord shall not be liable to Tenant or its Subtenant, or any person or entity claiming through Tenant or its Subtenant, or to the occupant of any portion of the Property for any loss, damage or harm arising out of Landlord's exercise of the rights of entry reserved herein, except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors, officers or employees.

9.4 Landlord's Repairs. If Tenant fails to make repairs or replacements as required in this Lease and such failure has a material adverse impact on the operation of the Property, after the expiration of any applicable notice and cure period, Landlord may once again notify Tenant of said failure in writing, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 9.4 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH THIRTY (30) DAY PERIOD AND DILIGENTLY PROSECUTED THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 9.4 OF THE LEASE." If Tenant then fails to make the repairs or replacements or commence the repairs or replacements as provided above, within such ten (10) business day period, Landlord may make such repairs and replacements at Tenant's expense. Tenant shall reimburse Landlord for the actual and reasonable costs thereof within thirty (30) days after Landlord's notice specifying such costs together with a written invoice therefor. Such costs may include, without limitation, the reasonably necessary cost of design, labor, material, equipment, the value of services provided by Landlord's employees in the actual performance of the repairs and replacements, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Landlord. If Landlord makes such repairs or replacements, Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, loss or liability of any kind arising out of or connected in any way with such work, including, but not limited to claims by Tenant, its officers, employees, agents, Subtenant and the patrons or visitors of Tenant or its Subtenant except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors and employees.

9.5 Capital Reinvestment. Within __ months prior to the commencement of the tenth Lease Year, and __ months prior to the commencement of every tenth Lease Year period thereafter, Tenant shall prepare and submit to Landlord for Landlord's reasonable approval a ten year plan for rehabilitation of the Improvements ("Rehabilitation Plan"). If Landlord disapproves the proposed Rehabilitation Plan, Tenant shall revise and resubmit the revised Rehabilitation Plan to Landlord within thirty (30) days of Landlord's disapproval notice. Each Rehabilitation Plan shall describe what work is necessary to maintain the structural integrity of the Improvements and keep the Improvements in a commercially reasonable condition which is sufficient to operate a Restaurant therein, and shall set forth a detailed budget and program of expenditures to be undertaken by Tenant within such ten year period,

broken down by Lease Year. Tenant shall perform the work set forth in each approved Rehabilitation Plan within the times set forth therein.

9.6 Reserve Account. Tenant shall establish and maintain a capital reserve account at all times during the Term of the Lease ("Reserve Account"). The funds to be placed and maintained in the Reserve Account during the first ten Lease Years shall be not less than _____, and the funds to be placed and maintained in the Reserve Account during each Lease Year shall be not less than the amount set forth in the approved Rehabilitation Plan for the current ten year Rehabilitation Plan period. Notwithstanding the foregoing, if the lender requires a larger minimum deposit into the Reserve Account, Tenant shall maintain such larger required amount in the Reserve Account. The funds in the Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Project fixtures and equipment in accordance with the current approved Rehabilitation Plan, and capital repairs to and replacement of the Project with a long useful life and which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Reserve Account does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Tenant shall submit to Landlord an accounting for the Reserve Account.

9.7 Condition at End of Lease. Upon vacating the Property at the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and cleanliness required to be maintained by Tenant during the Term of this Lease, wear and tear and casualty excepted, and shall peaceably surrender the same to Landlord. On the date Tenant is required by this section to surrender possession, Tenant shall deliver to Landlord such proper and executed instruments in recordable form, releasing, quitclaiming and conveying to Landlord all right, title and interest of Tenant and any other party claiming by or through Tenant or Tenant's Estate in and to the Property and/or the Improvements, including, without limitation, such documents necessary for Landlord to demonstrate to a title company that this Lease no longer encumbers the Property and Improvements, and that title to the Improvements shall have vested in Landlord, free and clear of all liens, encumbrances or title exceptions, other than the Permitted Title Exceptions, exceptions to title not otherwise created by or through Tenant, and title exceptions approved by Landlord in writing. All provisions of this section shall survive any termination of this Lease.

10. QUIET POSSESSION

10.1 Quiet and Peaceful Possession. Landlord covenants that it is has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of 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 Property by Tenant, Tenant shall have quiet and peaceful possession of the Property during the entire Term of this Lease. However, except as provided in this Lease,

Landlord shall in no event be liable in damages 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 gross negligence or willful misconduct of Landlord or its officers, agents or employees, in violation of its obligations under this Lease.

10.2 Other Activities in Shoreline Marina Area. Tenant acknowledges that from time to time during the term of this Lease, and at such times and intervals as may be determined by Landlord in its reasonable discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by the authority of Landlord within the Shoreline Marina area. Landlord agrees that such activities shall be performed during such hours and durations that are reasonable for such activities. Tenant acknowledges that said activities and related operations may be necessary and for the benefit of Tenant, its Subtenants, its guests and customers, other tenants and the public, and that the conduct of such activities shall not be deemed to have disturbed or interfered with the possession and use of the Property by Tenant or anyone claiming under Tenant, or to have caused Tenant to be evicted, either actually or constructively, from the Property, and shall, under no circumstances, entitle Tenant or others claiming under or through Tenant to claim or recover incidental or consequential damages from Landlord on account of such activities.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) Tenant's Duty to Restore. Subject to Section 11.1(b) below, if any Improvements are damaged by fire, other peril or any other cause during the Lease Term, then Tenant, at its sole cost and expense, shall, within three (3) years after the date of casualty, or such shorter period of time as is reasonably necessary for the restoration (subject to delays caused by Force Majeure Events), restore the Leasehold Improvements in compliance with and to the extent permitted by all then applicable laws and this Lease shall remain in full force and effect, without abatement of Base Rent or other charges, except to the extent of rental loss insurance proceeds paid to Landlord. All insurance proceeds payable as a result of such casualty shall be applied in the following order of priority:

i. First, as provided by any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

ii. Second, to Tenant for the payment of all costs and expenses to complete the restoration of the Improvements required of Tenant pursuant to this subsection; and

iii. Third, the remainder of insurance proceeds, if any, shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (ii) above shall be deemed to be held in trust for the benefit of Landlord and Tenant by the recipient for the purpose of restoration of the Improvements

(b) Tenant's Termination Rights. Notwithstanding anything to the contrary in this Lease:

(i) Election Not to Reconstruct. If an Uninsurable Loss in excess of the Restoration Amount or any Late Term Extensive Damage occurs, then Tenant, by delivery of written notice to Landlord within six (6) months after the occurrence of the damage, may elect not to reconstruct the Improvements, in which case Tenant, at its sole cost, shall remove all debris; restore the Property to a safe condition in compliance with all applicable laws; and maintain such Improvements which are not damaged in the condition required by this Lease. Following such election, this Lease shall continue to remain in full force and effect, without abatement of Base Rent or other charges. Tenant's failure to make an election in writing within six (6) months after the date of the occurrence of the damage shall constitute Tenant's affirmative election not to restore the damaged Improvements pursuant to Section 11.1(a) above. All insurance proceeds payable as a result of such casualty with regard to Late Term Extensive Damage which Tenant elects not to reconstruct as provided hereinabove shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to Tenant for the payment of all costs and expenses to complete the demolitions and/or restorations required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all Rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (B) above shall be deemed to be held in trust for the purposes and uses described therein.

Notwithstanding the foregoing, Tenant shall be responsible for repairing any damage to Improvements caused by an Uninsurable Loss if the Uninsurable Loss is less than the Restoration Amount.

(c) Infeasibility. Notwithstanding Section 11.1(a), if reconstruction of the Improvements following any casualty is physically infeasible because of physical conditions of the Property, or if the City or any other governmental authority cannot legally grant the permits and approvals for repair or restoration of the Improvements so that the Project shall continue to have not less than the original building and service area, plus facilities substantially equivalent to those existing prior to the casualty and reasonably desirable for the reconstructed Project taking into consideration any reduction in building and service area, and in any case sufficient to maintain the Restaurant operating standards set forth herein (the "Minimum Restoration Level"),

then Tenant may terminate this Lease as of the date set forth in its written notice to Landlord so stating. If the City or any governmental authority can legally grant permits and approvals for repair and restoration of the Improvements so that the total capacity of the Project after restoration will be at least the Minimum Restoration Level but less than the total capacity of the Project originally approved by the City land use entitlements, then Minimum Ground Rent shall thereafter be reduced to reflect the reduction in building area in the Project. Landlord shall cooperate with Tenant and use good faith efforts to have permits and approvals for repair granted for the highest amount of building area legally available, up to the building area originally approved by the City land use entitlements, but Landlord shall have the right to require that the Improvements contain the amenities required by this Lease, subject to reduction in size and/or capacity as specified in this Section 11.1(c). If Tenant elects to terminate this Lease pursuant to this section, Tenant, at its sole cost, shall, prior to the effective date of the termination remove all debris from the Property, restore any Improvements not removed, remove all safety hazards from the Property and restore the Property to a safe condition in compliance with all applicable laws. Subject to Tenant's completion of its obligations in the immediately preceding sentence, upon the termination date set forth in Tenant's written notice to Landlord of its election to terminate: (i) all Minimum Ground Rent and other sums due pursuant to this Lease shall be prorated as of the date of termination and paid by Tenant; (ii) this Lease shall expire and terminate; and (iii) neither Landlord nor Tenant shall have any further obligations hereunder, except for those obligations which have accrued prior to the date of termination or which are intended to survive termination of the Lease. All insurance proceeds payable as a result of such damage and Tenant's election to terminate shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to the payment of all expenses incurred by Tenant in completing the demolition and/or restoration required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

(d) General Provisions. Landlord shall not be required to repair any injury or damage to the Improvements on the Property. Landlord and Tenant hereby waive the provisions of (i) Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of Law from time to time in effect during the term of this Lease and relating to the effect on leases of partial or total destruction of leased premises; and (ii) Sections 1941 and 1942 of the Civil Code, providing for repairs to and of the Property. Landlord and Tenant agree that their respective rights upon any damage or destruction of the Improvements shall be those specifically set forth in this Article 11.

12. CONDEMNATION

12.1 Definitions. As used in this Article, the following words have following meanings:

12.1.1 "Award" means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

12.1.2 "Taking" means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

12.1.3 "Taking Date": means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

12.1.4 "Total Taking": means the taking of the title to all of the Property and the Tenant's Estate.

12.1.5 "Substantial Taking" means the Taking of the fee title to a portion of the Property or title to Tenant's Estate, or both, if one or more of the following conditions result:

12.1.5.1 the portion of the Property and/or Tenant's Estate not so taken cannot be repaired or reconstructed, as to constitute a Restaurant capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

12.1.5.2 such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

12.1.5.3 the cost of repairing or replacing the Improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

12.1.6 "Partial Taking" means any Taking of title that is not either a Total or a Substantial Taking.

12.1.7 "Notice of Intended Taking" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives a Notice of Intended Taking, notify Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's

Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of Improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment and Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the present value of Tenant's Estate, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of Tenant's Estate shall take into account and shall be determined subject to any permitted Subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property as Tenant deems appropriate so as to make them an operable whole to the extent allowed by governmental laws and restrictions.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by

governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than three (3) months, (i) this Lease shall continue in full force and effect, (ii) Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, (iii) neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and (iv) Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such three (3) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1 The party receiving any notice of the following kinds shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) Notice of an intended Taking; (b) Service of any legal process relating to condemnation of the Property or the Improvements; (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2 The party receiving any notice, Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, Landlord, Tenant and any Leasehold Mortgagee shall attempt to agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFERS

13.1 No Transfer Without Landlord's Consent. The qualifications and identity of Tenant are of particular concern to Landlord. It is because of those qualifications and identity that Landlord has entered into this Lease with Tenant. Except as otherwise provided below, during the Term of this Lease, (a) no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, (b) Tenant shall not make any total or partial sale, transfer, conveyance, assignment, Sublease, or subdivision of the whole or any part of the Property or the Improvements thereon (excluding deeds of trusts and mortgages), and (c) there shall not be a change in the controlling interest of Tenant, without the prior written approval of Landlord, except as expressly permitted below. Prior to the date that the Restaurant opens for business to the public, Landlord may disapprove a request for a transfer in its sole and absolute discretion. After the date that the Restaurant opens for business to the public, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Tenant's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to finance the Transfer and operate and manage the Restaurant, in sufficient detail to enable Landlord to evaluate the proposed transferee pursuant to the criteria set forth in this Section 13.1 and as reasonably determined by Landlord. Landlord shall evaluate each proposed transferee on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 13.1 applies, which Landlord reasonably determines does not possess these qualifications. Notwithstanding any provision in this Section 13 to the contrary, in no event shall Tenant make any Transfer which would or could likely be effective beyond the Term (including extensions thereof) without the prior written consent of the Landlord. A Sublease or assignment and assumption agreement, in form reasonably satisfactory to Landlord, shall also be required for all proposed Transfers. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease, provided that the assigning Tenant shall retain all indemnification obligations pursuant to this Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, **"**Permitted Transferee**"** means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Tenant's obligations under this Lease following completion of the Project, and (ii) that possesses the financial resources typical of owners of similar restaurant projects.

13.2 Definition of Transfer. For purposes of this Lease, **"**Transfer**"** means any sale, lease, Sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord's consent,

(ii) Affiliate Transfers, (iii) Leasehold Mortgages, and (iv) Subleases (as defined in Section 13.5 hereof).

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1 the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.3 a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as security for a Mezzanine Loan; or

13.3.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the- counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Effective Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.6 any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1 Tenant shall give Landlord ninety (90) days prior written notice of the proposed Transfer setting forth therein (i) the identity of the proposed transferee; and (ii) the proposed transferee's proposed use of the Property (the "**Transfer Request**"). Within thirty (30) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within thirty (30) days of the receipt of the

Transfer Request, Tenant may provide Landlord a second Transfer Request notice which states in bold that Landlord's failure to approve or disapprove the proposed transfer within fifteen (15) days of the date of receipt of the second Transfer Request notice will result in the proposed transfer being deemed approved by Landlord. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the second Transfer Request notice, Landlord shall be deemed to have approved the proposed Transfer.

13.4.2 The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord, which shall be in the form of a Sublease in accordance with Section 13.5 when the Permitted Transferee is a Subtenant. Upon consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer, which shall be in the form of a memorandum of Sublease when the Permitted Transferee is a Subtenant.

13.4.3 Tenant shall pay Landlord Participation Rent in the amount of two percent (2%) of the Gross Sales Proceeds of such Transfer pursuant to Section 13.6 hereof, concurrently with the closing of such Transfer.

13.4.4 No uncured Default shall exist hereunder on the date of Transfer.

13.5 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.5.1 Subleases for all or part of the Restaurant shall require the prior approval of the Landlord, which approval shall not be unreasonably withheld or delayed.

13.5.2 Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the Subtenant to attorn to Landlord upon a Default by Tenant hereunder and notice to Subtenant that Tenant has defaulted under this Lease and Subtenant is instructed to make Subtenant's rental payments to Landlord.

13.5.3 Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the Subtenant to take no action in contravention of the terms of this Lease.

13.5.4 Each Sublease is of a duration not greater than the Term of this Lease.

13.5.5 Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such Subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.5.6 Each Sublease shall contain rules and regulations concerning prohibited uses of the Subleased Premises in a form approved by Landlord.

13.6 Participation Rent from Transfer Proceeds. Upon any sale, transfer or assignment of any portion of Tenant's interest in this Lease or the Property to a third party or third parties, Landlord shall receive **"Participation Rent"** in the amount of two percent (2%) of **"Gross Sales Proceeds"** of all such sales, transfers and assignments retroactively. "Gross Sales Proceeds" means the gross consideration received by the transferor or any affiliate as a result of a transfer, without deductions for costs or expenses relating to the sale, transfer or assignment. Notwithstanding anything to the contrary contained herein, Participation Rent will not be due and owing for (i) financing or refinancing or equity financing and any foreclosure or deed in lieu of foreclosure in connection with any financing, refinancing or equity financing, (ii) any "key money" contribution or similar payment by a Project operator, or (iii) the direct or indirect sale of assets, merger, consolidation or upper tier transfers of interests in a parent or affiliate which owns directly or indirectly, an interest in Tenant or any entity holding an interest in the Lease, so long as there is no payment or distribution of consideration in connection with such transaction. An example of Participation Rent calculations is set forth in Exhibit H attached hereto.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. [DELETED]

15. INSOLVENCY

15.1 Landlord's Remedies. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. DEFAULT

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (a "Default") under this Lease:

16.1.1 Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) days after written notice of such default has been received by Tenant; or

16.1.2 Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been received by Tenant. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith and with reasonable diligence prosecutes the cure of such default to completion, but in no event later than ninety (90) days after written notice of such default has been received by Tenant.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1 Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2 Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been earned under this Lease after such termination up to the date of such award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the

Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom (including, but not limited to those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amounts referred to above shall be determined in accordance with Civil Code Section 1951.2(b) or successor statute.

16.3.3 Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1, unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

16.4 Costs. If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

16.5 Cumulative Remedies. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. A party's liability for damages under this Lease shall be limited to actual damages sustained and shall not include any consequential, indirect or punitive damages.

16.6 Waiver of Default. No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual

right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.

16.7 Landlord Default and Tenant Remedies. Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "Landlord Default": (a) if such failure can reasonably be cured within thirty (30) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such thirty (30) day period; or (b) if such failure cannot reasonably be cured within said thirty (30) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

17. LANDLORD MAY INSPECT THE PROPERTY

17.1 Advance Notice for Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

18.1 Terms Upon Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to One Hundred Fifty Percent (150%) of the amount of Base Rent due for the last month of the term of this Lease.

19. NOTICES

19.1 Address for Notices. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service,

provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

[Entity Name]
11755 Wilshire Blvd., Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copy to:

Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

And the address of Landlord is:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copy to:
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

20. SUCCESSORS

20.1 Binding on Successors and Assigns. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

21.1 Rights Upon Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 **Nondiscrimination**. Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, Subtenants, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

22.2 **Compliance with Law**. Tenant agrees, at its sole cost and expense, to itself comply, and to use its commercially reasonable efforts to secure compliance by all contractors and Subtenants of the Property and Improvements, with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities pertaining to the Property and the Improvements, as well as operations conducted thereon, and to faithfully observe and use its commercially reasonable efforts to secure compliance by all contractors and Subtenants of the Property and Improvements with, in the use of the Property and the Improvements with all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, Tenant shall use good faith efforts to prevent Subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by Subtenants of the Property and Improvements. The judgment of any court of competent jurisdiction, or the admission of Tenant or any Subtenant or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that the Subtenant or permittee has violated any such ordinance or statute in the use of the Property or the Improvements shall be conclusive of that fact as between Landlord and Tenant, or such Subtenant or permittee.

22.3 **Conflict of Interest.** No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

22.4 **Further Actions and Instruments; City Manager Authority.** Each of the parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Lease and the satisfaction of the conditions of this Lease. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Lease to carry out

the intent and to fulfill the provisions of this Lease or to evidence or consummate the transactions contemplated by this Lease. Landlord hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Lease on behalf of the Landlord so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Landlord as specified herein, or reduce the revenue earned or to be earned by Landlord, as may be necessary or proper to satisfy the purpose and intent of this Lease. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Landlord to do so. The City Manager may delegate some or all of his or her powers and duties under this Lease to one or more management level employees of the City.

22.5 **Section Headings.** The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.6 **Amendments**. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.

22.7 **Extensions of Time**. Times of performance under this Lease may be extended in writing by the mutual agreement of Landlord and Tenant, as applicable. The City Manager (or designee) shall have the authority in his or her sole and absolute discretion on behalf of Landlord to approve extensions of time not to exceed a cumulative total of ninety (90) days.

22.8 **Waiver.** The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.

22.9 **Cumulative Remedies**. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

22.10 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.

22.11 Late Charge and Interest. In the event Tenant fails to make any payment of Base Rent due hereunder upon the date due, Landlord shall be entitled to collect from Tenant a late charge equal to five percent (5%) of the amount of the delinquent payment. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.

22.12 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid. Specifically, without limitation, this Lease supersedes the DDA with respect to the terms and conditions of the Landlord's ground lease of the Property to the Tenant. In the event of any inconsistency between the terms and conditions of this Lease and the terms and conditions of the DDA with respect to the Property, the terms and conditions of this Ground Lease shall prevail.

22.13 Escalation. The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Effective Date and every tenth (10th) anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.

22.14 Language. The word "Tenant" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.

22.15 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.16 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent

amendments thereto, unless the reference to said statute specifically provides otherwise.

22.17 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.18 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.19 Survival. All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.20 Recordation. A memorandum of lease in the form attached hereto as Exhibit D shall be promptly executed and acknowledged by the Parties and recorded by Tenant in the county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.21 Net Lease

22.22.1 No Liability for Landlord Taxes. Nothing herein contained shall be construed so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

22.22.2 No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.23 Limitation of Liability.

22.23.1 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual officers or employees of Landlord, and Tenant shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the

Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its officers, employees, contractors, consultants, attorneys, volunteers, or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief, or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to such damages arising out of or relating to this Lease, including, but not limited to, damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

22.24 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substances" means all of the following:

23.1.1 Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste" or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("CERCLA"); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("RCRA"); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

23.1.2 any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

23.1.3 Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

23.1.4 Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

23.1.5 Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

23.2 The term **"Hazardous Substances**" shall include the following **"Permitted Hazardous Substances:"** all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by Subtenants under Subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

23.3 **"Environmental Law(s)"** means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.4 **Environmental Inspections.** Tenant has had an opportunity, prior to the Effective Date of this Lease, to engage its own environmental consultant to make such investigations of the Property as Tenant has deemed necessary, and Tenant has approved the environmental condition of the Property.

23.5 **Presence and Use of Hazardous Substances.** Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its Subtenants and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its Subtenants and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all

Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.6 Cleanup Costs, Default and Indemnification.

23.6.1 Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

23.6.2 Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord (as well as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

23.6.3 Upon and after the Commencement Date of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property occurring after the Commencement Date or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property arising after the Commencement Date, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Landlord, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Tenant's obligations under this Section 23.6 shall survive the expiration of this Lease.

23.7 Duty to Prevent Hazardous Materials Contamination. Tenant shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

23.8 Right of Entry. Notwithstanding any other term or provision of this Lease, in the event Landlord in good faith has reason to believe that a violation of applicable Governmental Regulations as determined by a final non-appeal order, with respect to Hazardous Materials on the Property Tenant shall, subject to the rights of Subtenants, permit Landlord or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials and Hazardous Materials Contamination in violation of Governmental Requirements as determined by a final non-appealable order on or affecting the Property, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials Contamination when Tenant has failed to do so after notice from Landlord and an opportunity to cure such deficiency, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 23 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) BUSINESS DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) BUSINESS DAY PERIOD AND DILIGENTLY PROSECUTE THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 23 OF THE LEASE." All actual third party costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Subtenants and to minimize interference with the day to day operation of the Property in exercising its rights under this Section 23.

23.9 Environmental Inquiries. Tenant shall notify Landlord, and provide to Landlord a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Tenant shall, as soon as reasonably possible after the release, furnish to Landlord a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Landlord, Tenant shall furnish to Landlord a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential

23.10 Storage or Handling of Hazardous Materials. Tenant, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its Subtenants to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including

without limitation wastes generated in connection with the uses conducted on the Property. In the event Tenant and/or any of its Subtenants will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Tenant shall promptly notify Landlord in writing. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Landlord in its reasonable good faith judgment, Landlord may require Tenant, at Tenant's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property in violation of Governmental Requirements. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Landlord, in Landlord's reasonable good faith discretion. Tenant's obligations hereunder shall survive the termination of this Lease.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

24.1 Warranty of No Brokers. Landlord and Tenant each represents and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction, [except for _____ who represented Tenant (**"**Broker**"**) and whose commission shall be paid by Tenant.] Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by Landlord and Tenant. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration or other termination of this Lease, and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

LANDLORD:

CITY OF SAN LEANDRO
a California charter city

By: _____
Jeff Kay
City Manager

ATTEST:

_____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____
Edward J. Miller
Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

Containing 15,468 square feet or 0.355 acres, more or less.

EXHIBIT B

MAP OF PROPERTY

[To Be Attached]

EXHIBIT C

PERMITTED EXCEPTIONS

[To Be Inserted]

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code Sections 6103 and 27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is hereby entered into as of _____, 202_ by and between the CITY OF SAN LEANDRO, a California charter city and municipal corporation (the "Landlord"), and [Cal Coast Entity] (the "Tenant").

RECITALS

A. Landlord and Tenant have entered into a "Ground Lease" dated concurrently herewith for those certain parcels of real property which are legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). A copy of the Ground Lease is available for public inspection at Landlord's office at 835 E. 14th Street, San Leandro, California. The term of the Ground Lease is thirty-four (34) years, with options to extend the term for ten (10) years and six (6) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of Alameda County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to the Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

LANDLORD:

CITY OF SAN LEANDRO,
a California charter city and municipal corporation

By: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____

By: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

Containing 15,468 square feet or 0.355 acres, more or less.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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 E

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: Ground Lease dated _____, ___ (the "Ground Lease") by and between the City Of San Leandro, a California charter city and municipal corporation ("Landlord"), and [Cal Coast Entity] ("Tenant"), covering certain real property located in San Leandro, California and described in Exhibit A attached hereto and made a part hereof (the "Property").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "Instrument") is executed and delivered as of _____, _____, by _____, in connection with _____. Capitalized terms used herein have the meanings set forth in the Ground Lease unless otherwise defined herein. The undersigned hereby certifies, declares and agrees as follows:

1. Ground Lease. Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented or amended, orally or in writing or in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease [or, if there have been defaults, stating the nature of the defaults]. Except for the Ground Lease and the Disposition and Development Agreement between Landlord and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as CC Development LLC, dated as of _____, 2020, [state any other such agreements, if any], there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on [insert date], and is scheduled to terminate on [insert date]. Tenant has the right to extend the term of the Ground Lease for an extended term of ten (10) years and an extended term of six (6) years, subject to conditions set forth in the Ground Lease.

3. **Rent.** No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.

4. Deposits. Tenant does not make any type of escrow deposits with Landlord. Landlord holds no security deposit from Tenant.

5. No Bankruptcy. No bankruptcy proceedings, whether voluntary or otherwise, are pending or, to Landlord's actual knowledge, threatened against Landlord.

6. No Violations; Condemnation. The undersigned has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. The undersigned has not received any written notice that Landlord, Tenant or [identify management company, if any] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act) [state exceptions, if any].

7. [Fee Encumbrances. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.] [Delete if inapplicable]

8. Insurance Coverage. As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.

9. [Leasehold Mortgage; Leasehold Mortgagee. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee," for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.] [**Conform to transaction**]

10. [Notice and Cure Rights. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6 of the Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [**Conform to transaction**]

[name]

[address]

With a copy to:

[name]

[address]

11. Miscellaneous. If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of the Ground Lease shall prevail. The captions of the sections of this Instrument are for convenience only and shall not have any interpretive meaning.

12. Counterparts. This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date first written above.

By: _____

Name: _____

Title: _____

EXHIBIT A TO GROUND LEASE ESTOPPEL CERTIFICATE

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

Containing 15,468 square feet or 0.355 acres, more or less.

EXHIBIT F

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

Developer Restaurant Element

a) Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor ("Developer Restaurant Element").
b) Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself.
c) The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City.

EXHIBIT "G"

SCHEDULE OF PERFORMANCE

6. Developer Restaurant Element	
All conditions precedent to commencement of Developer Restaurant Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Developer Restaurant Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Developer Restaurant Lease
Approval of permits for Horizontal Improvements for the Developer Restaurant Element (including grading, encroachment and demolition)	Prior to Effective Date of Developer Restaurant Lease
Construction drawings for Vertical Improvements submitted for Building Permit review, accepted as complete and in plan check.	Prior to Effective Date of Developer Restaurant Lease
Commencement of construction of Horizontal Improvements for the Developer Restaurant Element	Within 90 days of Effective Date of Developer Restaurant Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Restaurant Element	Within 18 months of commencement of construction of Horizontal Improvements for Developer Restaurant Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Restaurant Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Developer Restaurant Element (e.g., foundation), permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Developer Restaurant Element	Within 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element, TCO is received

Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Ground Lease, including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the Parties' sole and absolute discretion.

EXHIBIT H

EXAMPLES OF RENT CALCULATIONS*

The parties acknowledge that this Exhibit H reflects hypothetical values for purposes of illustration only and that the values shown in this exhibit in no way reflect what the actual amounts or anticipated amounts are or will be. Further, the parties acknowledge that if there is a conflict between the examples shown in this Exhibit H and the terms set forth in the body of the Lease, the terms set forth in the body of the Lease prevail.

[Insert Sample Rent Calculations]

Exhibit P

MARKET GROUND LEASE AGREEMENT

Between

CITY OF SAN LEANDRO

(“LANDLORD”)

And

[CAL COAST ENTITY]

(“TENANT”)

TABLE OF CONTENTS

Page

MARKET GROUND LEASE AGREEMENT

THIS MARKET GROUND LEASE AGREEMENT (hereinafter referred to as this "Lease") is made and entered into this _____ day of_____, 202__ (the "Effective Date"), by and between the City of San Leandro, a California charter city and municipal corporation ("Landlord" or "City"), and [Insert Cal Coast Entity] ("Tenant").

RECITALS

A. The City and Cal Coast Companies, LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. ("Developer"), have entered into a Disposition and Development Agreement, dated as of February 24, 2020 (the "DDA"), for the development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly described in the DDA (the "Shoreline Property").

B. City desires to advance the development of the Shoreline-Marina area to create new housing units, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base.

C. Section 1.4.6 of the DDA provides for the City to ground lease to the Developer or its affiliate a portion of the Shoreline Property for the development of an approximately 3,000 square foot single-story free-standing building shell (the "Market"), and associated parking, landscaping, lighting and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City (the "Project"). A food market, bait shop, and/or other retail or service business is to be located and operated in the Market. Section 1.4.6 of the DDA sets forth certain conditions to commencement of the ground lease which must be satisfied or waived by the City.

D. Landlord owns approximately _____ acres of land within the Shoreline Property located at _____ ("Property"), the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference. The Property is depicted on the Site Map attached hereto as Exhibit B and incorporated herein by this reference.

E. Tenant desires to lease the Property from Landlord in order to build and provide for the operation of the Project thereon.

F. The City has determined that the conditions to commencement of this Lease, as set forth in Section 1.4.5 of the DDA, have each been satisfied or waived by City. Landlord and Tenant now desire to enter into this Lease in order to carry out the Parties' obligations under the DDA with respect to the Project.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 Definitions. Capitalized terms in this Lease shall have the following meanings.

1.1.1 "**ADA**" means the Americans with Disabilities Act.

1.2.1 "**Affiliates**" has the meaning set forth in Section 8.1.3.

1.2.3 "**Anniversary Date**" has the meaning set forth in Section 22.13.1.

1.2.4 "**Annual Financial Statement**" has the meaning set forth in Section 3.3.1.

1.2.5 "**As-Is Condition**" means the condition of the Property as of the Effective Date.

1.2.6 "**Assessments**" has the meaning set forth in Section 4.2.3.

1.2.7 "**Audit Charge**" has the meaning set forth in Section 3.3.2.

1.2.8 "**Award**" has the meaning set forth in Section 12.1

1.2.9 "**Base Rent**" means the rent that is payable as set forth in Section 3.1.

1.2.10 "**Broker**" has the meaning set forth in Section 24.1.

1.2.11 "**Construction Period**" means the period of time from the Effective Date to the TCO Date.

1.2.12 "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said index is changed so that the base year differs from the base year used in the last Index published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised.

1.2.13 "**DDA**" has the meaning set forth in Recital A.

1.2.14 "**Default**" has the meaning set forth in Section 16.1.

1.2.15 "**Default Notice**" has the meaning set forth in Section 7.6.

1.2.16 "**Developer**" has the meaning set forth in Recital A.

1.2.17 "**Development Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.2.18 "**Effective Date**" has the meaning set forth in the preamble of this Lease.

1.2.19 "**Environmental Law(s)**" has the meaning set forth in Section 23.1 (b).

1.2.20 "**Force Majeure Events**" shall have the meaning set forth in Section 6.1.9.

1.2.21 "**GAAP**" means Generally Accepted Accounting Principles.

1.2.22 "**Gross Receipts**" means, for any Lease Year, as determined on a cash basis and otherwise in accordance with GAAP, consistently applied, all gross revenue, except as otherwise provided below, from retail sales and all other revenue of whatsoever kind or nature derived from the operation of the Project on the Property, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense. Gross Receipts expressly excludes state, county and City sales and use taxes; and any proceeds of sales of trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale.

1.2.23 "**Hazardous Substances**" has the meaning set forth in Section 23.1.

1.2.24 "**Horizontal Improvements**" is defined in the Scope of Development.

1.2.25 "**Improvements**" means the Project buildings and associated parking, drive aisles, publicly accessible outdoor space, landscaping, lighting, and other improvements to be constructed by Tenant on the Property in accordance with the Scope of Development, and any other improvements which may be constructed on the Property by Tenant from time to time during the Term.

1.2.26 "**Increased Costs**" has the meaning set forth in Section 6.1.7.

1.2.27 "**Indemnitee**" has the meaning set forth in Section 8.1.2.

1.2.28 "**Indemnitor**" has the meaning set for in Section 8.1.2.

1.2.29 "**Institutional Investor**" has the meaning set forth in Section 7.3.1

1.2.30 "**Landlord**" has the meaning set forth in the first paragraph of this lease.

1.2.31 "**Landlord Default**" has the meaning set forth in Section 16.7.

1.2.32 "**Landlord's Estate**" means all of Landlord's right, title, and interest in and to (a) its fee estate in the Property, (b) its reversionary interest in the Improvements, and (c) all Base Rent and other benefits due Landlord hereunder.

1.2.33 "**Lease**" has the meaning set forth in the first paragraph of this Lease.

1.2.34 "**Leasehold Mortgagee**" has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

1.2.35 "**Leasehold Mortgages**" has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

1.2.36 "**Lease Year**" means each January 1 to December 31 calendar year of the Term. The first Lease Year means the first full calendar year beginning on the January 1 occurring after the Rent Commencement Date.

1.2.37 "**Lender**" has the meaning set forth in Section 7.1 of this Lease.

1.2.38 "**Market**" means a high quality market building and associated parking, landscaping, lighting and all site utilities, which is constructed in accordance with the finishes, plans and specifications, and amenities approved by City pursuant to Section 6, in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City, and which offers high quality improvements consistent with other markets in the market area of the Project. The Market shall be an approximately 3,000 square foot building.

1.2.39 "**Mello-Roos Act**" has the meaning set forth in Section 5.4.

1.2.40 "**Mezzanine Loan**" has the meaning set forth in Section 7.3.4.

1.2.41 "**Mezzanine Loan Requirements**" has the meaning set forth in Section 7.3.4.

1.2.42 "**Mezzanine Lender**" has the meaning set forth in Section 7.3.4.

1.2.43 "**Minimum Ground Rent**" has the meaning set forth in Section 3.1.1.1.

1.2.44 "**New Lease**" has the meaning set forth in Section 7.8.

1.2.45 "**Notice of Intended Taking**" has the meaning set forth in Section 12.1.

1.2.46 "**Notice of Termination**" has the meaning set forth in Section 7.8 of this Lease.

1.2.47 "**Operator**" has the meaning set forth in Section 5.2.

1.2.48 "**Partial Taking**" has the meaning set forth in Section 12.1.

1.2.49 "**Partial Year Rent Commencement Date**" has the meaning set forth in Section 3.1.1.1.

1.2.50 "**Participation Rent**" has the meaning set forth in Section 13.6.

1.2.51 "**Percentage Rent**" has the meaning set forth in Section 3.1.2 hereof.

1.2.52 "**Permitted Exceptions**" has the meaning set forth in Section 1.2.

1.2.53 "**Permitted Hazardous Substances**" has the meaning set forth in Section 23.2.

1.2.54 "**Permitted Transferee**" has the meaning set forth in Section 13.1.

1.2.55 "**Prevailing Wage Law**" has the meaning set forth in Section 6.1.6.

1.2.56 "**Project**" means the Market to be constructed in accordance with the Scope of Development and continuously operated during the Term of this Lease as provided herein.

1.2.57 "**Project Labor Agreement**" means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

1.2.58 "**Property**" has the meaning set forth in Recital D.

1.2.59 "**Qualified Auditor**" has the meaning set forth in Section 3.3.1.

1.2.60 "**Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.2.61 "**Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.2.62 "**Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.2.63 "**Rehabilitation Plan**" has the meaning set forth in Section 9.5.

1.2.64 "**Rent Commencement Date**" has the meaning set forth in Section 3.1.1.2.

1.2.65 "**Reserve Account**" has the meaning set forth in Section 9.6.

1.2.66 "**Restoration Amount**" means three percent (3.0%) of the replacement cost of the Improvements immediately prior to the casualty. For purposes of calculating the Restoration Amount, "replacement cost" means the actual cost of replacing the Improvements in accordance with applicable law and the terms and conditions of this Lease, including, without limitation, costs of foundations and footings (excluding soils, excavation, grading and compaction), construction, architectural, engineering, legal and administrative fees, inspection, supervision and landscaping.

1.2.67 "**Schedule of Performance**" means the schedule attached hereto as Exhibit G.

1.2.68 "**Scope of Development**" means the description of the Improvements to be constructed by Tenant on the Property which is attached hereto as Exhibit F.

1.2.69 "**Security Instrument**" has the meaning set forth in Section 7.1 of this Lease.

1.2.70 "**Senior Recognized Leasehold Mortgage**" has the meaning set forth in Section 7.2.1.

1.2.71 "**Senior Recognized Leasehold Mortgagee**" has the meaning set forth in Section 7.2.1.

1.2.72 "**Senior Recognized Lender**" has the meaning set forth in Section 7.2.1.

1.2.73 "**Senior Recognized Mezzanine Lender**" has the meaning set forth in Section 7.2.1.

1.2.74 "**Shoreline Property**" has the meaning set forth in Recital A.

1.2.75 "**Sublease**" has the meaning set forth in Section 13.5.

1.2.76 "**Substantial Taking**" has the meaning set forth in Section 12.1.

1.2.77 "**Subtenant**" means a tenant of all or a portion of the Project.

1.2.78 "**Taking**" has the meaning set forth in Section 12.1.

1.2.79 "**Taking Date**" has the meaning set forth in Section 12.1.

1.2.80 "**Taxes**" has the meaning set forth in Section 4.2.1.

1.2.81 "**TCO Date**" means the first day of the month immediately following the month in which a temporary certificate of occupancy ("TCO") for the entirety of the Improvements is issued by the City.

1.2.82 "**Tenant**" has the meaning set forth in the first paragraph of this Lease.

1.2.83 "**Tenant's Estate**" means all of Tenant's right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

1.2.84 "**Tenant's Work**" has the meaning set forth in Section 2.1.2 of this Lease.

1.2.85 "**Term**" has the meaning set forth in Section 2.3.1.

1.2.86 "**Termination Notice Period**" has the meaning set forth in Section 7.6.1.

1.2.87 "**Total Taking**" has the meaning set forth in Section 12.1.

1.2.88 "**Transfer**" has the meaning set forth in Section 13.2.

1.2.89 "**Transfer Request**" has the meaning set forth in Section 13.4.1.

1.2.90 "**Uninsurable Loss**" means the cost to restore the Improvements to the condition required by and in accordance with Section 11.1 below, which is caused by: (i) earthquake; (ii) pollution liability; (iii) flood; or (iv) any other casualty for which Tenant is not otherwise required to obtain and maintain insurance coverage pursuant to this Lease. Notwithstanding the preceding, Uninsurable Loss shall not include (a) loss caused by flood, if the Property is located in a flood zone and flood insurance can be obtained at commercially reasonable rates, nor (b) loss caused by Tenant's release of Hazardous Substances on the Property or violation of its responsibilities pursuant to Section 23 hereof.

1.2.91 "**Vertical Improvements**" is defined in the Scope of Development.

1.3 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant's covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, subject to the matters set forth on Exhibit C attached hereto and incorporated herein ("Permitted Exceptions"). Not included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material as provided in Section 2.1.4 hereof.

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1 As-Is Condition. Landlord shall deliver possession of the Property to Tenant on the Effective Date, in its As-Is Condition, and Tenant hereby accepts the Property in its As-Is Condition. Neither the Landlord, nor any officer, employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Property, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Property, or any other matter, affecting the use, value, occupancy or enjoyment of the Property, the suitability of the Property for the uses permitted by this Lease, the suitability of the Property for the Project, construction of the Project, or construction or use of the Improvements on the Property, and Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Property is being leased in its As-Is Condition with respect to all matters. 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 Property, and has, to the extent it deemed necessary, independently investigated the condition of the Property, 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 except as provided in this Lease.

2.1.2 Construction of Development Work. Upon acceptance of possession of the Property, Tenant shall construct the Improvements and shall maintain, repair, replace and renovate the Improvements as required herein (collectively, "Development Work"). In performing the Development Work, Tenant shall comply with all of the requirements of Section 6 hereof. The time of Tenant's commencement and completion of the Development Work shall occur not later than the times set forth therefor in the Schedule of Performance (subject to the occurrence of any Force Majeure Events). For purposes of the Schedule of Performance, "commencement" of the Development Work means the commencement of grading pursuant to a grading permit issued by the City. For purposes of the Schedule of Performance, and "completion" of construction means the time that a TCO is issued for the Vertical Improvements. As set forth in Section 6, Landlord shall cooperate with Tenant in obtaining any necessary permits. Landlord shall join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.1.3 Utility Services. Tenant shall be responsible, at its expense, for obtaining all electricity, water, sewer, gas, telephone and other utility services necessary for Tenant's intended use of the Property.

2.1.4 Landlord Reservation of Interests. Landlord reserves to itself the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Property, regardless of the depth below the surface at which any such substance may be found. Landlord or its successors and assigns, however, shall not have the right for any purpose to enter on, into, or through the surface or the first 500 feet of the subsurface of the Property in connection with this reservation. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon Landlord's activities under this paragraph.

2.1.5 Net Lease. It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Landlord, without abatement, counterclaim, setoff or offset whatsoever, and that Tenant shall pay all costs, taxes, charges, and expenses of every kind and nature against the Property which may arise or become due during the Lease Term, and which, except as otherwise provided in this Lease and any other agreement entered into in connection with this Lease, and except to the extent arising out of a breach of this Lease by Landlord, or arising out of the negligence or willful misconduct by Landlord or its agents, employees, or contractors, which but for execution hereof would or could have been payable by Landlord.

2.2 Fee Mortgages. Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property without the prior written approval of Tenant and its Lease Mortgagee, which approval shall not be unreasonably withheld or delayed. Such approval may be conditioned upon Landlord and its fee mortgagee

entering into a subordination and non-displacement agreement with Tenant and its Lease Mortgagee.

2.3 Term.

2.3.1 Length of Initial Term. The initial term (the "Initial Term") of this Lease shall commence on the Effective Date, and shall expire thirty-four (34) years from the Effective Date, unless extended as set forth herein below.

2.3.2 Option Terms. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its obligations under this Lease beyond any applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on two (2) occasions (each such right, an "Extension Option"), as follows:

2.3.2.1 Length of Option Terms. The first extension of the Term shall be for a period of ten (10) years, and the second extension of the Term shall be for a period of six (6) years (each such period of time, an "Option Term").

2.3.2.2 Exercise of Option Terms. Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than two (2) years, prior to the expiration of the Term. Such written notification shall include a certification of Tenant that Tenant is currently in compliance with the Lease. Provided Tenant has properly and timely exercised an Extension Option, and further provided that Landlord has determined that Tenant is in compliance with this Lease at the time of notification and at the time of commencement of the Option Term, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant and Landlord shall prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid by Tenant). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

2.3.2.3 Term. The Initial Term and Option Terms are collectively referred to herein as the "Term."

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts of Minimum Ground Rent and Percentage Rent ("Base Rent") during the time periods set forth below. An example of the following rent calculations is set forth in Exhibit H attached hereto.

3.1.1 Minimum Ground Rent.

3.1.1.1 On or before the earlier to occur of (a) ninety (90) days after the TCO Date, or (b) twenty-four (24) months after the Effective Date ("Rent Commencement Date"), Tenant shall pay to Landlord, in advance, minimum ground rent equal to One Thousand Six Hundred Sixty-Seven Dollars ($1,667) per month. In the event of a Taking pursuant to Section 12 of this Lease, the Minimum Ground Rent shall be recalculated based upon the percentage of square feet remaining in the Project after the Taking. All amounts shall be payable in advance on or before the first day of such calendar month. The first month's monthly Minimum Ground Rent shall be prorated to the number of days remaining in such month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Minimum Ground Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.1.1.2 Upon January 1 of each Lease Year beginning the second Lease Year, the Minimum Ground Rent shall be increased by three percent (3%) of the Minimum Ground Rent then in effect.

3.1.1.3 Upon January 1 of the tenth (10th), twentieth (20th), thirtieth (30th) and fortieth (40th) Lease Years, the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the monthly amount of Minimum Ground Rent then in effect for the previous Lease Year, increased by three percent (3%) of the monthly amount of Minimum Ground Rent then in effect, or (b) the total amount of Minimum Ground Rent plus Percentage Rent due and payable during the five Lease Years preceding such date, dividing the total by five, and multiplying the result by 0.7, and dividing the total by twelve.

3.1.1.4 Upon the commencement of the first and second Option Terms (the "Value Determination Dates"), the Minimum Ground Rent shall be adjusted to the higher of the following: (a) the Minimum Ground Rent then in effect for the previous Lease Year, increased by three percent (3%) of the Minimum Ground Rent then in effect, or (b) the appraised fair market rental value of the Property. The fair market rental value of the Property shall be based upon the fair market value of the land and not the value of the Improvements, and shall be determined by appraisal as follows:

a. Appointment of Appraiser. For a period of thirty (30) days after notice from Landlord to Tenant, Landlord and Tenant shall use good faith efforts to jointly agree upon the appointment of a mutually acceptable MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1. The appraiser shall have not less than ten (10) years' experience appraising retail and commercial properties in the San Francisco Bay Area. In the event that the parties are unable to jointly agree upon a mutually acceptable appraiser, Landlord and Tenant shall, within ten (10) days after the expiration of the thirty (30) day period, each appoint an MAI appraiser to participate in the appraisal process provided for in this Section 3.1.1 and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the non-defaulting party shall have the right to apply to the Superior Court of Alameda County, California, to appoint an appraiser to represent the defaulting party. Within ten (10) days of the parties' appointment, the two (2) appraisers shall jointly appoint a third MAI appraiser and give written notice thereof to Landlord and Tenant or, if within ten (10)

days of the appointment of said appraisers the two (2) appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third appraiser.

b. Determination of Fair Market Rental Value.

(i) In the event that a single mutually acceptable appraiser has been appointed by the parties, within thirty (30) days after the appointment the appraiser shall commence to determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge its determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(ii) In the event that three appraisers have been appointed by the parties, within thirty (30) days after the appointment of the third appraiser, the two appraisers directly appointed by the Parties shall each commence to independently determine the fair market rental value of the Property in accordance with the provisions hereof, and shall execute and acknowledge their determination of fair market rental value in writing and cause a copy thereof to be delivered to each of the parties hereto.

(iii) The appraisers shall determine the fair market rental value of the Property as of the Value Determination Date as the date of value. Fair market rental value shall be determined for the Property only, and shall not include value attributable to the Improvements which are owned by Tenant during the Term of this Lease.

(iv) If the two appraisals arrive at different fair market rental values, the third appraiser shall select the appraisal which the third appraiser determines is closest to the fair market rental value of the Property, and such appraisal shall be deemed the fair market rental value of the Property as of the Value Determination Date.

(v) Each of the parties hereto shall (a) pay for the services of its own appointee, (b) pay one-half (l/2) of the fee charged by a mutually appointed appraiser and any appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisals.

3.1.2 Percentage Rent. Upon the commencement of the second (2nd) Lease Year, Tenant shall pay Landlord percentage rent ("Percentage Rent") equal to Five Percent (5%) of the Gross Receipts for the previous month, less Minimum Ground Rent actually paid by Tenant to and received by Landlord for the previous month. All payments of Percentage Rent shall be paid to Landlord on a monthly basis on or before the twentieth (20^{th}) day of each month. In the event Tenant is delinquent for a period of ten (10) days or more in paying Landlord any Percentage Rent, Tenant shall pay to Landlord interest thereon at the rate of two percent (2%) per month from the date such sum was due and payable until paid.

3.1.3 Within twenty (20) days after the close of each calendar month of the Term of this Lease, Tenant shall deliver to Landlord, in a form reasonably satisfactory to Landlord, an account of its Hotel Gross Receipts, Concessionaire Gross Receipts and Total Gross Receipts during the preceding month.

3.2 Maintenance of Records.

(a) Tenant shall at all times keep accurate and proper books, records and accounts required to determine Gross Receipts and Percentage Rent, including a written explanation of income and expense report procedures and controls ("Records").

(b) Tenant shall keep all of its Records related to this Lease at its home office. Landlord may examine and audit the Records at any and all reasonable business times, subject to reasonable prior notice. If Landlord elects to audit the Records, Landlord shall use an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing retail projects. Landlord and its auditors may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to examine and audit such Records, unless required under applicable law and in accordance with Section 3.4.3. All Records, including any sales tax reports that Tenant and its Subtenant may be required to furnish to any governmental agency, shall be open to the inspection of and copying (at Landlord's sole cost and expense) by Landlord, Landlord's auditor, or other authorized representative or agent of Landlord, who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing retail projects, at all reasonable times during business hours, subject to reasonable prior notice. Landlord shall use commercially reasonable efforts not to disrupt Tenant and to minimize interference with the day-to-day operation of Landlord and/or the Property in exercising its rights hereunder.

3.3 Annual Statements by Tenant, Verification of Records, Computation, Payment of Percentage Rent

3.3.1 On or before March 1 of each Lease Year during the Lease Term, Tenant shall submit to Landlord an "Annual Financial Statement" which shall include a breakdown, in line item detail, of Tenant's calculation of Gross Receipts and Percentage Rent payable for the prior Lease Year. Each Annual Financial Statement shall be reviewed by an authorized officer of Tenant, and shall contain an expressed written opinion of such officer that such financial statements present the financial position, results of operations, and cash flows fairly and in accordance with GAAP. Tenant shall also certify to Landlord that each Annual Financial Statement is accurate and consistent in all material respects with its Records. Landlord may, through its representatives, inspect, audit or perform an examination of any Annual Financial Statement and supporting documentation utilized in the creation thereof at any time, and Tenant shall provide reasonable access to all of its books and records as provided herein, using an auditor who is a qualified independent certified public accountant or real estate consultant, in either case, who is experienced in auditing retail projects ("Qualified Auditor"), subject to reasonable prior notice. Records must be supported by reasonable source documents. Tenant shall file with the State of California not less frequently than once each calendar quarter during the term of this Lease a periodic allocation schedule showing sales and use tax derived from Total Gross Sales during such period.

3.3.2 In the event Tenant fails to submit the Annual Financial Statement (together with the required written opinion) by the required time, Tenant shall pay to Landlord a late fee in the amount of One Hundred Dollars ($100) per day for each day after receipt by

Landlord of written notice from Landlord of such failure until the Annual Financial Statement (together with the required written opinion) is submitted as required.

3.3.3 If any audit or examination conducted by Landlord discloses that the payable Percentage Rent reported by Tenant for any calendar year was understated by more than three percent (3%), Tenant shall promptly pay to Landlord the actual reasonable costs incurred by Landlord for such audit or examination (the "Audit Charge") in addition to any amounts due as Percentage Rent; otherwise Landlord shall bear all costs of such audit or examination.

3.3.4 Landlord's billings for the Audit Charge shall be sufficiently detailed with reasonable backup information such as supporting paid invoices, so that Tenant may determine the fees for the various participants in the audit or examination for whom Tenant is required to pay. Prior to Tenant's obligation to pay any Audit Charge, Landlord shall have provided Tenant with the audit or examination report which is the basis for such Audit Charge, access to documents supporting such audit or examination, and a reasonable opportunity to review and discuss the audit or examination with Landlord and the auditor.

3.4 Acceptance Not Waiver; Retention of Records.

3.4.1 Landlord's acceptance of any money paid by Tenant under this Lease, whether shown by any Annual Financial Statement furnished by Tenant or otherwise specified in this Lease, shall not constitute an admission of the accuracy or the sufficiency of the amount of such payment. Landlord may, at any time within three (3) years after the receipt of any such payment, question the sufficiency of the amount thereof and/or the accuracy of any underlying Annual Financial Statement furnished by Tenant.

3.4.2 Tenant shall retain, for five (5) years after submission to Landlord of any such Annual Financial Statement, all of Tenant's Records relating to the information shown by any such Annual Financial Statement, and shall make them available to Landlord for examination to the extent as provided above during that period. Tenant shall use commercially reasonable efforts to require that its Subtenant keep, maintain and retain Records of its business activities conducted within the Project for such five (5) year period, which Records shall be made available to Landlord, Landlord's auditor, or other authorized representative or agent of Landlord for inspection and copying (at Landlord's expense) as provided above. Notwithstanding the foregoing, Tenant shall not be responsible for the records of any Subtenant.

3.4.3 Tenant shall also furnish Landlord all information reasonably requested by Landlord directly relating to the costs, expenses, earnings and profits of Tenant in connection with Tenant's operations conducted on or connected with the Property. Landlord may not disclose publicly any information, data and documents made available to Landlord in connection with the exercise of its right to such information, unless required under the Public Records Act or other applicable law, and the conditions set forth above with requests for information shall apply.

3.4.4 Landlord covenants to keep and to cause its auditor(s) to keep the results of such audit strictly confidential except to the extent disclosure is legally required by the Public Records Act or other applicable law, or if discoverable in litigation between the parties. If

Landlord receives a request for such information it shall immediately notify Tenant of such request and deliver to Tenant copies of all correspondence received by Landlord relating to such request, and afford Tenant an opportunity to contest such request.

4. OTHER EXPENSES

4.1 Tenant Payments. During the term of this Lease, Tenant shall pay the following:

4.1.1 Utilities. From and after the Effective Date, Tenant shall pay all charges for electricity, water, gas, telephone, internet, cable, and all other utility services used on the Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.1.2 Taxes and Assessments.

4.1.2.1 Pursuant to Revenue & Taxation Code Section 107.6, Landlord hereby advises Tenant that the leasehold interest in the Property conveyed to Tenant by this Lease will be subject to property taxation, and that it is Tenant's obligation under this Lease to pay or cause to be paid all of such property taxes levied on Tenant's interests in the Property. Tenant acknowledges that it understands that property taxes will be levied on the Property despite the Landlord's ownership of fee title to the Property and any exemptions Landlord is entitled to and receives as a result of public entity ownership of the Property.

4.1.2.2 The term "Taxes," as used herein, means all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, including community facilities district special taxes, but excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Effective Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.1.2.3 The term "Assessments," as used herein, means all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Effective Date and continuing throughout the Term.

4.1.2.4 Tenant covenants and agrees to pay or cause to be paid before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personal property as may be from time to time situated within the Property and the Improvements.

4.1.2.5 Tenant shall pay any business license fees imposed upon Tenant in connection with the operation of the Improvements.

4.1.2.6 Tenant shall be responsible for the collection, remittance and reporting of all sales and use taxes from Restaurant customers in accordance with Section 2.1 of the City Municipal Code.

4.2 Payment Date and Proof. All payments by Tenant for Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts.

4.3 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.11 below.

4.4 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.4.1 Payment of Base Rent. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall remain in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach.

4.4.2 Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the

responsibility of Tenant. Nothing in this Lease shall require tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any such law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest or that bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

5.1 **Use.** Tenant shall use the Property solely for the purposes of constructing, maintaining and operating the Improvements as a food market, bait shop, and/or other retail or service business, with the specific use to be approved by Landlord in its reasonable discretion ("Market").

5.2 **Operation of Project**. Upon the City's issuance of a Certificate of Occupancy for the Improvements and throughout the remainder of the Term of this Lease, the Tenant shall continuously without interruption operate a Market in the Improvements on the Property (the "Project"). Tenant shall have the responsibility, subject to Force Majeure Events, to keep the Project continuously open and operating throughout the term of this Lease, including any extensions hereof, subject to closures (i) following a casualty or condemnation or other loss, (ii) following any environmental release requiring remediation, (iii) if required by law or court order for any reason, (iv) as necessary during any partial or complete renovation of the Project, or (v) matters caused by Force Majeure Events. In the event of a closure as set forth above, Tenant shall close only that portion of the Project which is necessitated by the causative event, and shall use all reasonable efforts to reopen the Project or the closed portion of the Project as soon as reasonably possible following any such closure. The Tenant shall provide at its own cost any and all equipment, fixtures, furniture and furnishings necessary for the operation of a Market. Tenant shall be responsible for hiring and training all personnel necessary to operate and maintain the Project as a Market, or shall cause a professional commercial property management company to do so.

5.3 **CC&Rs.** Tenant agrees to join and participate in the Shoreline Business Association, and any organization that is organized, formed or sponsored by Landlord for substantially all businesses in the Shoreline-Marina area to pay for their fair share of maintenance, capital replacement reserves, and/or promotion of the Shoreline area and basin, which could include, without limitation, a property owners' association, business improvement district or other form of organization. The boundaries of the area subject to such organization shall be determined by Landlord or the participants in such organization.

5.4 **CFD**. Landlord and Tenant shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "Mello-Roos Act"), which may be responsible for funding the maintenance of public roads, public entryways, landscaped areas, trails and parks, as provided in Section 1.5 of the DDA.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1 Construction of Improvements. Tenant shall construct the Improvements in accordance with the Scope of Development, and in accordance with all building and other permits that may be issued in connection therewith. Tenant shall submit all construction plans, and commence and complete all construction of the Improvements, and shall satisfy all other obligations and conditions of this Lease, within the times established therefor in the Schedule of Performance and the text of this Lease, subject to Force Majeure Events pursuant to Section 6.1.9 hereof. Once construction of the Improvements is commenced, it shall continuously and diligently be pursued to completion and shall not be abandoned for more than thirty (30) days. During the course of construction and prior to issuance of the final TCO for the Improvements, Tenant shall provide monthly reports to Landlord of the progress of construction. The Improvements shall include all of the improvements contained in the approved construction plans and drawings, including without limitation the Project, sidewalks, plazas, landscaping, and parking. The construction of the Improvements shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Improvements shall be borne solely by the Tenant.

6.1.2 Landlord's Cooperation in Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Improvements. Such cooperative efforts may include Landlord's joinder in any application for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord's actual and reasonable third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions) within thirty (30) days after Landlord delivers an itemized statement of costs to Tenant. Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Property and operation and other use of such Improvements on the Property; and that Landlord's duty to cooperate and Landlord's approvals under this Lease do not in any way modify or limit the exercise of Landlord's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.3 Construction Contract. Tenant shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Improvements with a general contractor reasonably acceptable to the City, which general contractor shall be duly licensed in the State and shall have significant experience in organizing and contracting public-private development projects of the type and scale similar to the Project.

6.1.4 Construction Requirements. No development or construction on the Property shall be undertaken until Tenant shall have procured and paid for all required permits,

licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of "as built" plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements.

6.1.5 Compliance with Laws. Tenant shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the ADA, Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq., and the California Building Standards Code, Health and Safety Code Section 18900, et seq. The design, construction and operation of the Improvements shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Project and the Shoreline Project. This Lease does not provide Tenant any vested rights to construct the Improvements in accordance with the existing policies, rules and regulations of the City, or to construct the Improvements subject only to the existing conditions of approval which may have been previously approved by the City, except as Tenant may already have obtained vested rights to develop the Improvements in accordance with a Development Agreement between City and Tenant or a vesting tentative map.

6.1.6 Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Tenant and its contractors and subcontractors shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Improvements as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., any applicable federal labor laws and standards, and implementing regulations, and perform all other applicable obligations, including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, and compliance with all regulations and statutory requirements pertaining thereto, all as may be amended from time to time (the "**Prevailing Wage Law**"). Tenant shall periodically, upon request of Landlord, certify to Landlord that, to its knowledge, it is in compliance with the requirements of this paragraph.

6.1.7 Indemnity. Tenant shall indemnify, defend (with counsel approved by Landlord) and hold Landlord and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively. the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused

by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Landlord does not and shall not waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Landlord, or Tenant's deposit with Landlord of any of the insurance policies described in this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease and the issuance of a Certificate of Completion for the Improvements. Tenant's indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

6.1.8 Project Labor Agreement. Prior to the Effective Date of the Lease, and throughout the term of construction of the Improvements, Tenant shall negotiate, enter into, remain a party to and comply with at least one Project Labor Agreement with respect to the construction of the Improvements.

6.1.9 Performance and Payment Bonds.

6.1.9.1 Prior to commencement of any construction work on the Project, Tenant shall cause its general contractor to deliver to the Landlord copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Landlord as obligee and shall be in a form acceptable to the City Attorney. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the Landlord of contractor's ability to commence and complete construction of the Project in the form of subguard insurance, an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Landlord required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Landlord. Such evidence must be submitted to Landlord in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

6.1.10 Force Majeure. Performance by either party hereunder shall not be deemed to be in default, and the time within which a party shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, unavoidable casualties, litigation involving this Lease or the land use approvals of

the Improvements, or bankruptcy, insolvency or defaults of lenders or equity investors ("**Force Majeure Events**"). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twelve (12) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Lease to the contrary, delays due to inability to obtain financing, recession or other general economic conditions, adverse market conditions, adverse interest rates, and/or the lack of funds or financing to complete the Improvements, shall not constitute Force Majeure Events.

6.2 Fixtures and Equipment. In constructing the Improvements upon the Property, Tenant and its Subtenant may place or install in the Project such trade fixtures and equipment as Tenant or its Subtenant shall deem reasonably desirable for the conduct of business therein. Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its Subtenant (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Improvements) placed by Tenant or its Subtenant on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its Subtenant at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Improvements and all fixtures and equipment necessary for their operation and maintenance) constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or its Subtenant do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within thirty (30) days following the end of the Term, Landlord may as its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

6.3 Mechanics and Labor Liens. Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens, asserted by reason of contracts made by Tenant, to stand against the Landlord's fee interest in the Property, to Landlord's fee simple estate in reversion of the Improvements, nor against Tenant's leasehold interest therein for Work or labor done, services performed, or material used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or its Subtenant. Tenant shall cause any such claim of lien to be fully discharged within (30) days after the date of filing thereof, provided, however, that Tenant, in good faith, disputes the validity or amount of any such claim

of lien, and if Tenant shall post an undertaking as may be required or permitted by law or is otherwise sufficient to prevent the lien, claim of encumbrance from attaching to the fee interest in the Property. Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation results therefrom, discharges said lien. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Landlord, express or implied, by inference or otherwise, to any person or entity for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property, the Improvements, or any part thereof. Prior to commencement of construction of the Improvements on the Property, Tenant shall give Landlord not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws. Landlord shall have the right at all reasonable times and places after at least ten (10) days advance notice to post, and as appropriate to keep posted, any notices on the Property which Landlord may deem reasonably necessary for the protection of Landlord's interest in the Property from mechanic's liens or other claims. Tenant shall give Landlord at least ten (10) days prior written notice of the commencement of any work to be done upon the Property under this Section, in order to enable Landlord to post such notices. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO MECHANICS' OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.

6.4 Development Rights. Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay).

6.5 Hold Harmless. Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind of description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to be the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good

faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or Improvements shall be acquired as required by applicable laws, ordinances or regulations including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the Improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Term of this Lease, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, upon expiration or termination of this Lease, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Thirty (30) days prior to the expiration of the Term, Tenant shall deliver copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Subject to each and all of the terms and conditions listed in Paragraphs (a) – (d) below, Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon, and to refinance such mortgages, pledges and assignments, by way of one or more "Leasehold Mortgages" (as that term is defined below) (which may be of different priority and exist at the same time), and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a "Leasehold

Mortgagee"), including collateral assignments of this Lease, any Subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Leasehold Mortgage" below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more "Mezzanine Loans" as defined below, and subject to Landlord approval, which approval shall not be unreasonably withheld or delayed, and subject to the limitations set forth in the definition of "Mezzanine Loan" below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined is sometimes referred to herein as a "Security Instrument", and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a "Lender". In no event shall the fee interest of Landlord in the Property, residual interest of Landlord in the Improvements, or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

(a) Prior to the issuance of a TCO, Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited in purpose to and the principal amount of all such Leasehold Mortgages and Mezzanine Loans shall not exceed the amount necessary and appropriate to develop the Improvements, and to acquire and install equipment and fixtures thereon. Said amount shall include all hard and soft costs of acquisition, development, construction, and operation of the Improvements.

(b) After the issuance of a TCO, the principal amount of all Leasehold Mortgages and Mezzanine Loans entered into by Tenant shall be limited to an amount that does not exceed the sum of the value of Tenant's leasehold interest in the Property and the value of Tenant's fee ownership of the Improvements; provided, that such requirement shall not result in a default with respect to any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO, nor shall such requirement prohibit Tenant from refinancing any Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of a TCO as long as the principal amount of such refinancing does not exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage or Mezzanine Loan entered into by Tenant prior to issuance of the TCO and Tenant does not receive a payment of net proceeds from the refinancing. Tenant shall obtain Landlord's written approval prior to refinancing any Leasehold Mortgage or Mezzanine Loan if the principal amount of such refinancing will exceed the then-outstanding balance owed by Tenant on the refinanced Leasehold Mortgage and Mezzanine Loan, and/or if Tenant will receive a payment of net proceeds from the refinancing. Tenant shall compensate Landlord for Landlord's actual and reasonable costs to verify the value of Tenant's leasehold interest in the Property and the value of the Improvements, and to review and approve any Leasehold Mortgage or Mezzanine Loan and related loan documents that require Landlord's approval, including in-house payroll and administrative costs and out-of-pocket costs paid by Landlord to consultants and attorneys.

(c) Any permitted Leasehold Mortgages and Mezzanine Loans entered into by Tenant are to be originated only by Institutional Investors (as defined in Section 7.3

hereof) approved in writing by Landlord, which approval will not be unreasonably conditioned, delayed, or withheld. Landlord shall state the reasons for any such disapproval in writing.

(d) All rights acquired by said Leasehold Mortgagee or Mezzanine Lender shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions, and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage or Mezzanine Loan.

7.2 Notice to Landlord.

7.2.1 If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "Recognized Leasehold Mortgagee." The most senior recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees, shall be referred to in this Lease, and be entitled to the rights of, the "Senior Recognized Leasehold Mortgagee;" and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the "Senior Recognized Leasehold Mortgage," provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most Senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord a copy of the applicable Security Instrument shall be deemed a "Recognized Mezzanine Lender". Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a "Recognized Lender". The most senior Recognized Mezzanine Lender from time to time, based upon such notices from such Recognized Mezzanine Lender or a notice from the Senior Recognized Mezzanine Lender designating another Recognized Lender as the "Senior Recognized Mezzanine Lender", shall so long as the Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the "Senior Recognized Mezzanine Lender". The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the "Senior Recognized Lenders."

7.2.2 In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and

address for notice purposes shall be provided to Landlord in substantially like manner; provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.3 Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1. above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.4 Tenant and each Recognized Lender shall give Landlord written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender's rights hereunder in any manner whatsoever.

7.3 Definitions.

7.3.1 The term "**Institutional Investor**" as used in Section 7 shall refer to any entity with assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made, and which is a (i) savings bank, (ii) savings and loan association, (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing, or (ix) such other lender as may be approved by Landlord in writing in advance, which approval shall not be unreasonably withheld. The term "Institutional Investor" shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars ($100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2 The term "Leasehold Mortgage" as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3 The term "Leasehold Mortgagee" as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4 The term "Mezzanine Loan" means one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the "Mezzanine Loan Requirements"): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the

foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Investor (each a "Mezzanine Lender"); (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Senior Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided, however, that nothing in this Section 7.4 shall limit or derogate from Landlord's rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1 Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord's intent to so terminate this Lease (a "**Default Notice**") at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least sixty (60) days in advance of the proposed effective date of such termination (as such time period may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or sixty (60) day period (each such period a "**Termination Notice Period**"), any Senior Recognized Lender shall:

7.6.1.1 notify Landlord of such Senior Recognized Lender's desire to nullify such notice;

7.6.1.2 pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and

7.6.1.3 comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with by such Senior Recognized Lender within the notice period, provided, however, (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender's initial cure period shall commence upon the later of the end of Tenant's cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and (ii) provided, further, that such Senior Recognized Lender shall not be required during such sixty (60) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

7.6.1.4 Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notice of a change of Senior Recognized Lender ownership has been given to Landlord pursuant to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1 If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice shall be extended for a period of sixty (60) days, provided that such Senior Recognized Lender shall during such sixty (60) day period:

7.7.2 Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant' s interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such

Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

7.7.3 If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.4 If at the end of such sixty (60) day period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the Term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, and this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.5 If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.6 For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however, that following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1),

Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.7 If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.8 Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 New Lease. The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within sixty (60) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, or if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section 7.6.1, Landlord shall provide each Senior Recognized Lender with written notice that this Lease has been terminated ("Notice of Termination"), together with a statement of all sums which would at that time be due under this Lease, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("New Lease") of the Property with the Senior Recognized Lender for the remainder of the Term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all

escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1 Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2 Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3 Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord' s Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4 If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a New Lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5 Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such New Lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the New Lease simultaneously with the delivery of such New Lease.

7.8.6 The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7 In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Senior Recognized Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefor, issued by a responsible title insurance company doing business within the State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including, but not limited to, the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of an agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

7.13 Legal Proceedings. Landlord shall give each Recognized Lender prompt notice of the commencement of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties

hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Recognized Lenders not intervening after receipt of notice of the proceedings. In addition to the notice requirements in Section 7.2.4, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.

7.14 **No Merger**. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 **Estoppel Certificate.** Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord' s fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E stating to the best of such person' s knowledge after a commercially reasonable inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

7.16 **Notices.** Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above, and those from each

Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.

7.17 **Erroneous Payments**. No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof, provided the Recognized Lender shall have made demand therefor not later than one year after the date of its payment.

7.18 **Amendment of Lease**. Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.

7.19 **Certain Tenant Rights**. The right, if any, of the Tenant to treat this Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel this Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and any exercise of the foregoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat this Lease as terminated in the event of the Landlord' s bankruptcy; any such rights are limited to those provided under the terms of this Lease and applicable law.

7.20 **Limitation on Liability.** Notwithstanding anything to the contrary in this Lease, no Recognized Lender or its assigns shall have any liability under this Lease beyond its interest in this Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to, Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 **No Subordination of Fee Interest or Rent.** Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Base Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1 Tenant shall indemnify, defend and save harmless Landlord and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "**Indemnitees**") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Tenant, its Subtenant, invitees, agents, employees, guests, customers, licensees or permittees, except as may arise solely out of the willful or grossly negligent act of the Indemnitees. Landlord and Tenant agree that this provision shall not require Tenant to indemnify, defend and save the Indemnitees harmless from the Indemnitees' gross negligence or willful misconduct, if any.

8.1.2 All provisions of this Lease pursuant to which the Tenant agrees to indemnify the Indemnitees against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages caused by or resulting from the sole negligence of the Indemnitees. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3 Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Effective Date during the Term of this Lease. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without limiting the foregoing, neither Landlord nor any of the Indemnitees shall be liable for and, except as otherwise provided in Section 11.1.1, there shall be no abatement of Base Rent for, (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 Acquisition of Insurance Policies. Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of

California satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. [SUBJECT TO REVIEW OF CITY RISK MANAGEMENT] Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1 Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars ($5,000,000) each occurrence; Ten Million Dollars ($10,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2 Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3 Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars ($1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8.1 below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4 Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5 Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6 Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire,

extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Property, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1 Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2 Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord, except after thirty (30) days prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3 Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4 Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance;

8.4.5 Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums; and

8.4.6 Be provided by insurance carriers with an A.M. Best rating of not less than A:VII.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days

prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.11 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 **Proceeds.** All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 **Application of Proceeds of Physical Damage Insurance**. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be paid over to Tenant.

9. REPAIRS AND MAINTENANCE

9.1 **Acceptance of Property**. EXCEPT AS OTHERWISE PROVIDED HEREIN, TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS, WHERE IS, IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 **Tenant's Maintenance Obligations**. During the Term hereof, Tenant agrees to keep and maintain the Improvements and the Property, and every part thereof, including without limitation, all buildings, all exterior facades, all sidewalks, all exterior areas, any appurtenances and fixtures, the structural elements of the buildings, all parking facilities, roofs, walls, plumbing, heating, ventilation, air conditioning, plazas, and landscaping, at Tenant's sole cost and expense, in good repair, in a neat, clean, safe, and orderly condition, in accordance with the standard of maintenance of prudent owners of high quality retail projects within the East Bay Area region, in accordance with any property improvement plan required by any lender, and in compliance with the City Municipal Code and all applicable laws. Tenant agrees to perform all day-to-day maintenance, repairs and replacements reasonably necessary to maintain and preserve the Improvements and the Property, and to provide administrative services, supplies, contract services, maintenance, maintenance reserves, and management which are reasonably necessary for the maintenance of the Improvements. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Property. Tenant hereby waives all rights to make repairs or to cause any work to be

performed at the expense of Landlord as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

9.3 Landlord's Inspections. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof. Landlord may, after reasonable advance notice, enter upon the Property, or any portion thereof, from time to time, solely for the purpose of inspecting the Property or a suspected breach of this Lease by Tenant that reasonably requires entry upon the Property. In so doing, Landlord shall use reasonable efforts to minimize disruption to Tenant or its Subtenants. Landlord shall not be liable to Tenant or its Subtenant, or any person or entity claiming through Tenant or its Subtenant, or to the occupant of any portion of the Property for any loss, damage or harm arising out of Landlord's exercise of the rights of entry reserved herein, except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors, officers or employees.

9.4 Landlord's Repairs. If Tenant fails to make repairs or replacements as required in this Lease and such failure has a material adverse impact on the operation of the Property, after the expiration of any applicable notice and cure period, Landlord may once again notify Tenant of said failure in writing, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 9.4 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN THIRTY (30) DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH THIRTY (30) DAY PERIOD AND DILIGENTLY PROSECUTED THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 9.4 OF THE LEASE." If Tenant then fails to make the repairs or replacements or commence the repairs or replacements as provided above, within such ten (10) business day period, Landlord may make such repairs and replacements at Tenant's expense. Tenant shall reimburse Landlord for the actual and reasonable costs thereof within thirty (30) days after Landlord's notice specifying such costs together with a written invoice therefor. Such costs may include, without limitation, the reasonably necessary cost of design, labor, material, equipment, the value of services provided by Landlord's employees in the actual performance of the repairs and replacements, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Landlord. If Landlord makes such repairs or replacements, Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, loss or liability of any kind arising out of or connected in any way with such work, including, but not limited to claims by Tenant, its officers, employees, agents, Subtenant and the patrons or visitors of Tenant or its Subtenant except to the extent the same is due to the willful misconduct or gross negligence of Landlord, its agents, contractors and employees.

9.5 Capital Reinvestment. Within __ months prior to the commencement of the tenth Lease Year, and __ months prior to the commencement of every tenth Lease Year period thereafter, Tenant shall prepare and submit to Landlord for Landlord's

reasonable approval a ten year plan for rehabilitation of the Improvements ("Rehabilitation Plan"). If Landlord disapproves the proposed Rehabilitation Plan, Tenant shall revise and resubmit the revised Rehabilitation Plan to Landlord within thirty (30) days of Landlord's disapproval notice. Each Rehabilitation Plan shall describe what work is necessary to maintain the structural integrity of the Improvements and keep the Improvements in a commercially reasonable condition which is sufficient to operate a Market therein, and shall set forth a detailed budget and program of expenditures to be undertaken by Tenant within such ten year period, broken down by Lease Year. Tenant shall perform the work set forth in each approved Rehabilitation Plan within the times set forth therein.

9.6 Reserve Account. Tenant shall establish and maintain a capital reserve account at all times during the Term of the Lease ("Reserve Account"). The funds to be placed and maintained in the Reserve Account during the first ten Lease Years shall be not less than _____, and the funds to be placed and maintained in the Reserve Account during each Lease Year shall be not less than the amount set forth in the approved Rehabilitation Plan for the current ten year Rehabilitation Plan period. Notwithstanding the foregoing, if the lender requires a larger minimum deposit into the Reserve Account, Tenant shall maintain such larger required amount in the Reserve Account. The funds in the Reserve Account shall be expended only for capital repairs, improvements, and replacements to the Project fixtures and equipment in accordance with the current approved Rehabilitation Plan, and capital repairs to and replacement of the Project with a long useful life and which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Reserve Account does not in any manner relieve or lessen Tenant's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Project in the manner prescribed herein. Not less than once per year, Tenant shall submit to Landlord an accounting for the Reserve Account.

9.7 Condition at End of Lease. Upon vacating the Property at the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and cleanliness required to be maintained by Tenant during the Term of this Lease, wear and tear and casualty excepted, and shall peaceably surrender the same to Landlord. On the date Tenant is required by this section to surrender possession, Tenant shall deliver to Landlord such proper and executed instruments in recordable form, releasing, quitclaiming and conveying to Landlord all right, title and interest of Tenant and any other party claiming by or through Tenant or Tenant's Estate in and to the Property and/or the Improvements, including, without limitation, such documents necessary for Landlord to demonstrate to a title company that this Lease no longer encumbers the Property and Improvements, and that title to the Improvements shall have vested in Landlord, free and clear of all liens, encumbrances or title exceptions, other than the Permitted Title Exceptions, exceptions to title not otherwise created by or through Tenant, and title exceptions approved by Landlord in writing. All provisions of this section shall survive any termination of this Lease.

10. QUIET POSSESSION

10.1 Quiet and Peaceful Possession. Landlord covenants that it is has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of 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 Property by Tenant, Tenant shall have quiet and peaceful possession of the Property during the entire Term of this Lease. However, except as provided in this Lease, Landlord shall in no event be liable in damages 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 gross negligence or willful misconduct of Landlord or its officers, agents or employees, in violation of its obligations under this Lease.

10.2 Other Activities in Shoreline Marina Area. Tenant acknowledges that from time to time during the term of this Lease, and at such times and intervals as may be determined by Landlord in its reasonable discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by the authority of Landlord within the Shoreline Marina area. Landlord agrees that such activities shall be performed during such hours and durations that are reasonable for such activities. Tenant acknowledges that said activities and related operations may be necessary and for the benefit of Tenant, its Subtenants, its guests and customers, other tenants and the public, and that the conduct of such activities shall not be deemed to have disturbed or interfered with the possession and use of the Property by Tenant or anyone claiming under Tenant, or to have caused Tenant to be evicted, either actually or constructively, from the Property, and shall, under no circumstances, entitle Tenant or others claiming under or through Tenant to claim or recover incidental or consequential damages from Landlord on account of such activities.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

(a) Tenant's Duty to Restore. Subject to Section 11.1(b) below, if any Improvements are damaged by fire, other peril or any other cause during the Lease Term, then Tenant, at its sole cost and expense, shall, within three (3) years after the date of casualty, or such shorter period of time as is reasonably necessary for the restoration (subject to delays caused by Force Majeure Events), restore the Leasehold Improvements in compliance with and to the extent permitted by all then applicable laws and this Lease shall remain in full force and effect, without abatement of Base Rent or other charges, except to the extent of rental loss insurance proceeds paid to Landlord. All insurance proceeds payable as a result of such casualty shall be applied in the following order of priority:

i. First, as provided by any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

ii. Second, to Tenant for the payment of all costs and expenses to complete the restoration of the Improvements required of Tenant pursuant to this subsection; and

iii. Third, the remainder of insurance proceeds, if any, shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (ii) above shall be deemed to be held in trust for the benefit of Landlord and Tenant by the recipient for the purpose of restoration of the Improvements

(b) Tenant's Termination Rights. Notwithstanding anything to the contrary in this Lease:

(i) Election Not to Reconstruct. If an Uninsurable Loss in excess of the Restoration Amount or any Late Term Extensive Damage occurs, then Tenant, by delivery of written notice to Landlord within six (6) months after the occurrence of the damage, may elect not to reconstruct the Improvements, in which case Tenant, at its sole cost, shall remove all debris; restore the Property to a safe condition in compliance with all applicable laws; and maintain such Improvements which are not damaged in the condition required by this Lease. Following such election, this Lease shall continue to remain in full force and effect, without abatement of Base Rent or other charges. Tenant's failure to make an election in writing within six (6) months after the date of the occurrence of the damage shall constitute Tenant's affirmative election not to restore the damaged Improvements pursuant to Section 11.1(a) above. All insurance proceeds payable as a result of such casualty with regard to Late Term Extensive Damage which Tenant elects not to reconstruct as provided hereinabove shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to Tenant for the payment of all costs and expenses to complete the demolitions and/or restorations required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all Rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

The proceeds paid to Tenant pursuant to Subsection (B) above shall be deemed to be held in trust for the purposes and uses described therein.

Notwithstanding the foregoing, Tenant shall be responsible for repairing any damage to Improvements caused by an Uninsurable Loss if the Uninsurable Loss is less than the Restoration Amount.

(c) Infeasibility. Notwithstanding Section 11.1(a), if reconstruction of the Improvements following any casualty is physically infeasible because of physical conditions of the Property, or if the City or any other governmental authority cannot legally grant the permits and approvals for repair or restoration of the Improvements so that the Project shall continue to have not less than the original building and service area, plus facilities substantially equivalent to those existing prior to the casualty and reasonably desirable for the reconstructed Project taking into consideration any reduction in building and service area, and in any case sufficient to maintain the Market operating standards set forth herein (the "Minimum Restoration Level"), then Tenant may terminate this Lease as of the date set forth in its written notice to Landlord so stating. If the City or any governmental authority can legally grant permits and approvals for repair and restoration of the Improvements so that the total capacity of the Project after restoration will be at least the Minimum Restoration Level but less than the total capacity of the Project originally approved by the City land use entitlements, then Minimum Ground Rent shall thereafter be reduced to reflect the reduction in building area in the Project. Landlord shall cooperate with Tenant and use good faith efforts to have permits and approvals for repair granted for the highest amount of building area legally available, up to the building area originally approved by the City land use entitlements, but Landlord shall have the right to require that the Improvements contain the amenities required by this Lease, subject to reduction in size and/or capacity as specified in this Section 11.1(c). If Tenant elects to terminate this Lease pursuant to this section, Tenant, at its sole cost, shall, prior to the effective date of the termination remove all debris from the Property, restore any Improvements not removed, remove all safety hazards from the Property and restore the Property to a safe condition in compliance with all applicable laws. Subject to Tenant's completion of its obligations in the immediately preceding sentence, upon the termination date set forth in Tenant's written notice to Landlord of its election to terminate: (i) all Minimum Ground Rent and other sums due pursuant to this Lease shall be prorated as of the date of termination and paid by Tenant; (ii) this Lease shall expire and terminate; and (iii) neither Landlord nor Tenant shall have any further obligations hereunder, except for those obligations which have accrued prior to the date of termination or which are intended to survive termination of the Lease. All insurance proceeds payable as a result of such damage and Tenant's election to terminate shall be applied in the following order of priority:

A. First, as provided in any Leasehold Mortgage, to the satisfaction and payment of the Leasehold Mortgagee;

B. Second, to the payment of all expenses incurred by Tenant in completing the demolition and/or restoration required of Tenant pursuant to this subsection; and

C. Third, the remainder of insurance proceeds, if any, shall be paid to Landlord and Tenant, as their interests may appear; provided, however, that if Landlord has received all rent due under this Lease for the period of time prior to termination of the Lease, the remainder shall be paid to Tenant.

(d) General Provisions. Landlord shall not be required to repair any injury or damage to the Improvements on the Property. Landlord and Tenant hereby waive the provisions of (i) Sections 1932(2) and 1933(4) of the Civil Code of California and any other provisions of Law from time to time in effect during the term of this Lease and relating to the effect on leases of partial or total destruction of leased premises; and (ii) Sections 1941 and 1942 of the Civil

Code, providing for repairs to and of the Property. Landlord and Tenant agree that their respective rights upon any damage or destruction of the Improvements shall be those specifically set forth in this Article 11.

12. CONDEMNATION

12.1 Definitions. As used in this Article, the following words have following meanings:

12.1.1 "Award" means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

12.1.2 "Taking" means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

12.1.3 "Taking Date": means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

12.1.4 "Total Taking": means the taking of the title to all of the Property and the Tenant's Estate.

12.1.5 "Substantial Taking" means the Taking of the fee title to a portion of the Property or title to Tenant's Estate, or both, if one or more of the following conditions result:

12.1.5.1 the portion of the Property and/or Tenant's Estate not so taken cannot be repaired or reconstructed, as to constitute a Market capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

12.1.5.2 such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

12.1.5.3 the cost of repairing or replacing the Improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

12.1.6 "Partial Taking" means any Taking of title that is not either a Total or a Substantial Taking.

12.1.7 "Notice of Intended Taking" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives a Notice of Intended Taking, notify Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of Improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment and Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the present value of Tenant's Estate, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of Tenant's Estate shall take into account and shall be determined subject to any permitted Subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property as Tenant deems appropriate so as

to make them an operable whole to the extent allowed by governmental laws and restrictions.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than three (3) months, (i) this Lease shall continue in full force and effect, (ii) Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, (iii) neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and (iv) Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such three (3) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1 The party receiving any notice of the following kinds shall promptly give the other party notice of the receipt, contents and date of the notice received: (a) Notice of an intended Taking; (b) Service of any legal process relating to condemnation of the Property or the Improvements; (c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2 The party receiving any notice, Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, Landlord, Tenant and any Leasehold Mortgagee shall attempt to agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFERS

13.1 No Transfer Without Landlord's Consent. The qualifications and identity of Tenant are of particular concern to Landlord. It is because of those qualifications and identity that Landlord has entered into this Lease with Tenant. Except as otherwise provided below, during the Term of this Lease, (a) no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease, (b) Tenant shall not make any total or partial sale, transfer, conveyance, assignment, Sublease, or subdivision of the whole or any part of the Property or the Improvements thereon (excluding deeds of trusts and mortgages), and (c) there shall not be a change in the controlling interest of Tenant, without the prior written approval of Landlord, except as expressly permitted below. Prior to the date that the Market opens for business to the public, Landlord may disapprove a request for a transfer in its sole and absolute discretion. After the date that the Market opens for business to the public, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Tenant's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to finance the Transfer and operate and manage the Market, in sufficient detail to enable Landlord to evaluate the proposed transferee pursuant to the criteria set forth in this Section 13.1 and as reasonably determined by Landlord. Landlord shall evaluate each proposed transferee on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 13.1 applies, which Landlord reasonably determines does not possess these qualifications. Notwithstanding any provision in this Section 13 to the contrary, in no event shall Tenant make any Transfer which would or could likely be effective beyond the Term (including extensions thereof) without the prior written consent of the Landlord. A Sublease or assignment and assumption agreement, in form reasonably satisfactory to Landlord, shall also be required for all proposed Transfers. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease, provided that the assigning Tenant shall retain all indemnification obligations pursuant to this Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, **"**Permitted Transferee**"** means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Tenant's obligations under this Lease following completion of

the Project, and (ii) that possesses the financial resources typical of owners of similar Market projects.

13.2 Definition of Transfer. For purposes of this Lease, **"**Transfer**"** means any sale, lease, Sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord's consent, (ii) Affiliate Transfers, (iii) Leasehold Mortgages, and (iv) Subleases (as defined in Section 13.5 hereof).

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1 the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2 the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.3 a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer is described in this item (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as security for a Mezzanine Loan; or

13.3.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the- counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Effective Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.6 any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1 Tenant shall give Landlord ninety (90) days prior written notice of the proposed Transfer setting forth therein (i) the identity of the proposed transferee; and (ii) the proposed transferee's proposed use of the Property (the "**Transfer Request**"). Within thirty (30) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within thirty (30) days of the receipt of the Transfer Request, Tenant may provide Landlord a second Transfer Request notice which states in bold that Landlord's failure to approve or disapprove the proposed transfer within fifteen (15) days of the date of receipt of the second Transfer Request notice will result in the proposed transfer being deemed approved by Landlord. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the second Transfer Request notice, Landlord shall be deemed to have approved the proposed Transfer.

13.4.2 The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord, which shall be in the form of a Sublease in accordance with Section 13.5 when the Permitted Transferee is a Subtenant. Upon consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer, which shall be in the form of a memorandum of Sublease when the Permitted Transferee is a Subtenant.

13.4.3 Tenant shall pay Landlord Participation Rent in the amount of two percent (2%) of the Gross Sales Proceeds of such Transfer pursuant to Section 13.6 hereof, concurrently with the closing of such Transfer.

13.4.4 No uncured Default shall exist hereunder on the date of Transfer.

13.5 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.5.1 Subleases for all or part of the Market shall require the prior approval of the Landlord, which approval shall not be unreasonably withheld or delayed.

13.5.2 Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the Subtenant to attorn to Landlord upon a Default by Tenant hereunder and notice to Subtenant that Tenant has defaulted under this Lease and Subtenant is instructed to make Subtenant's rental payments to Landlord.

13.5.3 Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the Subtenant to take no action in contravention of the terms of this Lease.

13.5.4 Each Sublease is of a duration not greater than the Term of this Lease.

13.5.5 Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such

Subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.6 Participation Rent from Transfer Proceeds. Upon any sale, transfer or assignment of any portion of Tenant's interest in this Lease or the Property to a third party or third parties, Landlord shall receive **"Participation Rent"** in the amount of two percent (2%) of **"Gross Sales Proceeds"** of all such sales, transfers and assignments retroactively. "Gross Sales Proceeds" means the gross consideration received by the transferor or any affiliate as a result of a transfer, without deductions for costs or expenses relating to the sale, transfer or assignment. Notwithstanding anything to the contrary contained herein, Participation Rent will not be due and owing for (i) financing or refinancing or equity financing and any foreclosure or deed in lieu of foreclosure in connection with any financing, refinancing or equity financing, (ii) any "key money" contribution or similar payment by a Project operator, or (iii) the direct or indirect sale of assets, merger, consolidation or upper tier transfers of interests in a parent or affiliate which owns directly or indirectly, an interest in Tenant or any entity holding an interest in the Lease, so long as there is no payment or distribution of consideration in connection with such transaction. An example of Participation Rent calculations is set forth in Exhibit H attached hereto.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. [DELETED]

15. INSOLVENCY

15.1 Landlord's Remedies. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. DEFAULT

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (a "Default") under this Lease:

16.1.1 Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) days after written notice of such default has been received by Tenant; or

16.1.2 Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been received by Tenant. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith and with reasonable diligence prosecutes the cure of such default to completion, but in no event later than ninety (90) days after written notice of such default has been received by Tenant.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1 Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2 Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been

earned under this Lease after such termination up to the date of such award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom (including, but not limited to those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amounts referred to above shall be determined in accordance with Civil Code Section 1951.2(b) or successor statute.

16.3.3 Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1, unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

16.4 **Costs**. If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

16.5 **Cumulative Remedies**. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. A party's liability for damages under this Lease shall be limited to actual damages sustained and shall not include any consequential, indirect or punitive damages.

16.6 Waiver of Default. No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.

16.7 Landlord Default and Tenant Remedies. Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "Landlord Default": (a) if such failure can reasonably be cured within thirty (30) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such thirty (30) day period; or (b) if such failure cannot reasonably be cured within said thirty (30) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure.

17. LANDLORD MAY INSPECT THE PROPERTY

17.1 Advance Notice for Inspection. Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

18.1 Terms Upon Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to One Hundred Fifty Percent (150%) of the amount of Base Rent due for the last month of the term of this Lease.

19. NOTICES

19.1 Address for Notices. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect

to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service, provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

[Entity Name]
11755 Wilshire Blvd., Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copy to:

Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

And the address of Landlord is:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copy to:
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

20. SUCCESSORS

20.1 Binding on Successors and Assigns. The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

21.1 Rights Upon Termination. Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Nondiscrimination. Tenant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Tenant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, Subtenants, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

22.2 Compliance with Law. Tenant agrees, at its sole cost and expense, to itself comply, and to use its commercially reasonable efforts to secure compliance by all contractors and Subtenants of the Property and Improvements, with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities pertaining to the Property and the Improvements, as well as operations conducted thereon, and to faithfully observe and use its commercially reasonable efforts to secure compliance by all contractors and Subtenants of the Property and Improvements with, in the use of the Property and the Improvements with all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, Tenant shall use good faith efforts to prevent Subtenants from maintaining any nuisance or other unlawful conduct on or about the Property, and shall take such actions as are reasonably required to abate any such violations by Subtenants of the Property and Improvements. The judgment of any court of competent jurisdiction, or the admission of Tenant or any Subtenant or permittee in any action or proceeding against them, or any of them, whether Landlord be a party thereto or not, that the Subtenant or permittee has violated any such ordinance or statute in the use of the Property or the Improvements shall be conclusive of that fact as between Landlord and Tenant, or such Subtenant or permittee.

22.3 Conflict of Interest. No member, official or employee of Landlord shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

22.4 Further Actions and Instruments; City Manager Authority. Each of the parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Lease and the satisfaction of the conditions of this Lease. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Lease to carry out the intent and to fulfill the provisions of this Lease or to evidence or consummate the transactions contemplated by this Lease. Landlord hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Lease on behalf of the Landlord so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Landlord as specified herein, or reduce the revenue earned or to be earned by Landlord, as may be necessary or proper to satisfy the purpose and intent of this Lease. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Landlord to do so. The City Manager may delegate some or all of his or her powers and duties under this Lease to one or more management level employees of the City.

22.5 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.6 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.

22.7 Extensions of Time. Times of performance under this Lease may be extended in writing by the mutual agreement of Landlord and Tenant, as applicable. The City Manager (or designee) shall have the authority in his or her sole and absolute discretion on behalf of Landlord to approve extensions of time not to exceed a cumulative total of ninety (90) days.

22.8 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.

22.9 Cumulative Remedies. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or

by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

22.10 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.

22.11 Late Charge and Interest. In the event Tenant fails to make any payment of Base Rent due hereunder upon the date due, Landlord shall be entitled to collect from Tenant a late charge equal to five percent (5%) of the amount of the delinquent payment. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.

22.12 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid. Specifically, without limitation, this Lease supersedes the DDA with respect to the terms and conditions of the Landlord's ground lease of the Property to the Tenant. In the event of any inconsistency between the terms and conditions of this Lease and the terms and conditions of the DDA with respect to the Property, the terms and conditions of this Ground Lease shall prevail.

22.13 Escalation. The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Effective Date and every tenth (10th) anniversary date thereafter ("Anniversary Date") during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.

22.14 Language. The word "Tenant" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.

22.15 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.16 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.17 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.18 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.19 Survival. All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.20 Recordation. A memorandum of lease in the form attached hereto as Exhibit D shall be promptly executed and acknowledged by the Parties and recorded by Tenant in the county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.21 Net Lease

22.22.1 No Liability for Landlord Taxes. Nothing herein contained shall be construed so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

22.22.2 No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.23 Limitation of Liability.

22.23.1 Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual officers or employees of Landlord, and Tenant shall not seek recourse against the individual officers or employees of Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its officers, employees, contractors, consultants, attorneys, volunteers, or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief, or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to such damages arising out of or relating to this Lease, including, but not limited to, damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

22.24 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 "Hazardous Substances" means all of the following:

23.1.1 Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste" or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. ("CERCLA"); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. ("RCRA"); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature

whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

23.1.2 any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

23.1.3 Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

23.1.4 Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

23.1.5 Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

23.2 The term **"Hazardous Substances**" shall include the following **"Permitted Hazardous Substances:"** all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by Subtenants under Subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user's business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

23.3 **"Environmental Law(s)"** means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.4 **Environmental Inspections.** Tenant has had an opportunity, prior to the Effective Date of this Lease, to engage its own environmental consultant to make such investigations of the Property as Tenant has deemed necessary, and Tenant has approved the environmental condition of the Property.

23.5 Presence and Use of Hazardous Substances. Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its Subtenants and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its Subtenants and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.6 Cleanup Costs, Default and Indemnification.

23.6.1 Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

23.6.2 Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Landlord (as well as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

23.6.3 Upon and after the Commencement Date of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property occurring after the Commencement Date or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property arising after the Commencement Date, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Landlord, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Tenant's obligations under this Section 23.6 shall survive the expiration of this Lease.

23.7 Duty to Prevent Hazardous Materials Contamination. Tenant shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such

precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

23.8 Right of Entry. Notwithstanding any other term or provision of this Lease, in the event Landlord in good faith has reason to believe that a violation of applicable Governmental Regulations as determined by a final non-appeal order, with respect to Hazardous Materials on the Property Tenant shall, subject to the rights of Subtenants, permit Landlord or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency), without prior notice in the event of an emergency, and with not less than forty-eight (48) hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency remedial action with respect to Hazardous Materials and Hazardous Materials Contamination in violation of Governmental Requirements as determined by a final non-appealable order on or affecting the Property, or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials Contamination when Tenant has failed to do so after notice from Landlord and an opportunity to cure such deficiency, which notice states in bold type as follows: "THIS NOTICE OF DEFAULT IS BEING SENT PURSUANT TO SECTION 23 OF THE LEASE, AND IF TENANT FAILS TO CURE SUCH DEFAULT WITHIN TEN (10) BUSINESS DAYS OF ITS RECEIPT OF THIS NOTICE, OR IF TENANT HAS NOT COMMENCED SUCH CURE WITHIN SUCH TEN (10) BUSINESS DAY PERIOD AND DILIGENTLY PROSECUTE THE SAME TO COMPLETION, THEN LANDLORD MAY EXERCISE ITS SELF HELP RIGHTS UNDER SECTION 23 OF THE LEASE." All actual third party costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor. Landlord shall use commercially reasonable efforts not to disrupt Tenant or the Subtenants and to minimize interference with the day to day operation of the Property in exercising its rights under this Section 23.

23.9 Environmental Inquiries. Tenant shall notify Landlord, and provide to Landlord a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Tenant shall, as soon as reasonably possible after the release, furnish to Landlord a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Landlord, Tenant shall furnish to Landlord a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and

reports including, without limitation, those reports and other matters which may be characterized as confidential

23.10 Storage or Handling of Hazardous Materials. Tenant, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its Subtenants to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Tenant and/or any of its Subtenants will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Tenant shall promptly notify Landlord in writing. Tenant shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by Landlord in its reasonable good faith judgment, Landlord may require Tenant, at Tenant's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property in violation of Governmental Requirements. Such monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials on the Property, shall be satisfactory to Landlord, in Landlord's reasonable good faith discretion. Tenant's obligations hereunder shall survive the termination of this Lease.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

24.1 Warranty of No Brokers. Landlord and Tenant each represents and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction, [except for _____ who represented Tenant (**"**Broker**"**) and whose commission shall be paid by Tenant.] Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee except as agreed to in writing by Landlord and Tenant. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this Section shall survive expiration or other termination of this Lease, and shall remain in full force and effect.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

LANDLORD:

CITY OF SAN LEANDRO
a California charter city

By: _____
Jeff Kay
City Manager

ATTEST:

_____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____
Edward J. Miller
Authorized Signatory

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence continuing along said southwesterly line of Monarch Bay Drive, northwesterly along said curve through a central angle of 11°57'32", a distance of 116.47 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 54°23'55" West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46'01", for an arc length of 26.51 feet;
- South 06°22'06" East, 84.86 feet;
- North 85°26'24" East, 51.31 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 04°41'59" East;
- Northeasterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 6,019 square feet or 0.138 acres, more or less.

EXHIBIT B

MAP OF PROPERTY

[To Be Attached]

EXHIBIT C

PERMITTED EXCEPTIONS

[To Be Inserted]

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Clerk

Exempt From Recording Fee Pursuant to Government Code Sections 6103 and 27383

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is hereby entered into as of _____, 202_ by and between the CITY OF SAN LEANDRO, a California charter city and municipal corporation (the "Landlord"), and [Cal Coast Entity] (the "Tenant").

RECITALS

A. Landlord and Tenant have entered into a "Ground Lease" dated concurrently herewith for those certain parcels of real property which are legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). A copy of the Ground Lease is available for public inspection at Landlord's office at 835 E. 14th Street, San Leandro, California. The term of the Ground Lease is thirty-four (34) years, with options to extend the term for ten (10) years and six (6) years.

B. The Ground Lease provides that a short form memorandum of the Ground Lease shall be executed and recorded in the Official Records of Alameda County, California.

NOW, THEREFORE, the parties hereto certify as follows:

Landlord, pursuant to the Ground Lease, hereby leases the Property to the Tenant upon the terms and conditions provided for therein. This Memorandum of Lease is not a complete summary of the Ground Lease, and shall not be used to interpret the provisions of the Ground Lease.

LANDLORD:

CITY OF SAN LEANDRO,
a California charter city and municipal corporation

By: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

TENANT:

[Cal Coast Entity]

By: _____

By: _____

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence continuing along said southwesterly line of Monarch Bay Drive, northwesterly along said curve through a central angle of 11°57'32", a distance of 116.47 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 54°23'55" West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46'01", for an arc length of 26.51 feet;
- South 06°22'06" East, 84.86 feet;
- North 85°26'24" East, 51.31 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 04°41'59" East;
- Northeasterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 6,019 square feet or 0.138 acres, more or less.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public,
(here insert name and title of the officer)
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 E

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: Ground Lease dated _____, ___ (the "Ground Lease") by and between the City Of San Leandro, a California charter city and municipal corporation ("Landlord"), and [Cal Coast Entity] ("Tenant"), covering certain real property located in San Leandro, California and described in Exhibit A attached hereto and made a part hereof (the "Property").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "Instrument") is executed and delivered as of _____, _____, by _____, in connection with _____. Capitalized terms used herein have the meanings set forth in the Ground Lease unless otherwise defined herein. The undersigned hereby certifies, declares and agrees as follows:

1. Ground Lease. Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented or amended, orally or in writing or in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease [or, if there have been defaults, stating the nature of the defaults]. Except for the Ground Lease and the Disposition and Development Agreement between Landlord and Cal Coast Development, LLC, a Delaware limited liability company doing business in California as CC Development LLC, dated as of _____, 2020, [state any other such agreements, if any], there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property. To the best of the undersigned's knowledge, after a commercially reasonable inquiry, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on [insert date], and is scheduled to terminate on [insert date]. Tenant has the right to extend the term of the Ground Lease for an extended term of ten (10) years and an extended term of six (6) years, subject to conditions set forth in the Ground Lease.

3. **Rent.** No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.

4. **Deposits.** Tenant does not make any type of escrow deposits with Landlord. Landlord holds no security deposit from Tenant.

5. **No Bankruptcy**. No bankruptcy proceedings, whether voluntary or otherwise, are pending or, to Landlord's actual knowledge, threatened against Landlord.

6. **No Violations; Condemnation.** The undersigned has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. The undersigned has not received any written notice that Landlord, Tenant or [identify management company, if any] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act) [state exceptions, if any].

7. **[Fee Encumbrances**. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.] [Delete if inapplicable]

8. **Insurance Coverage.** As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.

9. **[Leasehold Mortgage; Leasehold Mortgagee**. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee," for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.] [**Conform to transaction**]

10. **[Notice and Cure Rights**. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6 of the Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [**Conform to transaction**]

[name]

[address]

With a copy to:

[name]

[address]

11. Miscellaneous. If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of the Ground Lease shall prevail. The captions of the sections of this Instrument are for convenience only and shall not have any interpretive meaning.

12. Counterparts. This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned has executed this Instrument as of the date first written above.

By: _____

Name: _____

Title: _____

EXHIBIT A TO GROUND LEASE ESTOPPEL CERTIFICATE

The land is situated in the City of San Leandro, County of Alameda, State of California, and is described as follows:

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence continuing along said southwesterly line of Monarch Bay Drive, northwesterly along said curve through a central angle of 11°57'32", a distance of 116.47 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 54°23'55" West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46'01", for an arc length of 26.51 feet;
- South 06°22'06" East, 84.86 feet;
- North 85°26'24" East, 51.31 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 04°41'59" East;
- Northeasterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 6,019 square feet or 0.138 acres, more or less.

EXHIBIT F

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

Market Element

a) Developer shall construct an approximately 3,000 square foot single-story free-standing building shell (the "Market").
b) The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
c) A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion.
d) The Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive.

EXHIBIT "G"

SCHEDULE OF PERFORMANCE

7. Market Element	
All conditions precedent to commencement of Market Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Market Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Market Lease
Approval of permits for Horizontal Improvements for the Market Element (including grading, encroachment and demolition)	Prior to Effective Date of Market Lease
Construction drawings for Vertical Improvements submitted for Building Permit review, accepted as complete and in plan check.	Prior to Effective Date of Market Lease
Commencement of construction of Horizontal Improvements for the Market Element	Within 90 days of Effective Date of Market Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Market Element	Within 18 months of commencement of construction of Horizontal Improvements for Market Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Market Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Market Element (e.g., foundation), permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Market Element	Within 18 months after approval of first Building Permit for Vertical Improvements for Market Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 18 months after

	approval of first Building Permit for Vertical Improvements for Market Element

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Ground Lease, including, without limitation, extension due to Force Majeure. Times of performance under the Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the Parties' sole and absolute discretion.

EXHIBIT H

EXAMPLES OF RENT CALCULATIONS*

The parties acknowledge that this Exhibit H reflects hypothetical values for purposes of illustration only and that the values shown in this exhibit in no way reflect what the actual amounts or anticipated amounts are or will be. Further, the parties acknowledge that if there is a conflict between the examples shown in this Exhibit H and the terms set forth in the body of the Lease, the terms set forth in the body of the Lease prevail.

[Insert Sample Rent Calculations]

3458168.3