

Staff Report 43

GRANTEE:

City of Newport Beach

PROPOSED ACTION:

Approval of form and consideration for the City of Newport Beach's proposed Second Amended and Restated Ground Lease for the Balboa Bay Club property, pursuant to Chapter 728, Statutes of 1994.

AREA, LAND TYPE, AND LOCATION:

Legislatively granted Public Trust Lands located in Newport Beach, Orange County (as shown in Figure 1 and Figure 2).

Figure 1. Location

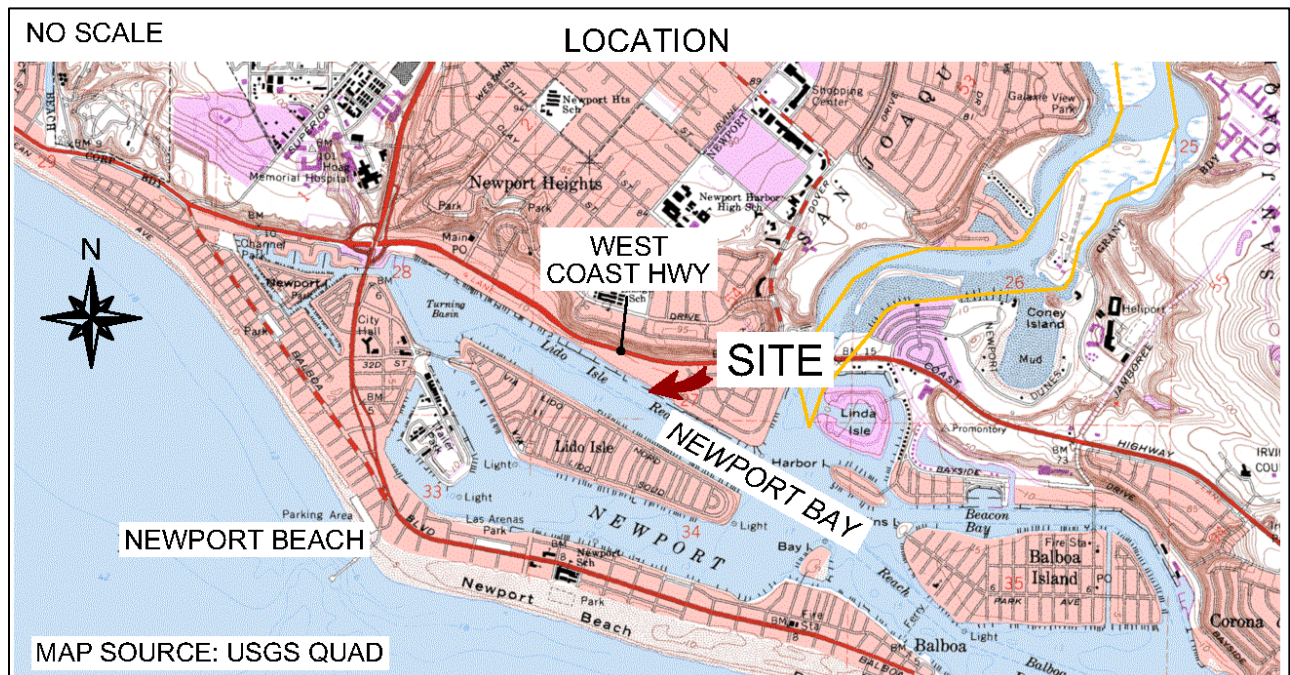
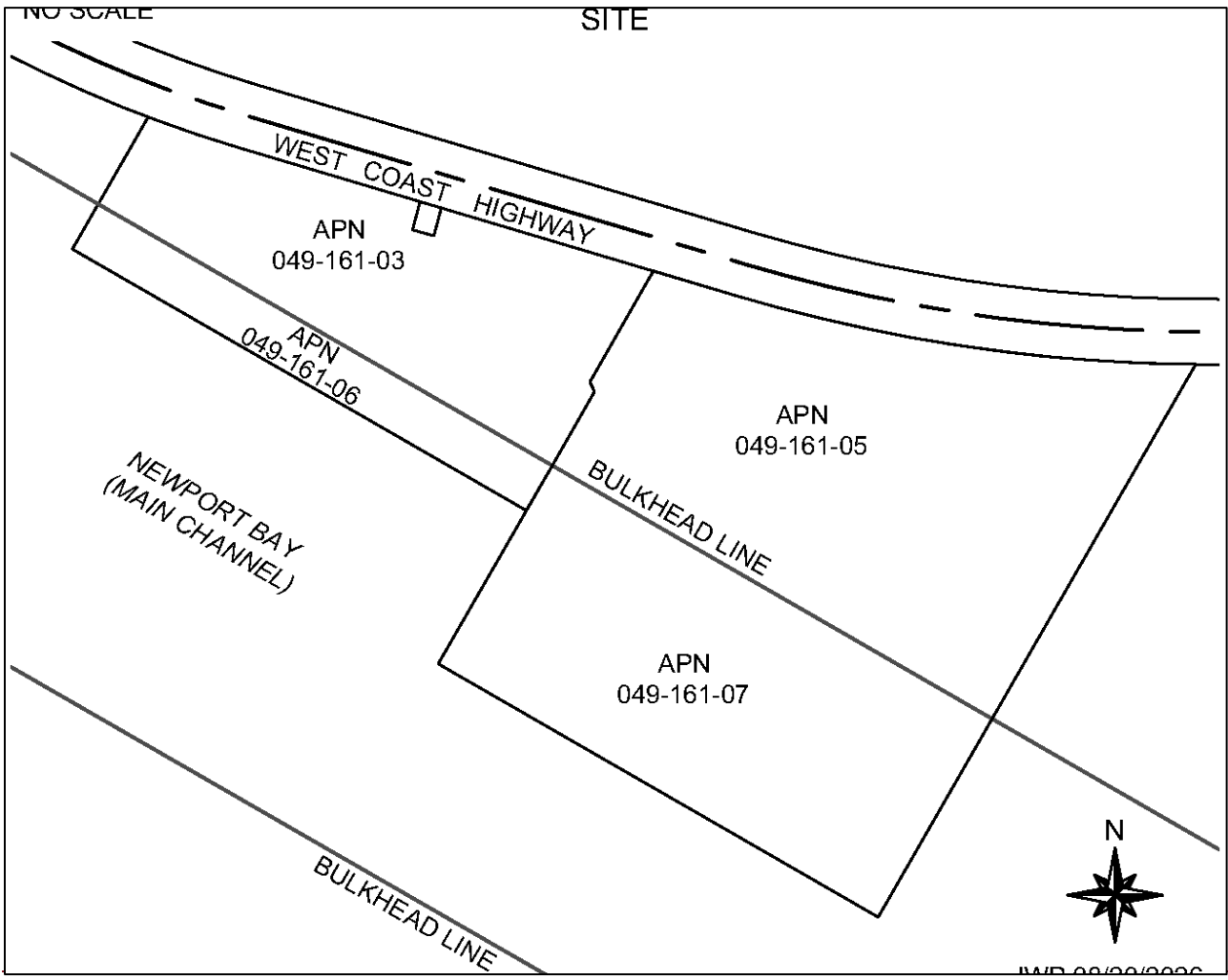
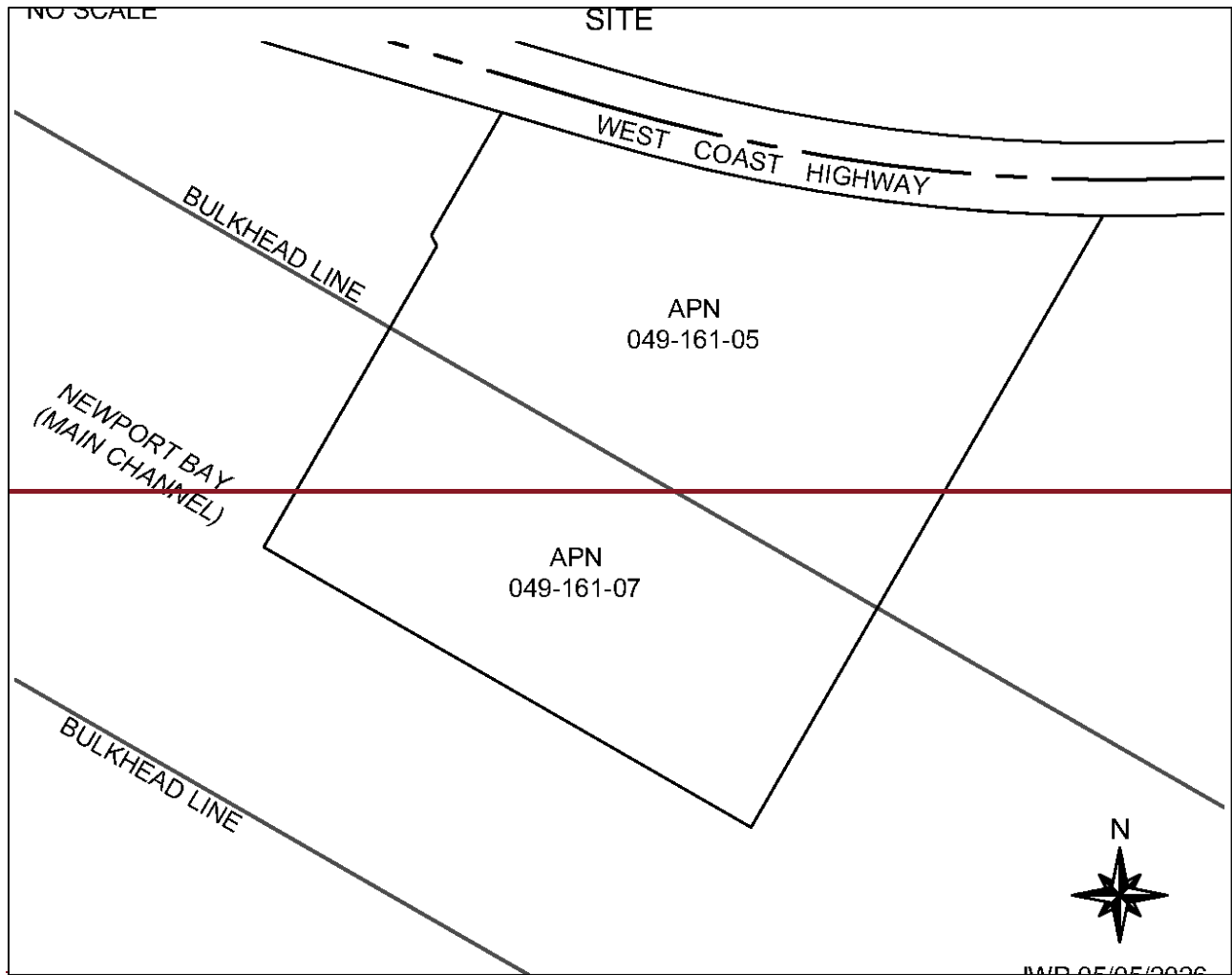


Figure 2. Site Map





NOTE: This depiction of the site premises is based on unverified information provided by the Grantee or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

BACKGROUND AND PROPOSED LEASE:

The City of Newport Beach (City) is a trustee of sovereign tide and submerged land that was first granted by the Legislature in 1919. This original grant was amended several times before being replaced by the operative grant, [Chapter 74, Statutes of 1978](#) (Chapter 74). This statute re-granted all tide and submerged lands, whether filled or unfilled, in both the Pacific Ocean and Newport Bay within the City's boundaries to hold and manage in trust.

In the 1920's, some areas of tide and submerged lands in Newport Bay were filled and reclaimed as part of harbor development in the Bay. Chapter 74 recognized

that these lands, identified as Parcels A, B, and C, are "...filled and reclaimed, are no longer submerged or below the mean high tide line and are no longer needed or required for the purposes of navigation, commerce, and fisheries...." As such, pursuant to Chapter 74, these lands "...are freed of the public trust for navigation, commerce, and fisheries...but shall continue to be held in trust by the City of Newport Beach subject to the other terms and provisions of [Chapter 74]...." Additionally, Chapter 74 required that any revenues derived from the leasing or administration of these lands would be used in a manner consistent with the Public Trust Doctrine and the City's granting statutes. However, Chapter 74 failed to recognize an additional parcel of filled lands within the City's grant area. This parcel, known as Parcel D, was later addressed by [Chapter 728, Statutes of 1994](#) (Chapter 728).

In 1948, 46 years before Parcel D was recognized in Chapter 728, the City leased Parcel D and adjacent property to private parties for a term of 50 years. When the lease for this property was signed, the character of Parcel D and the adjoining lands had not yet been resolved. It wasn't until 1952, following a judicial determination involving the City, Orange County, and the State, that Parcel D was confirmed as tide and submerged lands and, thus, part of the City's grant.

Balboa Bay Club Ventures, LLC (Club) is the successor to the 1948 lease for Parcel D. Under its leasehold interest, the Club developed Parcel D as a private club, marina, and residential apartment complex. As such, Parcel D includes uses that are not consistent with the Public Trust Doctrine. In 1986, the City and Club entered into a new lease with a 25-year term that required Parcel D conform to Public Trust use restrictions as of December 31, 1998, unless there was subsequent legislation, a judicial determination, or an agreement with the Commission that allowed the non-conforming uses to continue. In 1994, prior to the 1998 deadline of the 1986 lease, the Legislature passed Chapter 728 which specifically allowed the non-conforming residential use of Parcel D to continue until the residential improvement reached the end of its useful life, but in no event beyond December 31, 2044. Chapter 728 also provided that, "The form of any future lease or amendment of the current lease involving Parcel D, and the consideration to be received by the city, shall be subject to approval by the State Lands Commission".

In 2013, the City and Club terminated the previously existing lease and entered into a new 50-year lease. Under the terms of this new lease, and consistent with Chapter 728, the non-conforming residential uses on Parcel D were to be terminated by December 31, 2044. Pursuant to Chapter 728, the City requested

Commission approval of this lease and on September 20, 2013 the Commission approved the Amended and Restated Ground Lease for Parcel D ([Item 115](#)).

Now, the City and Club have negotiated the terms of a Second Amended and Restated Ground Lease for Parcel D. The new lease will provide for a new 50-year term, update consideration, update insurance requirements, and revise the lease language to be consistent with modern requirements and definitions. Pursuant to Chapter 728, the City has requested Commission approval of this Second Amended and Restated Ground Lease (Lease).

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Section 4.5, subdivision 8(e), of Chapter 728 provides that the form of any lease or amendment of lease that involves Parcel D, and the consideration to be received by the City through such a lease, is subject to approval by the Commission. The proposed Lease involves Parcel D, and therefore its form and consideration is subject to Commission approval.

ANALYSIS:

Consistent with the requirements of Chapter 728, the City has requested Commission approval of the proposed Lease. To this end, City staff consulted with staff regarding the form of the Lease and its consideration. City staff worked with staff to develop the proposed Lease's language, and staff believe that, as proposed, the form of the lease and its consideration are acceptable.

Pursuant to Section 1(b) of Chapter 74, the City can grant leases for terms up to 50 years. As mentioned, and consistent with Chapter 74, the proposed Lease will provide a new 50-year term for the subject property. This would extend the Lease well beyond the December 31, 2044 sunset date for the residential use on Parcel D. To account for this, the Lease includes a provision acknowledging that the Club intends to work towards obtaining a legislative extension of this sunset date but requires that the City and Club establish Public Trust consistent uses for Parcel D if such an extension is not obtained. This provision also establishes that these Public Trust consistent uses would be subject to advance approval by the Commission, and that the Club would be responsible for any relocation fees resulting from termination of the residential use on Parcel D.

Although the overall term for the proposed lease extends beyond the sunset date for residential uses on Parcel D as permitted under Chapter 728, staff believes that the lease's provisions are reasonable and will ensure that the existing non-conforming uses on Parcel D will be discontinued in favor of uses consistent with the Public Trust unless the Legislature chooses to extend the permitted term for these uses.

Consideration for the proposed lease will be the greater of an annual "Base Rent" or "Percentage Rent." The Base Rent will be \$3,921,732.76 and is based on an adjusted annual Base Rent from the previous lease. The Base Rent will be adjusted every five years to a sum equal to 75 percent of the average annual total rent the Club has paid over the preceding five-year period. Additionally, the Base Rent will be adjusted based on an appraisal of fair market value at the 19th anniversary of the lease.

Percentage Rent for the lease will be equal to the total of specific percentages of gross revenues for the Club's various revenue generating activities, as shown below:

Category	Percentage of Gross Revenue
Dues Revenue	6%
Apartment Revenues	16.5%
Marina Revenues	31%
Dry Storage Revenues	20%
Charter Commission Revenues	20%
Charter Revenues	6%
Room Revenues	5%
Beverage Revenues	5%
Food Revenues	3%
Retail Revenues	5%
Miscellaneous Revenues	10%
Cell Tower	15%

Because the proposed lease bases consideration on the greater of either Base Rent or Percentage Rent, contains provisions that will escalate rent over time, and ensures that Base Rent will be revised through an appraisal of fair market value, Staff believes that consideration for the proposed lease is reasonable.

Pursuant to Chapter 728, 10 percent of all money the City receives for the proposed lease will be deposited into the Kapiloff Land Bank fund, with the

remainder of the funds being deposited into the City's Tidelands Fund. The City's Tidelands Fund is used for expenditures related to maintaining and managing the City's granted lands.

Based on the reasons detailed above, staff recommends that the Commission approve the form and consideration of the proposed Lease.

OTHER PERTINENT INFORMATION:

1. The proposed action is consistent with the "Meeting Evolving Public Trust Needs" and "Committing to Collaborative Leadership" Strategic Focus Areas of the Commission's 2021–2025 Strategic Plan.
2. Staff recommends that the Commission find that approval of the Second Amended and Restated Ground Lease is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

EXHIBIT:

A. Proposed Second Amended and Restated Ground Lease

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

STATE'S BEST INTERESTS:

Find that the proposed Second Amended and Restated Ground Lease is consistent with existing legislation and the granting statutes, Chapter 728, Statutes of 1994,

and ensures that existing uses inconsistent with the Public Trust Doctrine in the subject location will be discontinued as required by Chapter 728, Statutes of 1994 unless the permitted term for these uses is extended by Legislature, includes reasonable consideration for the use of Public Trust lands; and that approval of the proposed lease is in the State's best interests.

AUTHORIZATION:

Approve the form and consideration of the proposed Second Amended and Restated Ground Lease, substantially in the form provided in Exhibit A, between the City of Newport Beach and Balboa Bay Club Ventures, LLC.

Exhibit A

SECOND AMENDED AND RESTATED GROUND LEASE

by and between

CITY OF NEWPORT BEACH,
a California municipal corporation

“Landlord”

and

BALBOA BAY CLUB VENTURES, LLC.,
a California limited liability company

“Tenant”

Dated as of _____, 2026

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS, GRANT AND TERM

1.1	Definitions	2
-----	-------------------	---

ARTICLE II

GRANT OF LEASE AND TERM

2.1.	Lease	8
2.2	Term	8
2.3	Quiet Possession	8
2.4	Ownership of Improvements	9

ARTICLE III

CONSTRUCTION AND IMPROVEMENT OF PREMISES

3.1	Reserved	10
3.2	Coastal Approval and Entitlements	10
3.3	Compliance With Laws	10
3.4	Lien Free Completion	10
3.5	As-Built Drawings	11
3.6	Tenant's Architects and Contractors	11
3.7	Costs of Construction	11
3.8	Renovation and Maintenance of Hotel	11
3.9	Renovation and Maintenance of Apartments	12
3.10	Maintenance of Marina Operations	12
3.11	Inspection Rights.....	13
3.12	Landlord's Cooperation	13

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1	Landlord's Representations and Warranties	13
4.2	Tenant's Representations and Warranties.....	13

ARTICLE V

RENT

5.1	Rent	14
5.2	Percentage Rent	14
5.3	Reserved.....	15
5.4	Periodic Adjustments of Base Rent	15

TABLE OF CONTENTS

	Page
5.5 Fair Market Adjustment of Base Rent	15
5.6 Payment of Rent	15
5.7 Charges for Goods and Services	15
5.8 Reconciliation of Annual Rent.....	16
5.9 Place for Payments of Rent	16
5.10 Records and Reports of Sales	16
5.11 Additional Rent	17
5.12 No Abatement or Reduction in Rent	17
5.13 No Partnership Created	17
5.14 Net Lease	18

ARTICLE VI

TENANT'S OBLIGATION WITH RESPECT TO MAINTAINING PREMISES

6.1 Repairs and Maintenance	18
6.2 Taxes and Assessments	18
6.3 Capital Repairs and Replacements	19
6.4 Reserved	19

ARTICLE VII

USE OF PREMISES

7.1 Use of Premises	20
7.2 Pump-Out Station	20
7.3 Environmental Requirements	20

ARTICLE VIII

CONDUCT OF BUSINESS BY TENANT

8.1 Standards of Operation	21
8.2 Management	21
8.3 Competition by Tenant	22
8.4 Use of Name	22

ARTICLE XI

ALTERATIONS, FIXTURES AND SIGNS

9.1. Tenant's Right to Make Alterations	22
9.2 Prohibition Against Liens	23
9.3 Signs	23

TABLE OF CONTENTS

Page

ARTICLE X

INSURANCE, INDEMNITY AND CASUALTY

10.1	Insurance	23
10.2	Indemnification	28
10.3	Settlement of Insurance Claims	29
10.4	Casualty	29
10.5	Casualty Late in Term	30
10.6	No Abatement of Rent	30

ARTICLE XI

UTILITIES

11.1	Utilities	30
------	-----------------	----

ARTICLE XII

ESTOPPEL CERTIFICATES

12.1	Estoppel Certificates	30
------	-----------------------------	----

ARTICLE XIII

ASSIGNMENT AND SUBLEASING

13.1	Limitation on Right to Assign	31
13.2	Grant or Denial of Consent	32
13.3	Non-Application of Guest Rooms and Facilities	32
13.4	Assignment to Affiliate	32
13.5	Limitation on Transfer of Interest in Tenant	33

ARTICLE XIV

HYPOTHECATION

14.1	Tenant's Right to Hypothecate	33
14.2	Notice to and Rights of Mortgagees	34
14.3	Nonsubordination of Fee	37
14.4	Equipment Financing	37
14.5	Cross Collateralization of Premises	37

TABLE OF CONTENTS

Page

ARTICLE XV

WASTE AND GOVERNMENTAL REGULATIONS

15.1	Waste or Nuisance	37
15.2	Governmental Regulations	37
15.3	Tenant's Right to Contest Governmental Regulations	38

ARTICLE XVI

EMINENT DOMAIN

16.1	Lease Governs	38
16.2	Termination of Lease	38
16.3	Partial Taking; Rental Abatement	38
16.4	Partial Taking; Restoration	38
16.5	Distribution of Award	39
16.6	Allocation of Award; Partial Taking	39
16.7	Allocation of Award; Temporary Taking	39
16.8	Allocation of Award; Total Taking	39
16.9	Conduct of Proceedings	40
16.10	Notices	40

ARTICLE XVII

DEFAULT PROVISIONS

17.1	Events of Default	40
17.2	Remedies Upon Default	41
17.3	Landlord Acting for Tenant's Account	42
17.4	Limited Liability; Non-Recourse Ground Lease	42

ARTICLE XVIII

LANDLORD'S ACCESS

18.1	Landlord's Right of Access	43
------	----------------------------------	----

ARTICLE XIX

MISCELLANEOUS

19.1	Waiver	43
19.2	Entire Lease	43
19.3	Termination of Existing Lease	44
19.4	Force Majeure	44

TABLE OF CONTENTS

	Page
19.5 Notices	44
19.6 Captions and Section Numbers	45
19.7 Construction of Language	45
19.8 Broker's Commission.....	45
19.9 Limitation of Landlord's Obligations	45
19.10 Landlord's or Tenant's Discretion	45
19.11 Interest	46
19.12 Successors.....	46
19.13 Applicable Law	46
19.14 Landlord's and Tenant's Rights are Cumulative.....	46
19.15 Saving Clause	46
19.16 Attorneys' Fees and Expenses	46
19.17 Injunctive Relief	46
19.18 Appraisal	46
19.19 Recording.....	46
19.20 Incorporation of Preamble, Recitals and Exhibits.....	46

SECOND AMENDED AND RESTATED GROUND LEASE

THIS SECOND AMENDED AND RESTATED GROUND LEASE (“Lease”) is made as of _____, 2026 (“Commencement Date”), by and between **THE CITY OF NEWPORT BEACH**, a charter city and California municipal corporation (“**Landlord**” or “**City**”), and **BALBOA BAY CLUB VENTURES, LLC**, a California limited liability company (“**Tenant**”). Landlord and Tenant are at times individually referred to as “Party” and collectively as “Parties” herein.

RECITALS

- A. Landlord is grantee of that certain parcel of real property located in the City of Newport Beach, County of Orange, State of California, as more particularly described and depicted in **Exhibit A** attached hereto and incorporated by reference herein (“**Premises**”), pursuant to the provisions of the Beacon Bay Bill (Chapter 74 of Statutes of 1978, as amended).
- B. Tenant is currently occupying and in possession of the Premises pursuant to that certain Amended and Restated Ground Lease between Landlord, as lessor, and Tenant, as lessee, dated October 29, 2013 (“**Existing Lease**”). The Premises are operated as a multi-use hotel and club facility by Tenant, operating under the name “Balboa Bay Club”. Tenant is a wholly-owned subsidiary of International Bay Clubs, LLC.
- C. On November 3, 1992, a majority of the electors of the City of Newport Beach approved Measure M which authorized the City Council of the City of Newport Beach to lease tidelands and waterfront property consistent with the provisions of State Law.
- D. The California State Lands Commission has determined that this Lease conforms with the provisions of relevant statutes, rules and regulations and has approved this Lease.
- E. The City Council of the City of Newport has determined that this Lease is consistent with the Charter of the City of Newport Beach, and its General Plan and Zoning Ordinance applicable thereto, and all other applicable state, federal and local laws.
- F. The City Council of the City of Newport Beach has determined that it is in the best interests of citizens of the City of Newport Beach to maintain the use and character of the Premises for the general uses permitted thereon by the current General Plan and Zoning Ordinances of the City applicable thereto, and to enter into this Lease under the terms and conditions set forth herein.
- G. Landlord and Tenant acknowledge and agree that there exists no event of default under the Existing Lease as of the date hereof.
- H. Landlord and Tenant waive all notice and other applicable provisions and hereby terminate the Existing Lease.
- I. Landlord and Tenant agree that this Lease fully complies with and completely satisfies the obligations of Landlord and Tenant under all prior agreements and understandings, including the Existing Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS, GRANT AND TERM

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

“Accounting Period” means a calendar quarter.

“Affiliate” means any individual, corporation, partner, partnership, limited liability company, trust or other entity which directly or indirectly controls, is directly or indirectly controlled by or is under common control, whether it be direct or indirect, with the specified entity.

“Apartment Revenues” means Gross Revenues derived by the Tenant Parties from the rental of apartments within the Project, whether for transient or long-term occupants, plus any portion of any Award made on account of a Temporary Taking allocated to “Apartment Revenues” pursuant to Section 16.7 of this Lease.

“Business Day” means Monday through Friday, except for state or federal holidays.

“Calendar Year” means the period of January 1 through December 31 of each year of the Term.

“Cell Tower Revenues” means Gross Revenues derived by the Tenant Parties from the lease/rental of space for cell towers within the Project, whether for transient or long-term occupants, plus any portion of any Award made on account of a Temporary Taking allocated to “Cell Tower Revenues” pursuant to Section 16.7 of this Lease.

“Charter Commission Revenues” means Gross Revenues derived by the Tenant Parties from commissions received for arranging boat charters of bay or ocean going vessels for guest trips and special purpose occasions, including Newport Harbor cruises, whether or not such charters depart from or arrive at the Premises, plus any portion of any Award made on account of a Temporary Taking allocated to “Charter Commission Revenues” pursuant to Section 16.7 of this Lease.

“Charter Revenues” means Gross Revenues derived by the Tenant Parties from operating or managing the boat charters of bay or ocean going vessels for guest trips and special purpose occasions, including Newport Harbor cruises, whether or not such charters depart from or arrive at the Premises, plus any portion of any Award made on account of a Temporary Taking allocated to “Charter Revenues” pursuant to Section 16.7 of this Lease.

“City” means the City of Newport Beach, located in the County of Orange, State of California, a charter city formed pursuant to the laws of the State of California. References in this Lease to the City (as distinguished from Landlord) are intended to distinguish actions, rights and powers of the City in the exercise of its municipal and legislative powers and authority and the discharge of its legislative and municipal responsibilities from the actions of Landlord pursuant to this Lease. This Lease shall not limit, preclude or infringe upon the municipal and legislative powers and authority of the City or the discharge of its legislative and municipal responsibilities, whether or

not any of such actions, authority, powers or responsibilities, are discretionary, administrative or mandatory under law.

“Commencement Date” means the date set forth in the introductory paragraph of this Lease.

“Control”, “Controlled by” or “Controlling” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through ownership of an interest therein, through ownership of voting securities, by contract or otherwise.

“Constituent Member” means any constituent partner, joint venture, holder of a beneficial interest or shareholder in Tenant or in any partnership, joint venture, trust or corporation holding a direct or indirect interest in Tenant.

“County” means the County of Orange, State of California.

“Default Rate” means the then Prime Rate plus five percent (5%) per annum. The Default Rate shall change as and when the Prime Rate shall change.

“Dry Storage Revenues” means Gross Revenues derived by the Tenant Parties from the dry storage of small boats on the Premises on behalf of guests, members and other persons, plus any portion of any Award made on account of a Temporary Taking allocated to “Dry Storage Revenues” pursuant to Section 16.7 of this Lease.

“Dues Revenues” means Gross Revenues derived by the Tenant Parties from membership dues and fees for membership in or use of the club, spa, recreational facilities or beach at the Project (exclusive of security deposits), and Bay Window Magazine subscriptions and sales, plus any portion of any Award made on account of a Temporary Taking allocated to “Dues Revenues” pursuant to Section 16.7 of this Lease; provided, however, that charges for or income derived from any services or facility included in any other category of percentage Rent, such as, by way of example and not limitation, food and beverage revenues or rental of guest rooms, shall not be included in Dues Revenues.

“Event of Default” means the occurrence of any of the events listed in Section 17.1 and the expiration of any applicable notice and cure period provided in said Section.

“Food and Beverage Revenues” means Gross Revenues derived by the Tenant Parties from the sale of food and beverages (including food and beverages from all facilities, off-premises food and beverage sales, cover charges, service charges and miscellaneous banquet revenue), plus any portion of any Award made on account of a Temporary Taking allocated to “Food and Beverage Revenues” pursuant to Section 16.7 of this Lease, but shall not include (i) the value of *gratis* meals furnished to Tenant’s employees as an incident of their employment, (ii) gratuities paid to employees, and (iii) the value of meals provided in connection with charitable events when no Tenant Party receives payment therefore other than by reason of a charitable contribution.

“Force Majeure” means, without limitation, such events as: strikes; pandemic, such as COVID-19; lockouts; acts of God; inability to obtain labor, materials, equipment or supplies; breaches of contract by contractors, subcontractors or materials suppliers which materially affect the critical path of construction of the improvements contemplated by this Lease; breaches of contract by any lender with a lien on the Project which materially affect the critical path of construction of the improvements contemplated by this Lease; governmental restrictions; moratoriums, initiatives,

referenda imposed by or occurring within the County or other governmental agency which now or hereafter has jurisdiction over the Premises; war or enemy action or invasion; civil commotion; insurrection; riot; mob violence; malicious mischief or sabotage; unusual failure of transportation; fire or any other casualty; flood; earthquake; unusually adverse weather conditions; a Taking; any litigation or other judicial or administrative proceeding or the passage, promulgation or application of any law, order or regulation of any governmental, quasi-governmental, judicial or military authority; either Party's delay in responding to the other Party's request for approval or consent which the requesting Party is required to obtain hereunder beyond the period of time the responding Party is given under this Lease to respond; or other similar causes beyond the control of the delayed Party; any of which has the effect of delaying, hindering or preventing such Party's performance of its obligations hereunder. If the event of *Force Majeure* arises out of a Party's delay in responding to the other's request for consent or approval, then the delayed Party shall notify the other Party of such event of *Force Majeure* promptly after the delayed Party has knowledge that such delay will or may occur as a result thereof, and the delayed Party shall use reasonable efforts to minimize the effects thereof. With respect to the occurrence or threat of any event of *Force Majeure*, the delayed Party agrees to notify the other Party promptly after the delayed Party has knowledge that such event of *Force Majeure* may or will occur. Provided the Project is open, no event of Force Majeure shall result in any permitted delay in performance by Tenant of any obligation under this Lease by a period of more than six (6) months. If a Force Majeure event results in the closure of the Project, any insurance proceeds received by the Tenant for lost or reduced revenue or income shall be paid to the City, but only up to the amount of the applicable Base Rent.

"Furnishing(s)" means all furniture, furnishings, fixtures and equipment used in the operation of the Project, including: all wall coverings, draperies, blinds, shades, shutters and other window coverings, curtain rods, valances and other window treatments; tapestries, paintings, art and sculpture; carpets, rugs and other floor coverings; bar, saloon, lounge, dining, banquet, meeting and guest room furniture and furnishing; laundry, valet and dry cleaning equipment; office and material handling equipment and machinery; maintenance, janitorial, cleaning and engineering equipment; all kitchen equipment and facilities (whether or not permanently attached), and machinery equipment and furnishings used in food and beverage storage, preparation, heating and refrigeration; and all trade fixtures.

"Gross Revenues" means all gross receipts of every kind and nature, whether for cash, credit or barter, from any business, use or occupation, or any combination thereof, transacted, arranged or performed, in whole or in part, on, from or for services from the Premises, whether operated by the Tenant or by a sublessee, licensee or concessionaire if such sublessee, licensee or concessionaire is an Affiliate of Tenant for Room Revenues, Food and Beverage Revenues, Apartment Revenues, Marina Revenues, Dry Storage Revenues, Charter Revenues, Charter Commission Revenues, Dues Revenues, Retail Revenues, Cell Tower Revenues, and Miscellaneous Revenues. In the computation of Gross Revenues for any of the abovementioned categories thereof, there shall be excluded therefrom the following amounts: (i) rebates, refunds and discounts (exclusive of credit card discounts or commissions paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; (ii) excise, sales and use taxes collected directly from patrons or guests or as a part of the sales price of any goods or services, such as gross receipts, admission, cabaret or similar taxes, which are accounted for by Tenant to any governmental agency; (iii) income or interest derived from cash, securities and other property acquired and held for investment by Tenant (including income or interest earned on any amounts held in operating or replacement reserves for the Project); (iv) proceeds of insurance other than business interruption or rental loss insurance; (v) up to five percent (5%) of

Tenant's advertising, promotional or charitable billings not actually charged or paid; and (vi) bad or uncollectible debts. Sales upon credit shall be considered cash sales and shall be included in the gross receipts for the period during which the goods or services are delivered or performed. All Gross Revenues shall be computed without deduction or allowance for costs, charges or expenses for the purchase, sale, transportation or delivery of merchandise or services, or for labor and materials in connection with the rendering of services or the sale of goods.

"Hazardous Material" means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 *et seq.*; the California Hazardous Substance Account Act, Health and Safety Code Section 25330 *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 *et seq.*; California Health and Safety Code Section 25280 *et seq.* (Underground Storage of Hazardous Substances); the California Hazardous Waste of Concern and Public Safety Act, Health and Safety Code Section 25169.5 *et seq.*; California Health and Safety Code Sections 25501 *et seq.* (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 *et seq.*, all as they, from time-to-time may be amended or re-codified, (the above-cited statutes are here collectively referred to as the "Hazardous Substance Laws") or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree 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; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.

"Hazardous Material Activity" means any storage, holding, release, emission, discharge, generation, abatement, disposition, handling or transportation of any Hazardous Material from, on or otherwise relating to the Premises exclusive of use of minor quantities of Hazardous Materials in the ordinary course of business in compliance with applicable law.

"Inventories and Supplies" means inventory and supply items, including chinaware, linens, silverware, utensils, uniforms, office supplies, paper supplies, guest room supplies, cleaning supplies and other consumable supplies, food and beverage inventories and goods held for resale or used or intended for use in connection with the conduct of Tenant's business on the Premises.

"Lease Interest Rate" means the then Prime Rate plus two percent (2%) per annum. The Lease Interest Rate shall change as and when the Prime Rate shall change.

"Leasehold" means the leasehold estate created by the terms and subject to the conditions of this Lease.

"Marina Revenues" means Gross Revenues derived by the Tenant Parties from the rental of boat slips and temporary dock or slip fees and charges (exclusive of utility reimbursements paid by slip

renters) plus any portion of any Award made on account of a Temporary Taking allocated to "Marina Revenues" pursuant to Section 16.7 of this Lease.

"Miscellaneous Revenues" means all Gross Revenues derived by the Tenant Parties from the Project excepting those receipts previously categorized under Apartment Revenues, Charter Revenues, Charter Commission Revenues, Dry Storage Revenues, Dues Revenues, Food and Beverage Revenues, Marina Revenues, Retail Revenues and Room Revenues derived from the Project, including but not limited to sales from gift and other shops, rentals or agreements for other guest services, vending machines revenues, any revenue or income related to telephone and telecommunication operations any revenue or income related to cable or video television operations, parking charges or fees, proceeds of business interruption or rental loss insurance (net of Tenant's reasonable costs of settling the claim giving rise to such proceeds with the insurance carrier), plus any portion of any Award made on account of a Temporary Taking allocated to "Miscellaneous Revenues" pursuant to Section 16.7 of this Lease, plus all rentals or other payments from sublessees, licensees or concessionaires who are not Affiliates of Tenant, and any other Gross Revenues which may be received from time-to-time which are not specifically provided for in the categories described in apartment Revenues, Charter Revenues, Charter commission Revenues, Dry Storage Revenues, Dues Revenues, Food and Beverage Revenues, Marina Revenues, Retail Revenues and Room Revenues.

"Mortgage" means any deed of trust, mortgage or similar security instrument entered into by Tenant encumbering the leasehold estate created by this Lease, as permitted by the Lease, including an assignment of this Lease as security therefor.

"Mortgagee" means the holder of or beneficiary under a Mortgage.

"Partial Taking" means a Taking which does not constitute a total Taking or a Temporary Taking.

"Percentage Rent" means the rental calculated in accordance with Section 5.2 of this Lease.

"Premises" means the parcel of land located in the City of Newport Beach, County of Orange, State of California, as more fully defined in Recital "A" of this Lease.

"Prime Rate" means the prime or base rate or interest or equivalent rate of interest, however termed, as announced from time-to-time and as so identified by Bank of America. "Prime Rate" means the prime or base rate of interest, or equivalent rate of interest, however termed, as announced from time-to-time as so identified by the Wall Street Journal if at any time Bank of America shall fail or cease to publish and announce a prime or base rate of interest.

"Project" means all improvements, elements and features constructed or to be constructed on the Premises, including a private membership club, hotel, rental apartments, boat slips, spa and health club, food and beverage facilities, recreational facilities, parking facilities, and all other amenities and services customarily found in projects in Southern California of the type, size and quality described herein.

"Qualified Manager" means, as to the hotel portion of the Project, during any time the hotel portion of the Project is being managed by Tenant or an Affiliate, an individual employed by Tenant or such Affiliate who is an experienced hotel operator with a good reputation for honesty and integrity and who has not less than ten (10) years experience in the operation and management of first class hotel facilities; and during any time the hotel portion of the Project is

being managed on behalf of Tenant by an independent operator under a management contract, a regionally recognized hotel operator of first-class resort hotels of the type, size and quality of the hotel portion of the Project, who has the financial ability to perform its obligations under a conventional management agreement for the management and operation of the hotel portion of the Project, who enjoys a reputation for honesty and integrity, who is experienced in the management and operation of hotels meeting the first-class standards of the Project. As to the restaurant portions of the Project, a "Qualified Manager" means, a Qualified Manager of the hotel portion of the Project, or during any time the restaurant portion of the Project is being managed by the Tenant or an Affiliate, an individual employed by Tenant or such Affiliate who is an experienced restaurant operator with a good reputation for honesty and integrity and who has not less than ten (10) years experience in the operation and management of first class restaurant facilities; and during any time the restaurant portions of the Project is being managed on behalf of Tenant by an independent operator under a management contract, a regionally recognized restaurant operator of first-class restaurants of the type, size and quality of the restaurant portions of the Project, who has the financial ability to perform its obligations under a conventional management agreement for the management and operation of the restaurant portions of the Project, who enjoys a reputation for honesty and integrity, and who is experienced in the management and operation of restaurants meeting the first-class standards of the Project.

"Reserve Account" shall have the meaning ascribed to it in Section 6.3.

"Retail Revenues" means Gross Revenues derived by the Tenant Parties from the sale of goods and services from retail shops, including clothing and other soft goods, hair and beauty salons, gift and sundries shops, plus any portion of any Award made on account of a Temporary Taking allocated to "Retail Revenues" pursuant to Section 16.7 of this Lease.

"Room Revenues" means Gross Revenues derived by the Tenant Parties from the rental, or any other fee or charge in connection therewith, of hotel rooms intended for overnight accommodations upon the Premises, meeting rooms and similar facilities, including revenues derived from telephone, telex, facsimile and other such equipment and facilities, plus any portion of any Award made on account of a Temporary Taking allocated to "Room Revenues" pursuant to Section 16.7 of this Lease.

"Taking" means any acquisition of or damage to all or any portion of the Premises, or any interest therein or right accruing thereto, pursuant to or in anticipation of the exercise of the power of condemnation or eminent domain, or by reason of the temporary requisition of the use or occupancy of the premises, or any part thereof, by any governmental or quasi-governmental authority, civil or military, or any other agency empowered by law to take property in the State of California under the power of eminent domain.

"Tenant" means the person or entity owning the Leasehold estate created by this Lease.

"Tenant's Investment" has the meaning ascribed to it in Section 2.4.

"Tenant Parties" means Tenant and any and all of its Affiliates.

"Temporary Taking" means a Taking for a temporary period or use of the Premises or the Project or any portion thereof.

"Term" has the meaning ascribed to it in Section 2.2.

“Total Taking” means a Taking of all of the Premises and the Project other than for a temporary purpose; or a Taking of so much of the Premises or the Project as to render the balance of the Premises unsuitable for the operation of the Project in the manner set forth in this Lease.

ARTICLE II GRANT OF LEASE AND TERM

2.1 Lease. In consideration of the covenants to be observed and performed by the parties hereunder, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Landlord reserves all oil, oil rights, gas, minerals, mineral rights, natural gas rights and other hydrocarbon substances in and under the Premises and the right to grant and transfer the same, together with all necessary and convenient rights to explore for, develop, produce and extract and take the same, subject to the express limitation that any and all operations for the exploration, development, production, extraction and taking of any such substance shall be carried on at levels below the depth of five hundred feet (500') from the surface of the land by means of wells, derricks and other equipment from surface locations on adjoining or neighboring land so long as such activities do not interfere with or impair the operation, business or aesthetics of the Project, and subject further to all restrictions and regulations concerning the drilling for, and production of, oil, gas, minerals, petroleum and other hydrocarbon substances specified in the Newport Beach City Charter or the Newport Beach Municipal Code.

2.2 Term. The term (**“Term”**) of this Lease shall commence on the Commencement Date and shall expire upon the fiftieth (50th) anniversary thereof (**“Expiration Date”**), unless sooner terminated as herein provided.

2.3 Quiet Possession.

(a) Tenant shall be entitled to peaceably and quietly use and enjoy the Premises for the Term, without hindrance or interruption by Landlord (other than in exercise of Landlord's rights should Tenant be in breach or default hereunder) or any other person or persons claiming by, through or under Landlord. Landlord shall in no event be liable in damages or otherwise, because of the interruption or termination of any service provided by the City (such as, water or sewer service), or a termination, interruption or disturbance of any service attributable to any act or neglect of Tenant or its servants, agents, employees, licensees, business invitees, or any person claiming by, through or under Tenant; provided, however, Tenant's obligations hereunder, other than its obligation to pay Rent in accordance with Article V, shall be excused to the extent such interruption or termination interferes with the performance by Tenant of its obligations hereunder.

(b) Tenant has satisfied itself, by its own investigation and research, regarding all physical conditions affecting Tenant's use and enjoyment of the Premises and construction of the Project on the Premises (including soil conditions and on-site and off-site improvements which may be needed). By execution of this Lease, Tenant shall be deemed to have accepted the Premises in an “AS IS” condition. Tenant acknowledges that it has had the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation of the Premises, has (to the extent it deems necessary) independently investigated the condition of the Premises, including the soils, hydrology and seismology thereof, and the laws and regulations relating to the construction and operation of the Project on the Premises, including environmental, zoning

and 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 hereunder. In connection with the matters set forth in this Section 2.3(b) Tenant acknowledges that it (or its affiliated predecessors in interest) has been in possession and occupancy of the Premises under the Existing Lease and predecessor leases since 1948, and Tenant is fully familiar with the condition of the Premises. As between Landlord and Tenant, Tenant shall be solely responsible for any condition on the Premises which may interfere with the construction, operation or maintenance of the Project.

2.4 Ownership of Improvements. Except as hereinafter provided, Tenant shall be the owner of all improvements presently existing or hereafter constructed by Tenant upon the Premises (as the same may be altered, expanded and/or improved from time to time), and all Furnishings, Inventories and Supplies and all other personal property located on the Premises or in the Project (hereinafter referred to collectively as the **"Tenant's Investment"**). Tenant shall retain all rights to depreciation deductions and tax credits arising from its ownership of the Tenant's Investment. At any time during the Term, upon Tenant's request therefor, and within a reasonable period of time following said request, Landlord agrees to confirm, in writing, that Landlord has no present possessory interest in any part of the Tenant's Investment. Following the expiration or earlier termination of this Lease, all improvements constituting fixtures to the Premises that cannot be removed without causing damage to the Project shall automatically revert to and become the property of Landlord without compensation or payment to, or requirement of consent or act of, Tenant, and Tenant shall thereafter have no further rights thereto to interest therein, including any rights to depreciate deductions or tax credits with respect thereto. Following the expiration or any earlier termination of this Lease, Tenant shall retain its ownership in all items of personal property comprising a portion of Tenant's Investment which may be removed without causing damage to the Project; provided, however, if Tenant fails to remove the same within thirty (30) calendar days following the expiration or earlier termination of this Lease, any part of Tenant's Investment remaining on the Premises after said thirty (30) calendar day period has expired shall become the sole property of Landlord without compensation or payment to, or requirement of consent or act of, Tenant, and Tenant shall thereafter have no further rights thereto or interest therein. Upon the expiration or earlier termination of this Lease for any reason, Tenant shall surrender the Premises and the Project to Landlord in good condition and repair, reasonable wear and tear, casualty, and acts of God excepted. Furthermore, at such time, Tenant shall surrender all keys to any and all parts of the Project to Landlord and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the Project or elsewhere on the Premises. Tenant agrees to execute, acknowledge and deliver to Landlord any instruments reasonably requested by Landlord to carry out the intention of this Section 2.4. Tenant's obligations and Landlord's rights under this Section 2.4 shall survive the expiration or earlier termination of this Lease. Notwithstanding any other provision of this Lease, as permitted by California Public Resources Code Section 6312, or any successor statute, the Parties agree that upon expiration or earlier termination of this Lease the City shall have no liability or obligation to pay compensation for any improvements made to the Premises.

**ARTICLE III
CONSTRUCTION AND IMPROVEMENT OF PREMISES**

3.1 Reserved.

3.2 Coastal Approval and Entitlements. Tenant acknowledges and represents that it has obtained a Coastal Development Permit (as such term is used in the certified land use plan encompassing the Premises and approved by the California Coastal Commission) for the Project, and to the extent not already obtained, Tenant shall, at its sole cost and expense, apply for, process and use its best efforts to obtain all other approvals (including environmental approvals) and use permits or variance required under applicable law for the construction and/or operation of the Project.

3.3 Compliance with Laws. Subject to its right to contest as contained in Section 15.3 below, Tenant shall cause any subsequent improvements on the Premises, to be constructed and completed in substantial accordance with all applicable laws, including, but not limited to, labor and prevailing wage laws, if applicable, ordinances, resolutions, plans, permits, conditions, rules, regulations and orders of all governmental authorities having jurisdiction over the Premises, construction of improvements thereon, or the conduct of Tenant's business there at. Upon request of Landlord, Tenant shall furnish Landlord with copies of any or all certificates and approvals relating to any work or installation done by Tenant that may be required by any governmental authority or by all applicable underwriters and insurers.

3.4 Lien Free Completion. Tenant agrees that any alterations, renovations, or improvements to the Project shall be constructed free of liens for labor and materials, using quality materials and workmanship, and substantially in accordance with City approved plans and all applicable underwriters and insurance requirements, zoning regulations, building codes and requirements of any governmental authority having jurisdiction over the Premises. Tenant shall promptly discharge any such lien or claim of lien made or filed against the Premises: provided, however, that Tenant shall have the right to contest in good faith and with reasonable diligence the amount or validity of any such lien or claim of lien so long as Tenant shall provide Landlord, at Tenant's sole cost and expense with such bond or other security as Landlord may reasonably require to ensure payment thereof and prevent any sale, foreclosure or forfeiture of all or any part of the Premises. Tenant shall notify Landlord in writing of any and all liens and claims of lien made or filed against the Premises within fifteen (15) calendar days after Tenant becomes aware of the filing thereof. Tenant shall immediately satisfy any final judgment or decree and cause the lien to be discharged. Any judgment shall be deemed final for the purposes of this provision unless enforcement thereof is stayed pending appeal. If Tenant fails promptly to discharge liens or claims of lien, or to contest such liens or claims of lien and in connection therewith provide the security required under this Section 3.4 or, after having complied with the provisions of this Section 3.4, there is an adverse order, judgment, decree or award with respect to Tenant or Landlord and Tenant fails to satisfy the final judgment, order, decree or award and cause the lien to be discharged, Landlord, following reasonable written notice to Tenant, may, in its sole discretion, procure the release and discharge of any such lien and any judgment or decree thereon and, in furtherance thereof, may in its reasonable discretion, effect any settlement or compromise. All amounts reasonably expended by Landlord in connection with the provisions of this Section 3.4 (including attorneys fees, charges and expenses), together with interest thereon at the Default Rate from the date of expenditures to the date of reimbursement, shall be payable by Tenant with five (5) calendar days following demand therefore. Upon completion of any work of improvements to the Project and expiration of all applicable lien periods, Tenant shall provide

Landlord with an updated preliminary title report to Landlord that such work on improvements and construction has been completed and that there are no outstanding mechanics lien claims which have not been otherwise cured as provided hereinabove.

3.5 As-Built Drawings. Upon completion of any work under this Article, Tenant shall furnish Landlord with a set of drawings and specifications for all completed construction hereafter occurring on the Premises which accurately reflect the nature and extent of all work done on or to the Premises after the date hereof, and, where such drawings and specifications are prepared in connection with any work or improvement contemplated in this Lease, any existing improvements on the Premises all marked to show such construction "as built."

3.6. Tenant's Architects and Contractors. All improvements and landscaping (other than minor seasonal plantings) on the Premises and any subsequent repairs, alterations, additions or improvements to any of the foregoing shall be designed, selected or constructed, as applicable, by qualified and licensed (where required) architectural, design, engineering and construction firms selected by Tenant.

3.7 Costs of Construction. Tenant shall bear all costs and expenses associated with the design, construction, maintenance, alteration, renovation, improvement, furnishing, equipping and supplying of the Project, which costs and expenses include without limitation: (i) utility hook-up and connection fees and all distribution facilities, conduits, pipelines and cables required in connection with the development of the Project; (ii) all design, engineering, financing and construction costs; and (iii) all necessary use permits or variances, and all grading, building and like permits required to construct, alter, renovate, improve and operate the Project, including the Coastal Development Permit and any fees assessed on the Premises by any governmental, or quasi-governmental agency or authority in connection with any regional transportation or other public improvements and school district taxes, development fees and assessments.

3.8 Renovation and Maintenance of Hotel. Subject to Sections 10.4 and 10.5 hereof, Tenant shall maintain the hotel component of the Project, and each part thereof, and the furniture, fixtures, appliances and personal property used in connection therewith, in a condition of repair and maintenance at least comparable to other first-class hotels in the Newport Beach area (such as, on the date hereof: (i) the VEA Newport Beach, a Marriott Resort & Spa; (ii) Pendry Newport Beach; and (iii) Lido House Hotel, Autograph Collection). From time-to-time, but no more frequently than once in any consecutive six (6) month period, upon request of Tenant, Landlord shall provide an estoppel certificate to Tenant certifying whether, in the opinion of Landlord, the Project, and each part thereof, and the furniture, fixtures, appliances and personal property used in connection therewith, has or has not been maintained in a condition of repair and maintenance at least comparable to other first class hotels in the Newport Beach area as of the date of such certificate. Tenant shall maintain the hotel with not less than one hundred forty (140) guest rooms and all related facilities necessary or desirable to achieve the standard contemplated in this Lease, including food and beverage services, banquet, conference and meeting facilities, restaurants, sundries and gift shops, and spa and health club; provided however, if during the Term, Tenant reasonably determines that maintenance of such number of guest rooms or related facilities is not as economically advantageous as some permitted use, Tenant shall be entitled to reduce the number of required guest rooms or related facilities to allow for such other permitted uses so long as there is no material reduction in economic benefits accruing to Landlord or the City from the Project by reason of such change in use: provided, however, in no event may the number of hotel rooms be reduced below one hundred twenty-five (125) without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

3.9 Renovation and Maintenance of Apartments. Tenant shall maintain the apartment component of the Project, and each rental unit therein, and the furniture, equipment, fixtures, appliances and personal property used in connection therewith, in a condition of repair and maintenance comparable to other high quality rental apartments in the Newport Beach area. Tenant shall, from time-to-time as each apartment unit is leased, but not less frequently than once every five (5) calendar years during the Term hereof, renovate each apartment unit to maintain such quality by cleaning and/or replacing the carpeting, floor coverings and/ or window coverings as reasonably required and painting the unit interior walls. Subject to Sections 10.4 and 10.5, Tenant shall maintain and operate the Apartment building as apartment units available for rental at all times during the Term in a manner consistent with the provisions of the Beacon Bay Bill.

3.10 Maintenance of Marina Operations. Tenant shall maintain the marina facilities, and the fixtures, equipment, appliances and personal property used in connection therewith, in a condition of repair and maintenance at least comparable to other high quality marina operations in Newport Harbor throughout the Term. Tenant shall maintain and operate slips of varying number and length for rental throughout the Term to the general public who are members of the Balboa Bay Club, and shall make such slips available for rental at comparable rental rates for comparably sized and maintained marina facilities in Newport Harbor from time-to-time during the Term. Tenant shall be entitled to fluctuate the number of slips and to vary configuration or operation, to increase the revenue generated by the marina operations; provided that any proposed reduction in the number of slips or reconfiguration of the design or layout of the marina shall be submitted to the City for its prior written approval. Tenant shall not enter into rental or leasing agreements for boat slips (i) for a term of longer than one (1) year unless such agreements have provision for adjustment of rent to full fair market rental value not less often than each year, or (ii) with any person for a discounted or reduced rental below comparable rental rates of the slip based upon membership in any club, facility or business arrangement between tenant, or any affiliated entity, and a renter of a slip.

3.11 Inspection Rights. Not more than once in any calendar year, Landlord shall have the right to conduct a physical inspection of the condition of the hotel, apartments, and marina facilities to ensure Tenant's compliance with its maintenance and repair obligations set forth in this Article III. Unless otherwise agreed to by Landlord and Tenant, such inspection shall take place within sixty (60) calendar days of the due date for the annual forecast of budgeted capital improvements, replacements, repairs and maintenance pursuant to Section 5.10(f) herein, with the exact dates to be determined by Landlord and Tenant after consultation. Landlord shall have the right to conduct a physical inspection, consisting of a visual review of all of the common areas of the hotel, the marina and the apartments, and a representative number of hotel rooms and apartments, depending upon availability.

3.12 Landlord's Cooperation. Landlord shall cooperate with Tenant, to the extent required by Tenant, in Tenant's efforts to construct, operate and maintain the Project as set forth in this Article III, and shall execute such applications and other undertakings as shall be reasonably required in its capacity as the owner of the Premises to enable Tenant to file for and obtain all building permits, licenses, variances, permissions and consents necessary to construct, operate and maintain the Project and otherwise to perform its activities under this Article III; provided, however, that nothing herein shall imply any obligation inconsistent with or result in any diminution of City's legislative, quasi-judicial or administrative rights, obligations and prerogatives in connection with reviewing and approving any license, permit for entitlement for the development, construction or use of the Premises.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Landlord's Representations and Warranties. As material inducement to Tenant to enter into this Lease, Landlord represents and warrants the following as of the date hereof:

(a) **Power and Authority.** That City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of California; that City has all necessary power and authority to enter into this Lease and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by Landlord of Landlord's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any agreement, ordinance, regulation, lease, law or court order to which Landlord is a party or by which Landlord is bound the remedy for which default would have a material adverse effect on Landlord's ability to perform its obligations hereunder.

(b) **Authorization; Valid Obligation.** That all actions required to be taken by or on behalf of Landlord to authorize it to execute, deliver and perform its obligations under this Lease have been taken, and that this Lease is a valid and binding obligation of Landlord enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) **Executing Parties.** That the persons executing this Lease on behalf of Landlord have full power and authority to bind Landlord to the terms hereof.

(d) **Possessory Rights.** Landlord has no knowledge that anyone has any right to occupy, possess or use the Premises, or any part thereof, other than Tenant under the Existing Lease, rights imposed as a condition of approval of the construction or operation of the Project by governmental authorities having jurisdiction over the Premises, rights derived as a matter of law by virtue of the Premises being tidelands, and any person deriving such rights by agreement or conduct of Tenant.

(e) **Actions, Suits or Proceedings.** Landlord has no knowledge of any actions, suits or proceedings pending or threatened before any commission, board, bureau, agency instrumentality, arbitrator(s), court or tribunal that would affect the Premises or the right of Tenant to occupy or utilize same.

4.2 Tenant's Representations and Warranties. As a material inducement to Landlord to enter into this Lease, Tenant represents and warrants the following as of the date hereof:

(a) **Power and Authority.** That Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California; that Tenant has all necessary power and authority to enter into this Lease and to carry out the transactions and obligations contemplated herein; and that the execution and delivery of this Lease and the performance by Tenant of its obligations hereunder will not violate or constitute an event of default under the terms and provisions of any agreement, ordinance, regulation, law or court order to which Tenant is a party or by which Tenant is bound.

(b) **Authorization; Valid Obligations.** That all actions required to be taken by or on behalf of Tenant to authorize it to execute, deliver and perform its obligations under this Lease have been taken, and that this Lease is a valid and binding obligation of Tenant enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) **Executing Parties.** That the persons executing this Lease on behalf of Tenant have full power and authority to bind Tenant to the terms hereof.

ARTICLE V RENT

5.1. Rent. Commencing upon the Commencement Date, Tenant shall pay to Landlord the greater of (i) annual rent in the sum of Three Million Nine Hundred Twenty-One Thousand Seven Hundred Thirty-Two Dollars and Seventy-Six Cents (\$3,921,732.76) ("**Base Rent**") as adjusted pursuant to Section 5.4 below, or (ii) the percentage rent set forth in Section 5.2 ("**Percentage Rent**"). Base Rent and Percentage Rent are hereinafter referred to as "**Rent.**"

5.2 Percentage Rent. Percentage Rent shall equal the total of the percentages set forth below of the corresponding categories of Gross Revenues on an annual basis from each transaction, sale or activity of Tenant on or from the Premises:

CATEGORY	PERCENTAGE RENT
Dues Revenue	6%
Apartment Revenues	16.5%
Marina Revenues	31%
Dry Storage Revenues	20%
Charter Commission Revenues	20%
Charter Revenues	6%
Room Revenues	5%
Beverage Revenues	5%
Food Revenues	3%
Retail Revenues	5%
Miscellaneous Revenues	10%
Cell Tower	15%

To the extent that Gross Revenues include proceeds of business interruption or rental loss insurance which are based upon or in compensation for Percentage Rent payable under this Lease, the Percentage Rent owed for any of the foregoing activities for which such proceeds of business interruption or rental loss insurance were received during the period affected by such insurance claim shall be greater of (i) the amount of such proceeds of business interruption or rental loss insurance relating to Percentage Rent payable to Landlord hereunder, or (ii) the amount of Percentage Rent calculated as set forth above after deduction from Gross Revenues of the amount of such proceeds of business interruption or rental loss insurance relating to Percentage Rent.

5.3 Reserved.

5.4 Periodic Adjustments of Base Rent. On January 1, 2029, (respectively, an “Adjustment Date”), and the first day of every sixty one (61) months thereafter, Base rent shall be increased or decreased as the case may be, to a sum equal to seventy-five percent (75%) of the average annual total of Rent payable during the immediately preceding five (5) years. Following receipt of the report of Gross Revenues and Percentage Rent for the year immediately preceding an Adjustment Date. Landlord shall calculate the adjustment in Base Rent, if any, and shall notify Tenant in writing of such adjustment. Subject to Tenant’s right to contest, in good faith, Landlord’s calculation of the adjustment to Base Rent, any such adjustment shall be effective as of the relevant Adjustment Date, and Tenant shall pay any accrued and unpaid Base Rent from the Adjustment Date to the date of receipt of Landlord’s notice of adjustment in Base Rent no later than fifteen (15) calendar days following receipt of Landlord’s notice of adjustment in Base Rent.

5.5. Fair Market Adjustment of Base Rent. Upon the nineteenth (19th) anniversary of the Commencement Date (“Market Adjustment Date”), the Base Rent shall be increased or decreased, as the case may be, based upon the determination of the fair market rental value of the Premises in the manner set forth in Section 19.19. For purposes of appraising the fair market rental value of the Premises, the appraisers shall determine such value including payment of Base Rent and Percentage Rent in excess thereof in the categories set forth in Section 5.2 above. The Base Rent shall be adjusted to equal seventy-five percent (75%) of the full fair market rental value of the Premises as so determined. In the event the adjusted Base Rent determined pursuant to this Section 5.5 is one hundred twenty percent (120%) or more of the average annual Base Rent payable during the five (5) Calendar Years preceding the Adjustment Date, the amount by which the new Base Rent exceeds one hundred twenty percent (120%) or more of the average annual Base Rent payable during the five (5) Calendar Years preceding the Market Adjustment Date, the amount by which the new Base Rent exceeds one hundred twenty percent (120%) or more of the average annual Base Rent payable during the five (5) Calendar Years preceding the Market Adjustment Date shall be added to Base Rent at the rate of twenty-five percent (25%) thereof per year in the ensuing four (4) Calendar Years. For example, if the amount by which the new Base Rent exceeds one hundred twenty percent (120%) or more of the average annual Base Rent payable during the preceding five (5) Calendar Years is \$4,000, then Base Rent shall be increased by \$1,000 in each of the ensuing four (4) Calendar Years. Landlord and Tenant agree to use the appraisal methodology provided in Exhibit B, which is attached hereto and incorporated by reference.

5.6 Payment of Rent. Base Rent shall be payable on the first (1st) day of each Accounting Period during the Term; provided, however, to the extent that Percentage Rent for such Accounting Period exceeds the Base Rent paid during such Accounting Period, the differential shall be payable in arrears concurrent with the next installment of Base Rent. Any installment of Rent payable during any Accounting Period shall equal the greater of (i) Percentage Rent computed from the commencement of that particular Calendar Year to the end of the Accounting Period for which such Rent is due, or (ii) the Base Rent due from the commencement of that particular Calendar Year to the end of the Accounting Period for which such Rent is due, in each instance less the aggregate amount of any Rent previously paid to Landlord during such Calendar Year.

5.7 Charges for Goods and Services. Tenant agrees to charge prices for all goods, services and facilities (including boat slip rentals) offered at or provided on or from the

Premises comparable with prices for such goods, services and facilities charged at other private clubs in Southern California; provided, however, (i) that for purposes hereof, the rent charged for slips in the marina shall be adjusted, where necessary, to eliminate any discounts or reduced fees and charges at such clubs based upon payment of membership fees or other comparable arrangements, and (ii) nothing herein shall limit or impair Tenant's ability to charge less than such amounts if, in the exercise of Tenant's reasonable business judgment, such lesser amounts will stimulate revenue increases or in connection with advertising, promotions, discounts to employees, guests or charitable functions.

5.8 Reconciliation of Annual Rent. Within thirty (30) calendar days following receipt by Landlord of the annual statement set forth in Section 5.10(b), the Percentage Rent due for such Calendar Year shall be determined, subject to audit as set forth in Section 5.10(e), and the amount of Rent paid or payable for such Calendar Year shall be adjusted accordingly. Landlord shall credit the amount of any Rent received from Tenant pursuant to Section 5.6 which is in excess of the amount of Rent determined to have been due and payable for such Calendar Year, such excess to the installments of Rent next following. Tenant shall pay, within five (5) calendar days following such determination, but in no event later than one hundred and sixty (160) calendar days following the end of such Calendar Year, the full amount of Rent determined to have been due and payable for such Calendar Year.

5.9 Place for Payment of Rent. All payments of Rent shall be made in lawful money of the United States of America and shall be paid to Landlord on-line at www.newportbeachca.gov, in person or by United States' mail, or overnight mail service, at the Cashier's Office located at 100 Civic Center Drive, Newport Beach, CA 92660, or to such other address as Landlord may from time-to-time designate in writing to the Tenant. The Tenant assumes all risk of loss and responsibility for late charges and delinquency rates if Rent is not timely received by the Landlord regardless of the method of transmittal.

5.10 Records and Reports of Sales.

(a) **Quarterly Statement.** Tenant shall provide to Landlord a statement setting forth in reasonable detail the amount of Tenant's Gross Revenues (including a breakdown among the categories set forth in Section 5.2 above) for the immediately preceding Accounting Period within twenty (20) calendar days following the end of each Accounting Period.

(b) **Annual Statement.** Tenant shall provide to Landlord a statement setting forth in reasonable detail the amount of Tenant's Gross Revenues for the preceding Calendar Year within one hundred twenty (120) calendar days following the end of each Calendar Year.

(c) **Payment of Percentage Rent.** Tenant shall accompany the statement of Gross Revenues for each Accounting Period and the Calendar Year with a payment of the amount by which Percentage Rent exceeds the Base Rent paid during such Accounting Period calculated in accordance with Section 5.2 of this Lease.

(d) **Books and Records.** Tenant shall prepare and keep full, complete, accurate and proper books, records and accounts of all business conducted by Tenant or its Affiliates from the Premises, in accordance with generally accepted accounting principles consistently applied, which shall include equipment to record all sales at the time of the

transaction. Tenant shall keep at the Premises records of Tenant's Gross Revenues for a period of not less than three (3) years after the expiration of the Calendar Year to which such records relate and upon request shall furnish Landlord true and accurate statements thereof. Within one hundred twenty (120) calendar days following the close of each Calendar Year, Tenant shall deliver to Landlord an audited statement prepared by a nationally recognized independent firm of certified public accountants showing in reasonable detail, on a Calendar Year basis, the amount of Tenant's Gross Revenues (including a breakdown among the categories set forth in Section 5.2 above) for the immediately preceding Calendar Year.

(e) **Audit Rights.** Landlord shall have the right upon two (2) calendar days prior notice to Tenant and during normal business hours, but not more often than one (1) time during each Calendar Year of the Term, to audit the Tenant's statements of Gross Revenues, and supporting records and data. Within ten (10) calendar days of receipt of such audit, Tenant shall pay Landlord the additional Rent found to be due plus interest thereon at the Lease Interest Rate if the audit discloses an understatement of annual Gross Revenues. However, if the audit discloses Rent has been overpaid by Tenant, the excess shall be applied to any amounts then due from Tenant to Landlord, and the balance, if any, shall be credited against Base Rent thereafter due from Tenant. Tenant shall pay for the reasonable cost of Landlord's audit if Landlord's audit discloses a total underpayment of Rent for any Calendar Year which is in excess of five percent (5%). Landlord shall have the right to receive a copy of the results of any audit conducted at the request of Tenant of Tenant's statements of Gross Revenues during the Term. Promptly following the completion of any such audit, Tenant shall deliver, or cause to be delivered, to Landlord a copy of the result of such audit regardless of whether Landlord shall have made a demand therefor.

(f) **Annual Forecast of Operations.** On or before December 31 of each year during the Term, Tenant shall provide Landlord, for informational purposes, with a forecast for the ensuing Calendar Year of the amount of (i) Gross Revenues expected to be received by Tenant, and (ii) Percentage Rental expected to be payable hereunder (by categories of Percentage Rental). On or before December 31 of each year during the Term, Tenant shall provide Landlord with a forecast for the ensuing twelve (12) month period of budgeted capital improvements, replacements, repairs and maintenance that Tenant anticipates expending during such twelve (12) month period to maintain the Project in a manner consistent with the original quality of the Project and as required by this Lease.

5.11 Additional Rent. Tenant agrees to pay as rental for the Premises, within ten (10) calendar days of Landlord's demand therefor, unless a different time for payment is expressly provided herein, all other amounts Tenant is obligated to pay Landlord under the provisions of this Lease in addition to Rent ("**Additional Rent**").

5.12 No Abatement or Reduction in Rent. Except as expressly provided to the contrary elsewhere in this Lease, Tenant shall not be entitled to any abatement, set-off or reduction in Rent or Additional Rent hereunder.

5.13 No Partnership Created. Landlord and Tenant shall in no event be construed or held to be partners, co-owners, joint ventures or associates of one another in the conduct of Tenant's business on the Premises, or in its ownership of the Project. The relationship between Landlord and Tenant is and at all times shall remain that of lessor and lessee for all purposes.

5.14 Net Lease. The Rent set forth in this Article V herein is based upon the assumption that Landlord will not have to pay any expenses or incur any liabilities of any kind in any way relating to, or in connection with, the Premises during the Term except for refunds, interest, credits, or other payments herein specifically set forth. Accordingly, Tenant will promptly pay all costs of every kind and description relating to or arising out of the Premises during the Term.

ARTICLE VI TENANT'S OBLIGATION WITH RESPECT TO MAINTAINING PREMISES

6.1. Repairs and Maintenance. Tenant shall at all times during the Term keep in good order, condition and repair the entire Premises and all improvements and buildings located thereon, including the structural and non-structural portions of the Project, the entrances, the windows, partitions, doors, lighting and plumbing fixtures, heating, ventilation and air conditioning systems, the grounds and all landscaping, the paving and other hardscape surfaces, and all fixtures, equipment and appurtenances relating to the Premises and/or the Project, subject to reasonable wear and tear, fire and other casualty, consistent with the continued operation of a project of the type, size and quality of the Project.

6.2. Taxes and Assessments.

(a) Except as otherwise expressly permitted elsewhere in this Lease, during the Term, Tenant shall pay prior to delinquency the amount of all taxes and assessments levied against, or on account of, the Premises; provided, however, that, if by law any such tax or assessment is payable or may at the option of taxpayer be paid in installments, Tenant may pay the same, together with any accrued interest payable on the unpaid balance of such tax or assessment, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. Taxes and assessments shall be prorated for the Term (or earlier termination) based upon the number of days during such final year that this Lease is in effect. In accordance with Section 107.6 of the California Revenue and Taxation Code, Tenant is specifically informed, and hereby acknowledges and agrees, that the Premises or Project and any fixtures, equipment, or other improvements installed or constructed thereon shall be subject to possessory interest taxes and assessments, and that such taxes and assessments shall be paid by Tenant prior to delinquency. Tenant shall include a statement in all Subleases to the effect that the interests created therein are derive from the Tenant's interest under this Lease and that Tenant's interest requires the payment of a possessory interest tax. Notwithstanding the foregoing, in no event shall Tenant be liable for increases in taxes or assessment, if any, attributable to a "change in ownership" of Landlord's interest in the Premises.

(b) Tenant shall pay, before delinquency, all taxes and assessments levied against, or on account of, all fixtures, equipment, equipment and personal property located in or upon the Premises and/or the Project.

(c) Landlord and Tenant agree to consult with each other and to keep each other advised concerning any controversy or contest pertaining to the amount or validity of any tax or assessment referred to in this Section 6.2, which tax or assessment Tenant is required to pay or reimburse to Landlord under the terms of this Lease. Tenant shall have

the right, at Tenant's sole cost and expense, to contest the amount or validity of any tax or assessment levied upon, assessed, or proposed to be assessed, against the Premises and/or the Project or any of the fixtures, equipment and personal property therein to the extent permitted by applicable law; provided however, Tenant shall do the following: (i) comply with all laws, orders, rules and regulations respecting such contest; (ii) give Landlord prior written notice of Tenant's intent to so contest said amount or validity; and, (iii) at Landlord's sole option, either (A) demonstrate to Landlord's reasonable satisfaction that the proceedings to be initiated by Tenant shall conclusively operate to prevent the sale of the Premises, the Project and all personal property thereat, or any part thereof, to satisfy such tax or assessment prior to final determination of such proceedings, or (B) furnish a good and sufficient bond or surety or other assurance as requested by and reasonably satisfactory to Landlord, or (C) provide a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale. Nothing in this Subsection 6.2(c) shall be deemed or construed as relieving, modifying or extending Tenant's covenant to pay any such tax or assessment at the time and in the manner provided in this Section 6.2.

6.3 Capital Repairs and Replacements. If during each rolling three (3) year increment of the Term, commencing upon the Commencement Date, Tenant fails to expend a sum equal to at least four percent (4%) of Gross Revenues per annum during such three (3) year period on repairs, replacements and/or renewals of Furnishing, for routine repairs and maintenance and structural and non-structural refurbishments of the Project (including capital improvements, such as the replacement of the roof, mechanical, electrical or similar building systems, or major portions thereof), Tenant shall deposit in a separate account ("**Reserve Account**") with a commercial bank or savings and loan association approved by Landlord, or with or under the control of Tenant's Mortgagee if such Mortgagee shall so require, an amount equal to the difference between the sum actually expended by Tenant for the foregoing purposes during such three (3) year period and four percent (4%) of Gross Revenues per annum during such period which Reserve Account shall be used by Tenant for the specific purpose of accumulation therein and disbursing therefrom funds to be used solely for the foregoing purposes. Tenant shall not withdraw funds from the Reserve Account in any ensuing Calendar Year until Tenant has expended for the foregoing purposes in such Calendar Year a sum of not less than four percent (4%) of Gross Revenues during such Calendar Year. Nothing herein contained shall be construed as a limitation on tenant's obligations under other provisions of this Lease to repair, maintain and replace the Furnishing or Premises, and each portion thereof. At all times after the Reserve Account has been established, Tenant shall include in each annual forecast to be submitted to Landlord pursuant to Section 5.10(f) above a reconciliation of funds expended for the foregoing purposes, and evidence of all amounts contained in and all deposits and withdrawals from the Reserve Account during the preceding Calendar Year. Notwithstanding anything to the contrary contained herein. Tenant shall not be obligated to make other than ordinary repairs and replacements of Furnishings during the final five (5) years of the Term and during such five (5) year period the amount that Tenant shall be required to expend or reserve under this Section 6.3 shall be reduced to two percent (2%) per annum. Upon expiration or earlier termination of this Lease, all funds required to be maintained in the Reserve Account shall be allocated first to any repairs, maintenance, replacements and renewals necessary to place the Project and Furnishings in a first class condition, as determined by Landlord, and any excess shall be the sole property of Tenant.

6.4 Reserved.

ARTICLE VII USE OF PREMISES

7.1 Use of Premises. The Premises may be used solely for construction, renovation, maintenance and operation of the Project, which shall include the right to (i) operate or enter into businesses or grant licenses, concessions or subleases covering less than ten thousand (10,000) square feet of space in the Project in the aggregate to third parties provided that the same shall be done in arm's length transactions to persons unrelated to Tenant on commercially reasonable terms, and (ii) leases or subleases or apartment units in the Project. Tenant shall be permitted to grant licenses, concessions or subleases to Affiliates on customary terms for fair market value so long as all Gross Revenues derived by any such Affiliate in connection with any such license, concession or sublease shall be included within the appropriate category of Gross Revenues hereunder. The licenses, concessions and/or subleases granted by Tenant in connection with its operation of the Project shall only be for business that provide goods and/or services principally for the purpose of catering to the needs and desires of hotel guests and club members, and the business conducted by such licensees, concessionaires or sublessees shall be conducted in a manner consistent with the quality of services required to be offered at the Project by the terms of this Lease. In no event shall Tenant engage in any activity for the exploration, production, extraction, taking or transport of any oil, oil rights gas, minerals, mineral rights, natural gas rights and other hydrocarbon substances or minerals in and under the Premises.

The portion of the Premises used for residential apartment purposes ("Parcel D") is subject to the use restrictions in Chapter 728 of the Statutes of 1994, and to the approval of the City that will occur through a separate written amendment to this Lease (e.g., allowable uses, applicable rent, etc.). Tenant has indicated that it will work towards obtaining all the requisite legislative or administrative amendment(s) required to extend the residential use of the Premises beyond December 31, 2044. No later than December 31, 2040, if the residential apartment use of the Premises has not been extended beyond December 31, 2044, the Tenant and Landlord shall immediately commence good faith negotiations to establish a new permitted use for the Premises, which is compatible with the resort campus. This new use shall be: i. Consistent with the statutory trust grant; and ii. subject to the advance written approval of the State Lands Commission and the Landlord. Tenant and Landlord shall provide a plan for this new use to State Lands Commission staff no later than December 31, 2043. If the residential apartment use is terminated, Tenant agrees to be responsible for any relocation fees and costs required to be paid pursuant to federal, state or local law in connection with such termination. Tenant further agrees to meet and negotiate in good faith with the Landlord to establish an appropriate category and amount of percentage rent to be paid to Landlord if there are any Gross Revenues associated with the new permitted use that are not covered by the categories set forth in Section 5.2 (Percentage Rent). Consistent with Chapter 728 of the Statutes of 1994, residential use of the Premises cannot continue beyond December 31, 2044, unless the requisite legislative or administrative amendment(s) to extend this use have been obtained.

7.2 Pump-Out Station. At all times during the Term, Tenant covenants and agrees to maintain a vessel holding tank pump-out facility in the marina area of the Premises convenient and available for use by the public, which facility shall at all times be maintained and operated in accordance with all applicable federal, state or local laws, regulations and ordinances.

7.3 Environmental Requirements.

(a) Tenant shall not use, nor permit the use of, any Hazardous Material in the construction, reconstruction or renovations of, or additions to the Project in violation of any applicable law, regulation, code or ordinance. Tenant shall, at its expense, comply, and require each of its Affiliates, subtenants, licensees and/or concessionaires of space in the Project or elsewhere on the Premises to comply, with all applicable laws, regulations, codes and ordinances relating to any Hazardous Material or to any Hazardous Material Activities, including obtaining and filing all applicable notices, permits, licenses and similar authorizations.

(b) Tenant shall indemnify, defend, protect and hold Landlord, its City Council, boards, commissions, agents, servants and employees, harmless from and against any and all liability, claims, actions, and out-of-pocket costs or expenses of an kind or nature, including damage to any property and injury (including death) to any person (collectively, "Claims"), arising directly or indirectly from any Hazardous Material Activity of, Tenant or any of Tenant's agents, employees, independent contractors, invitees, licensees, guests, subcontractors, and Affiliates during the Term; provided, however, that Tenant shall have no liability under this Section 7.3(b) for any portion of any Claim which arises out of the negligence or willful misconduct of any party indemnified under this Section 7.3(b). The foregoing indemnity shall include all costs and expenses of removal, remediation of any kind and disposal of any such Hazardous Material and all reasonable consultants' fees, attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by any indemnified party or their counsel from the first notice that any Claim is to be made or may be made. The obligation of Tenant under this Section 7.3(b) shall survive the expiration or earlier termination of the Term.

ARTICLE VIII CONDUCT OF BUSINESS BY TENANT

8.1 Standards of Operation. Tenant shall continuously (except for reasonable interruption during repairs, maintenance or renovations and during any delay caused by an event of *Force Majeure*) during the Term, diligently operate, or cause to be operated, the Project in a first-class manner and as otherwise required by this Lease. Tenant shall stock and maintain adequate working capital and adequate inventories of food, beverages, operating equipment and supplies.

8.2 Management. Tenant agrees that at all times during the Term, the hotel and restaurant portions of the Project shall be managed and operated by Tenant, an Affiliate of Tenant or a Qualified Manager. It shall not be deemed a default by Tenant under this Lease if at any time during the Term it shall be determined that the then manager of the hotel and/or restaurant portions of the Project is not a Qualified Manager so long as the applicable management agreement or employment contract shall give Tenant the right to terminate said agreement and Tenant shall promptly take all reasonable steps to terminate said agreement and remove said manager from the Premises and secure a Qualified Manager.

8.2.1 If Tenant transfers or assigns this Lease to an unaffiliated third party that is not a Qualified Manager, parent, or subsidiary of Tenant, the City shall have the right to approve the management of the Premises as follows:

8.2.2 Tenant shall submit to Landlord for its review and approval, the identity of the proposed manager Tenant desires to have manage the Premises or Project. Landlord shall not

unreasonably withhold, condition, or delay approval of the proposed manager and shall grant such approval if Tenant provides evidence reasonably satisfactory to the Landlord that the proposed manager meets the Qualified Manager criteria.

8.2.3 Concurrently with submitting its request for manager approval, Tenant shall submit to Landlord information needed to demonstrate that the proposed manager meets the criteria of a Qualified Manager. Upon Landlord's request, Tenant shall cooperate with Landlord and provide such additional information as Landlord may reasonably request relating to such criteria or other factors bearing upon Landlord's approval. If the Landlord disapproves, and such disapproval is reasonable, of the proposed manager, Landlord shall do so by written notice, within thirty-five (35) calendar days of Tenant's transfer or assignment, to Tenant stating the reasons for such disapproval. Should Landlord not provide written notice to Tenant in such thirty-five (35) calendar day period, such party or person shall be deemed to be a Qualified Manager.

8.2.4 Landlord shall have the right, but not the obligation, upon delivery of thirty (30) days written notice to Tenant, to require Tenant to remove the Qualified Manager and have the Tenant select a new manager pursuant to Section 8, if Landlord determines that the then current Qualified Manager of the Premises or Project is guilty of "Gross Mismanagement." For purposes of this Lease, "Gross Mismanagement" shall include, but is not limited to, any of the following: (i) the Qualified Manager's intentional underreporting of Gross Room Revenues or Gross Non-Room Revenues; (ii) the Qualified Manager's failure to timely cure a Default under this Lease after and despite Landlord's delivery of written notice; or (iii) the Qualified Manager's failure to timely cure more than three (3) separate Defaults under Sections 3.8-3.10, and 6.1 (maintenance and repair obligations) of this Lease that occur during any continuous one (1) year period during the Lease Term, after and despite Landlord's delivery of written notice of Default.

8.2.5 Notwithstanding anything in this Lease to the contrary, and for the avoidance of doubt, Tenant shall be solely responsible to Landlord for the continued operation of the Premises or Project in accordance with the terms and conditions of this Lease.

8.3 Competition by Tenant. From and up to five (5) years following the Commencement Date, Tenant agrees for itself and its Affiliates that Tenant and its Affiliates shall not own, lease or operate, or participate in the ownership, lease, or operation of, including any ownership interest in any partnership, joint venture or other equity participation, any business venture or operation similar to the hotel, private membership club and marina operations conducted by Tenant as part of the Project, located on Newport Harbor (that is, its nearest boundary is within fifteen hundred (1,500) feet of the waterfront of Newport Harbor). It is expressly acknowledged and agreed that Landlord is entering into this Lease in reliance upon this covenant, and the rental payable to Landlord hereunder would be adversely affected by a violation of this covenant by Tenant, and Landlord would not enter into this Lease in the absence of such a covenant. The foregoing restriction shall not apply to: (i) any Mortgagee who shall have acquired Tenant's leasehold estate hereunder pursuant to a judicial or non-judicial foreclosure of its Mortgage or deed or other conveyance in lieu of such foreclosure; (ii) any entity which shall be an institutional investor with a diversified investment portfolio containing projects operated under three (3) or more trade names and under management agreements with (3) or more unaffiliated national chain management companies; or (iii) any business venture or operation similar to the Project located upon land owned/managed by the City. The foregoing prohibitions on ownership shall not be deemed to apply to ownership of less than a Controlling interest in any publicly traded corporation, or ownership of hotels in a diversified investment portfolio of insurance companies,

pension funds or similar institutional investors containing hotels operated under three (3) or more trade names with management contracts with three (3) or more unrelated national hotel chain management companies. The restrictions set forth in this Section 8.3 shall not be deemed to apply to any operations of Tenant or its Affiliates (or any successor thereto) substantially similar to the Project that are owned, leased or operated by Tenant or its Affiliates (or any successor thereto) as of the date of this Lease or in which Tenant or any Affiliate (or any successor thereto) participates in the ownership, lease or operation as of the Commencement Date.

8.4 Use of Name. At all times during the Term, the Project shall be operated utilizing the words "Balboa Bay" in its name; provided, however, any Qualified Manager may operate the Project under its trade name in conjunction with the foregoing words.

ARTICLE IX ALTERATIONS, FIXTURES AND SIGNS

9.1 Tenant's Right to Make Alterations. Tenant shall have the right, at any time and from time-to-time, to make any repair, alteration or addition which Tenant deems advisable to the improvements constructed upon the Premises by Tenant; provided, however, that all such repairs, alterations or additions to the Project shall be consistent with the Premises being used for the purposes permitted by this Lease and be of the type and quality as other first class hotels in the Newport Beach area.

9.2 Prohibition Against Liens. Tenant shall not create nor permit to be created or to remain, any lien, encumbrance or charge (whether levied on account of any mechanic's, laborer's or materialmen's lien or any conditional sale, title retention lease or chattel mortgage) against the Premises or the Project, or any part thereof or interest therein, except for equipment leases, title retention agreements and similar instruments in connection with financing of the purchase or lease of Furnishings. Subject to Tenant's right to contest such liens as set forth in this Lease, if any mechanic's laborer's or materialmen's lien shall at any time be filed against the Premises and/or the Project, or any part thereof or interest therein, Tenant shall with all due diligence cause the same to be discharged of record by payment, bonding in accordance with applicable law, or transfer of such lien to other security pursuant to applicable law.

9.3 Signs. Tenant will not place or suffer to be placed or maintained on the exterior of any improvements or on the Premises any signs, logos or advertising unless such signs, logos or advertising are consistent with the City's Municipal Code, and other applicable laws and regulations.

ARTICLE X ALTERATIONS, INDEMNITY AND CASUALTY

10.1 Insurance. Without limiting Tenant's indemnification of Landlord, Tenant will obtain, provide and maintain at its own expense during the Term of this Lease, a policy or policies of insurance of the type, amounts and form acceptable to Landlord. The policy or policies shall provide, at a minimum, those items described below.

(a) **Coverage Requirements**

- (i) Workers' Compensation insurance providing statutory benefits and Employer's Liability Insurance in an amount not less than One

Million Dollars (\$1,000,000) each accident, each employee and policy limit for bodily injury or disease. Coverage shall include US Longshore & Harbor Workers Act (USLHWA) and Maritime Coverages as appropriate. In addition, Tenant shall require each vendor and/or contractor, which delivers goods to the property or performs any work at the Property (including, but not limited to, service, repair, maintenance, or alterations) to similarly maintain workers compensation insurance and employer's liability insurance, including USLHWA and Maritime Coverages as appropriate, in accordance with the laws of the State of California for all of the contractor's or vendor's employees. The insurer shall agree to waive all rights of subrogation against Landlord, its officers, agents, employees and volunteers for losses arising from work performed by Tenant for Landlord, by endorsement to the policy.

- (ii) Commercial General Liability insurance in an amount not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence and Twenty-Five Million Dollars (\$25,000,000) General Aggregate for bodily injury, personal and advertising injury, property damage, completed operations, sexual molestation, and liquor liability, which amount shall be subject to periodic adjustment in accordance with Subsection 10.1(c)(ii) below. Coverage shall be at least as broad as that provided by Insurance Services Office form CG 00 01 and may be arranged through any combination of primary and excess insurance as required to achieve the limits specified provided that any excess liability policy does not restrict coverage provided in the primary policy. Other policy forms may be acceptable if more appropriate to the exposures, such as Marina Operator's Liability insurance. None of the policies required herein shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to Landlord and approved in writing.
- (iii) Business Automobile Liability coverage insurance for bodily injury and property damage for all activities of the Tenant arising out of or in connection with the services to be performed under this Lease, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than Five Million Dollars (\$5,000,000) combined single limit for each occurrence.
- (iv) Property Insurance, including Boiler and Machinery, Flood and Earthquake on an "All Risk" basis equal to the full replacement cost of the property insured with no coinsurance clause and business interruption coverage sufficient to allow Tenant to meet its obligations under this Lease for payment of rents.
- (v) Builder's Risk insurance during construction, reconstruction or alteration of any Improvements (as improved or altered by Minor Alterations or Structural Changes, if any) on the Premises, against "All Risk" of physical loss, including, without limitation, the perils of

flood, collapse, including collapse resulting from builder's design error, and transit, with deductibles acceptable to Landlord. The value insured shall cover 100% of the completed contract cost, including Boiler & Machinery and Soft Costs and shall be maintained until full acceptance of the work.

- (vi) Pollution Legal Liability insurance including onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf of Tenant, of any waste or waste materials off or away from the project site. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than Five Million Dollars (\$5,000,000) each loss and in the aggregate. The policy shall not exclude any hazardous materials for which there is exposure. Tenant shall require contractors and subcontractors to maintain and provide evidence of Contractor Pollution Legal Liability insurance to meet this requirement.
- (vii) Prior to commencing any construction or improvements on the Premises pursuant to Article III of this Lease, Tenant shall require its Contractors to obtain and maintain appropriate Professional Liability Insurance with limits of no less than Two Million Dollars (\$2,000,000 each claim and Four Million Dollars (\$4,000,000) in the aggregate. Covered professional services shall specifically include all work to be performed under the Lease and delete any exclusions that may potentially affect the work to be performed. Tenant shall cause Contractors to maintain continuous coverage for a period of no less than three years after completion of the Services required by this Agreement.
- (viii) Watercraft Liability including Protection and Indemnity with minimum limits of Five Million Dollars (\$5,000,000) each occurrence and Ten Million Dollars (\$10,000,000) in the aggregate, US Longshore & Harbor Workers Act (USLHWA) for employees performing services under said Act, and Water Pollution Liability. Water Pollution Liability shall be included, if not covered under the Pollution Legal Liability policy, and include coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of Five Million Dollars (\$5,000,000) each loss and in the aggregate.
- (ix) Garagekeepers Liability with minimum limits of One Million Dollars (\$1,000,000) each loss.
- (x) Crime Bond in an amount not less than One Million Dollars (\$1,000,000) to include at a minimum employee theft, forgery or alteration, computer fraud and funds transfer fraud.

- (xi) Cyber Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000) per claim and annual aggregate, covering (1) all acts, errors, omissions, negligence, infringement of intellectual property; (2) network security and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or negligence in the handling of confidential information, privacy perils, including coverage for related regulatory defense and penalties; (3) data breach expenses including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services.
- (b) **Endorsements:** Policies shall contain or be endorsed to contain the following provisions:
 - (i) Landlord, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as an additional insured under all liability policies, including Excess/Umbrella Liability policies with respect to liability arising out of Tenant's activities related to this Lease and use or occupancy of the Premises.
 - (ii) Policies shall be considered primary insurance as respects to Landlord, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from Tenant's operations. Any insurance maintained by Landlord, including any self-insured retention Landlord may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
 - (iii) Liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - (iv) The insurer waives all rights of subrogation against Landlord, its elected or appointed officers, officials, employees, agents and volunteers. This provision applies regardless of whether the Landlord has received a waiver of subrogation endorsement from the insurer.
 - (v) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Landlord, its elected or appointed officers, officials, employees, agents or volunteers.
 - (vi) The insurance required by this Lease shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days (ten (10) calendar days written notice of non-payment of premium) written notice has been received by Landlord. It is Tenant's obligation to ensure that provisions for such notice have been established.

- (vii) Landlord shall be named a loss payee under the Property Insurance policy or policies for its interest in the Premises.

(c) **Additional Requirements**

- (i) All insurance shall be written on an occurrence-made form except for the Pollution, Cyber, and Professional Liability policies;
- (ii) In the event Landlord determines that (i) the Tenant's activities in the Premises creates an increased or decreased risk of loss to the Landlord, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant may be changed accordingly upon receipt of written notice from Landlord; provided that Tenant shall have the right to appeal a determination of increased coverage to the City Council within fourteen (14) calendar days of receipt of notice from the Risk Manager in the manner provided in Municipal Code Section 17.65.010 *et seq.* (or any amended or successor Code section or ordinance) If Tenant fails to timely appeal a decision, it shall be deemed final. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates and endorsements evidencing acceptable insurance policies with Landlord incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates and endorsements evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice.
- (iii) All insurance policies shall be issued by an insurance company currently authorized by the California Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders'. Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by Landlord.
- (iv) Any self-insured retention must be approved in writing by the Landlord and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a self-insured retention. The Landlord may require the Tenant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Tenant or the Landlord.

- (v) If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Lease with the Landlord and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Lease.
- (vi) Tenant shall be responsible for causing all licensees, sub-tenants, concessionaires, contractors and subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Lease, including adding the Landlord as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to applicable policies.
- (vii) The insurance obligations under this Lease shall be: (1) all the insurance coverage and/or limits carried by or available to Tenant; or (2) the minimum insurance coverage requirements and/or limits shown in this Lease; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the Landlord. No representation is made that the minimum insurance requirements of this Lease are sufficient to cover the obligations of the Tenant under this Lease.
- (viii) Tenant shall give Landlord prompt and timely notice of any claim made or suit instituted arising out of or resulting from Tenant's performance under this Lease.
- (ix) Tenant shall provide certificates of insurance, with original endorsements as required above, to Landlord as evidence of the insurance coverage required herein. Insurance certificates must be approved by Landlord prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with Landlord at all times during the Term of this Lease.
- (x) All required insurance shall be in force on the Commencement Date and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Tenant.
- (xi) If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, then, subject to the notice and cure provisions set forth in Article XVII, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all available remedies.
- (xii) Tenant agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

10.2 Indemnification.

(a) To the fullest extent permitted by law, Tenant hereby agrees to defend, indemnify, protect and hold Landlord harmless from and against any and all liability, claims, damage, penalties, actions, demands or expenses of kind or nature, including damage to any property and injury (including death) to any person (collectively, "**Claims**"), arising from Tenant's or Affiliates use occupation of the Premises or the Project, or from any activity, work or things done, permitted or suffered by Tenant or Affiliate or any omission of Tenant or Affiliate on or about the Premises or the Project, or from any litigation concerning any of the foregoing in which Landlord is made a party defendant. Tenant shall not be required hereunder to defend indemnify or hold Landlord or any other person or entity indemnified under this Section 10.2(a) harmless from or against any of the aforementioned Claims to the extent such Claims arise out of the negligence or willful misconduct of Landlord or any other person or entity indemnified hereunder. This obligation to indemnify shall include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by Landlord or its counsel from the first notice that any Claim is to be made or may be made. To the fullest extent permitted by law, Landlord, in its capacity of Landlord hereunder but not in its municipal capacity, hereby agrees to defend, indemnify, protect and hold Tenant harmless from and against any and all Claims to the extent such Claims arise out of the negligence or willful misconduct of Landlord, in its capacity of Landlord hereunder but not in its municipal capacity, or any other person or entity indemnified by Tenant under the first sentence of this Section 10.2(a). This obligation to indemnify shall also include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by Tenant or its counsel from the first notice that any such Claim is to be made or may be made.

(b) Any sums paid by an indemnified Party, with interest at the Lease Interest Rate, costs and damages, shall be due from and paid by the indemnifying Party within thirty (30) calendar days of written demand therefor. Upon receiving knowledge of any Claim that an indemnified Party believes is covered by this indemnity, such indemnified Party shall give the indemnifying Party notice of the matter and an opportunity to defend it, at the indemnifying Party's sole cost and expense, with legal counsel reasonably satisfactory to such indemnified Party. The indemnified Party may also require the indemnifying Party to so defend the matter. So long as the indemnifying Party shall be defending any such Claim, the indemnified Party shall not settle such claim without the consent of the indemnifying Party.

(c) Effective upon the Commencement Date, Tenant shall obtain and maintain during the Term, combined rental income and/or business interruption and extra expense insurance against loss of Tenant's income from the Project for a period of twelve (12) months due to the perils covered by the insurance referred to above, in an amount sufficient to cover the Rent payable under the terms of this Lease. If the improvements located on the Premises shall be destroyed or damaged resulting in any reduction in income received by Tenant from the Project, the proceeds of such rental, income and/or business interruption insurance shall be utilized by Tenant, subject to the rights of a Mortgagee, in payment of such Rent and other charges hereunder until such time as the improvements so damaged or destroyed have been fully restored and placed in full operation.

(d) Notwithstanding Section 10.2(b), Tenant shall accept any tender of defense by Landlord pursuant to the terms of Sections 7.3(b) and/or 10.2(b), and Tenant shall protect and hold Landlord harmless from and against the subject Claim and defend Landlord as required under Sections 7.3(b) and/or 10.2(b); provided, however, that Tenant shall not be liable for any such Claim to the extent and in proportion that such Claim is finally determined by a court of competent jurisdiction (or in a negotiated settlement agreed to by Landlord) to be attributable to the negligence or willful misconduct of Landlord. Notwithstanding Sections 7.3(b) and/or 10.2(b), Tenant shall accept any defense tendered by Landlord under Sections 7.3(b) and/or 10.2(b), unless the preponderance of the evidence shows that Landlord or its employees acted with active negligence or engaged in willful misconduct. Tenant shall defend, indemnify, and hold Landlord harmless from and against the applicable Claim, as required under Sections 7.3(b) and/or 10.2(b); however, Tenant shall not be responsible for any portion of such Claim that is finally determined by a court of competent jurisdiction (or agreed upon in a settlement approved by Landlord) to result from the negligence or willful misconduct of Landlord or its employees.

10.3 Settlement of Insurance Claims. Subject to the rights of Tenant's Mortgagees, if all or any part of the Project shall be damaged or destroyed by an insured peril or otherwise, Tenant shall have the exclusive right to negotiate and accept any proposed settlement, adjustment or compromise of any claim; provided however, subject to the rights of Tenant's Mortgagees, Landlord is hereby authorized and empowered by Tenant, and Landlord's option and in its sole discretion, to settle, adjust or comprise any and all claims if Tenant elects to terminate under Sections 10.4 or 10.5 below.

10.4 Casualty. Except as provided in Section 10.5 below, Tenant shall promptly cause the Project or the Premises, or any part thereof, which is damaged or destroyed, whether or not required to be insured against under this Article X, to be repaired and restored to its original condition or such other condition as may be mutually agreed upon by the Parties (subject to changes necessary to comply with then existing laws applicable thereto any changes in design approved by Landlord), at Tenant's sole cost and expense. To the extent the insurance proceeds are insufficient to cover the cost of such repair and restoration, Tenant shall make up the deficiency out of Tenant's own funds. Subject to events of *Force Majeure*, such repair and restoration shall be commenced in good faith and with reasonable diligence within a reasonable period of time following the casualty and shall be completed with due diligence. Notwithstanding the foregoing, in the event the cost of such repair and restoration exceeds the sum of (i) the amount of insurance proceeds available to Tenant plus (ii) the amount of the deductible by an amount which Tenant reasonably determines renders reconstruction of the Project economically not feasible, Tenant shall have the option to terminate this Lease and surrender possession of the Premises to Landlord. Subject to the rights of Mortgagees, in the event of such a termination, Tenant shall pay to Landlord the amount of the deductible and assign to Landlord any and all rights Tenant may have in and to the insurance proceeds on account of such damage or destruction.

10.5 Casualty Late in Term. If the Project or any part thereof is damaged or destroyed at any time following the fortieth (40th) year of the Term and the costs of restoration and repair are estimated to exceed thirty percent (30%) of the then full replacement cost of the Project and Tenant elects not to repair or restore said damage or destruction, then either Party shall have the right to terminate upon the other Party's receipt of written notice of termination

given not later than ninety (90) calendar days following the occurrence of such damage or destruction. Subject to the rights of any Mortgagee, Landlord shall have the right to receive and retain all insurance proceeds paid or payable to Tenant on account of any damage or destruction to the Project if this Lease is terminated by Landlord or Tenant under this Section 10.5; provided, however, that Tenant shall receive out of any such insurance proceeds the amount of actual out-of-pocket expenses incurred by Tenant in obtaining any settlement of insurance claims and the costs of restoring the Premises to a good and orderly condition and even grade, if any.

10.6 No Abatement of Rent. Except as provided in Sections 10.4 and 10.5 above, throughout the Term, no direct or indirect destruction of or damage to the Project by fire or other casualty whatsoever, whether such damage or destruction be partial or total, shall (i) permit Tenant to surrender or terminate the Lease, or (ii) except to the extent of rent abatement insurance paid to Landlord, relieve Tenant from its obligation to pay in full the Rent and other sums and charges payable by Tenant hereunder or from any other obligation under the Lease, except as otherwise expressly set forth herein; provided, however, that if any such direct damage is caused by the negligence or willful misconduct of Landlord, Rent shall be suitably abated until such damage or destruction is repaired or restored; provided, further, however, nothing herein shall limit or restrict Landlord's right to retain rental abatement insurance proceeds.

ARTICLE XI UTILITIES

11.1 Utilities. Tenant shall be solely responsible for obtaining and promptly paying all hook-up or connection fees and other charges for heat, gas, water, air conditioning, electricity, sewerage, cable television or any other utility used or consumed in or upon the premises. Upon written request of Tenant, Landlord agrees to join in the grant of such easements and licenses upon the Premises to any supplier of utilities to the Project as necessary to construct, install, operate and maintain any facilities, conduits, transmission lines and pipelines for the provision of utility services to the Project; provided, however, that all such conduits, transmission lines and pipelines, and all facilities and improvements associated with utility services and located upon the Premises, shall be located below grade in subterranean easements.

ARTICLE XII ESTOPPEL CERTIFICATES

12.1 Estoppel Certificates. Within thirty (30) calendar days after each request therefor by either Party, the other Party agrees to deliver a certificate to any person designated by the requesting Party (including a proposed mortgagee or purchaser), or to the requesting Party, certifying (if such be the case) that this Lease is in full force and effect, that, to the best of such Party's knowledge at that time, there are no Events or Default by Tenant hereunder or any defaults by Landlord hereunder and that no events have occurred which, with the giving of notice or the passage of time or both, would constitute an Event or Default with respect to Tenant or a default with respect to Landlord hereunder, or stating those claimed by the responding Party, and that, to the best of such Party's knowledge, there are no defenses or off-sets in favor of either Party hereto, or stating those claimed by the responding Party, and/or certifying whether any consent or approval required under this Lease has been denied or granted by the responding Party and whether any specified rights have been waived or deemed waived or expired. Any such certificate shall also contain a warranty that the person signing has the authority to execute the certificate on behalf of such Party. Each such estoppel certificate shall identify the Lease and all amendments, shall specify the date to which Rent has been paid, and shall specify the then

applicable Base Rent payable hereunder. If the responding Party fails to execute and deliver any such certificate within the aforementioned time period, insofar as the requesting Party and any person designated by the requesting Party is concerned, the other Party shall be conclusively deemed to have acknowledged that the certificate as submitted by the requesting Party is correct. The requesting Party or the person designated by the requesting Party as the recipient of said certificate (including, but not limited to, a proposed Mortgagee or purchaser) may rely on the certifications made by the responding Party or the certifications deemed made thereby (if such certificate is not delivered within thirty (30) calendar days). Nothing in this Section 12.1 shall be construed as reducing the period of time that any Party has under the terms of this Lease to respond to a request by the other Party for a consent or an approval.

ARTICLE XIII ASSIGNMENT AND SUBLEASING

13.1 Limitation on Right to Assign. Except as hereinafter set forth in this Article XIII and in Article XIV of this Lease, Tenant will not transfer assign or hypothecate this Lease, or its interest therein, in whole or in part, nor sublease (which term shall be deemed to include allowing anyone else to occupy) all or any part of the Premises and/or the Project, without the prior written consent of Landlord in each instance having first been obtained, which consent shall not be unreasonably withheld or delayed. The consent by Landlord to any transfer, hypothecation, assignment or subleasing shall not constitute a waiver of the necessity for such consent to any subsequent assignment, transfer, hypothecation or subleasing. This prohibition against assigning or subleasing shall be construed to include a prohibition against any sale, hypothecation, transfer of possession, or any assignment or subleasing by operation of law or otherwise. Landlord shall be deemed to be reasonable in not granting its consent if the proposed purchaser, transferee, assignee or sublessee fails to meet all of the following criteria:

(a) the proposed purchaser, transferee, assignee or sublessee, or, if the proposed purchaser, transferee, assignee or sublessee is a wholly owned subsidiary, its parent, or the constituent general partners of the proposed purchaser, transferee, assignee or sublessee shall have a net worth at least equal to the greater of (i) Ten Million Dollars (\$10,000,000.00) (increased each five (5) years from the Commencement Date by the percentage of any increase over such period in the Consumer Price Index for All Urban Consumers, Los Angeles-Long Beach-Anaheim, CA, All Items, published by the Bureau of Labor Statistics, Department of Labor), or (ii) ten percent (10%) of the fair market of the leasehold estate created by this Lease. The successor or most nearly comparable index published by some other brand or department of the United States Government shall be used if said Bureau shall cease to publish the Consumer Price Index. For purposes of determining the fair market value of the leasehold estate created by this Lease, such value shall be conclusively determined by the purchase price to be paid by the proposed purchaser, transferee, assignee or sublessee for the interest to be acquired, as evidenced by information reasonably required by Landlord (for purposes of calculating such net worth, it shall be permissible to include as an asset of said proposed purchaser, transferee, assignee or sublessee its anticipated equity in the Project and the leasehold estate created hereby);

(b) the proposed purchaser, transferee, assignee or sublessee shall either be a Qualified Manager or, if the proposed purchaser, transferee, assignee or sublessee is not a Qualified Manager, shall have entered into a binding agreement with a Qualified Manager, to manage the Project, it being acknowledged herein that continued

management of the Project by a Qualified Manager is an affirmative obligation of Tenant hereunder; and

(c) the proposed purchaser, transferee, assignee or sublessee (or, with respect to a transfer of a Controlling interest under Section 13.5, the person or entity acquiring such Controlling interest) shall have a reputation for honesty, integrity and sound business practices.

13.2 Grant or Denial of Consent. Landlord shall grant or deny its approval of, or request additional reasonable information and/or documentation with respect to, any proposed transfer, hypothecation, assignment or sublease within thirty (30) calendar days following Landlord's receipt of written notification from Tenant regarding the proposed transfer. Following a request from Landlord for additional reasonable information and/or documentation as provided herein, Landlord shall have ten (10) calendar days from Landlord's receipt of such additional information and/or documentation in which to grant or deny its approval of the proposed transfer and/or transferee. Landlord shall be deemed to have granted its approval if Landlord shall not request additional information and/or documentation within such thirty (30) calendar day period and Landlord has not notified Tenant within the time periods herein specified of its decision either to grant or deny its approval. From and after the effective date of an assignment by Tenant of its entire Leasehold, the assignor shall thereafter be relieved from any further liabilities or obligations under this Lease and Landlord shall look solely to the assignee Tenant for performance of such obligations hereunder.

13.3 Non-Application to Guest Rooms and Facilities. This Article XIII shall have no application to (i) rental of guest rooms or suites or other guest facilities within the Project, (ii) rental of apartment units in the Project in the ordinary course of business for a term of not more than two (2) years or such longer term if the rent paid by the apartment tenant adjusts annually to the fair market rent of the unit, (iii) rental of stores and shops contained within the Project, (iv) rental of boat slips in the marina in the ordinary course of business for a term of not more than one (1) year, or (v) the granting of concessions, licenses or subleases in the normal course of operations, provided that the term of any such concession, license, rental or sublease shall not extend beyond the Term hereof.

13.4 Assignment to Affiliate. Tenant shall have the right, without Landlord's consent, to assign this Lease:

(a) to a partnership or limited liability company Controlled by Tenant and in which Tenant is a general partner or member thereof and owns a legal and beneficial interest therein of not less than twenty-five percent (25%), or to a corporation Controlled by Tenant and in which Tenant owns and controls not less than twenty-five percent (25%) of all issued and outstanding stock of such corporation in every class with full and unrestricted voting rights and privileges; or

(b) as security pursuant to a Mortgage;

provided, Tenant provides Landlord with notice of the assignment; however, that any assignment by Tenant under this Section 13.4 shall not relieve Tenant from liability hereunder.

13.5 Limitation on Transfer of Interest in Tenant. If Tenant is a corporation, an unincorporated association, a partnership or a joint venture, the transfer, assignment or hypothecation (except for a hypothecation in connection with a loan transaction of the type contemplated by Article XIV hereof) of a Controlling ownership interest in such entity, whether in a single transaction or multiple transactions and whether to a single person or multiple persons, shall be deemed an assignment within the meaning of this Article XIII. Furthermore, any transaction by which Tenant undergoes a merger or other reorganization, including a sale of all or substantially all of its assets, wherein Tenant is not the surviving corporation (or the stock holders of Tenant immediately before the merger or reorganization do not retain Control of the surviving corporation) shall be deemed, for purposes of the foregoing, a transfer of this Lease. If Tenant is or becomes a publicly traded entity, any sale or other transfer of any outstanding stock of, or limited partnership interests in. Tenant shall not be deemed an assignment within the meaning of this Article XIII unless said sale or other transfer is made by a person or entity owning a Controlling interest in Tenant and results in a change in the person(s) or entity(ies) having Control of Tenant.

ARTICLE XIV HYPOTHECATION

14.1 Tenant's Right to Hypothecate. Subject to any restrictions set forth in this Article XIV, Tenant may, from time-to-time, without Landlord's consent or approval, assign, hypothecate, mortgage, pledge or alienate Tenant's leasehold estate and rights hereunder (including Tenant's interest in any subleases, licenses and concession agreements) to a lender or lenders as security for payment of any indebtedness of Tenant incurred in connection with the design, approval, construction, furnishing, renovation, remodeling, equipping and completion of the Project or any portion thereof and any refinancing of the existing debt secured by the Premises in connection therewith, and thereafter any refinancing of the Project and/or Tenant's leasehold estate; provided, however, that any such lender shall be an institutional lender, such as, without limitation, a bank, savings and loan or thrift institution, pension fund, real estate investment fund, publicly traded limited partnership, or insurance company. In no event shall Tenant, or its successors in interest, borrow any sum of money secured by a Mortgage in excess, in the aggregate, of the greater (i) ninety percent (90%) of the appraised value of the Project and Tenant's leasehold interest hereunder as reflected in an appraisal thereof completed no earlier than one hundred eighty (180) calendar days prior to the date such loan is funded, which appraisal shall be subject to Landlord's reasonable approval if such appraisal is not required and approved by such lender, or (ii) an amount which results in Tenant having a net equity in the Project of not less than Ten Million Dollars (\$10,000,000) (increased each five (5) years by the percentage of any increase over such period in the Consumer Price Index for All Urban Consumers, Los Angeles-Long Beach-Anaheim, CA, All Items, published by the Bureau of Labor Statistics, Department of Labor). The successor or most nearly comparable index published by some other branch or department of the United States Government shall be used if said Bureau shall cease to publish the Consumer Price Index; provided, however, that in connection with any refinancing of debt secured by the Premises, the Mortgage may be in the amount of the debt being refinanced at the time of such refinancing. In calculating whether the borrowed funds exceed ninety percent (90%) of the appraised value of the Project, any participation in net revenues from operations, or proceeds of sale or refinancing granted to the Mortgagee which are fully contingent shall not be included. The limitation on borrowing set forth in the immediately preceding sentence shall not apply to any Mortgagee who acquires the Project and the leasehold interest hereunder through foreclosure or deed-in-lieu thereof, or to a Tenant who shall have acquired the Project and the leasehold interest hereunder from a Mortgagee (or the trustee under a Mortgage) following a

foreclosure of its Mortgage or its acceptance of a deed-in-lieu thereof. If requested by Tenant, Landlord agrees to execute its written consent to any such assignment, hypothecation, mortgage, pledge or alienation, which consent shall be in form and content reasonably satisfactory to Tenant and Landlord. In no event shall Landlord have any obligation to subject its interest in the Premises or this Lease to the lien of any mortgage given by Tenant. Any such lien whether evidenced by a mortgage, deed of trust or otherwise shall be referred to herein as a **"Mortgage,"** and the holder or holders of or beneficiary under any Mortgage shall be referred to herein as the **"Mortgagee."** The Mortgagee may enforce such Mortgage and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such Mortgage, the Mortgagee may elect to take possession of and operate the Premises and the Project, or any portion thereof, subject to its Mortgage, perform all obligations performable by the Mortgagee, and upon foreclosure of such Mortgage by power of sale, judicial foreclosure or otherwise, or upon acquisition of the leasehold estate by a deed, assignment or other conveyance in lieu of foreclosure, the Mortgagee may elect to sell and assign the leasehold estate hereby created subject to the terms of this Lease. Except for payment of any delinquent Rent or other payments due hereunder and obligations reasonably susceptible of cure by the Mortgagee or any such assignee, the Mortgagee or any such assignee of the leasehold estate shall not be liable to perform the obligations imposed upon Tenant by this Lease prior to the period such person or entity has ownership of said leasehold estate or possession of the Project or the Premises or any portion thereof subject to the Mortgage.

14.2 Notice to and Rights of Mortgagees.

(a) When giving notice to Tenant with respect to any default hereunder, Landlord shall contemporaneously serve a copy of each such notice upon any Mortgagee who shall have given Landlord a written notice specifying its name and address. When giving any other notice to Tenant hereunder a type which a Mortgagee has requested to receive in writing, Landlord shall, at the same time, serve a copy thereof upon such requesting Mortgagee provided it shall have also given Landlord written notice specifying its name and address. Any Mortgagee shall have the right, but not the obligation, to cure a default by Tenant under this Lease, and Landlord shall accept any such performance by any Mortgagees as though the same had been done or performed by Tenant. The Mortgagees shall have an additional reasonable period of time following the expiration of the applicable cure period granted Tenant hereunder to effectuate such cure.

(b) In the case of a monetary default by Tenant under this Lease, Landlord will take no action to obtain possession of the Premises or the Project (including possession by a receiver) or to effect a termination of this Lease by reason thereof unless Landlord shall have served a copy of such notice upon any Mortgagee and the default has continued for a period of thirty (30) calendar days beyond the date the Mortgagee shall have received said notice. In the case of any non-monetary default by Tenant under this Lease, Landlord will take no action to obtain possession of the Premises or the Project (including possession by a receiver) or to effect a termination of this Lease by reason thereof unless Landlord has served a copy of a notice of such a default upon any Mortgagee and such non-monetary default continues for a period of sixty (60) calendar days beyond the date the Mortgagee received said notice and the Mortgagee shall not have done any of the following:

(i) commence to cure such default, if such default is capable of cure by the Mortgagee without the Mortgagee obtaining possession of the Premises, within said

sixty (60) calendar day period, and, thereafter, diligently proceed to cure such default; or

(ii) commence to obtain possession of the Project (including possession by a receiver) within said sixty (60) calendar day period, *and*, thereafter, diligently proceed to obtain said possession, and, once said possession is obtained, commence and diligently proceed to cure such default in the case of a default which is capable of being cured only after the Mortgagee has obtained said possession; or

(iii) institute foreclosure proceedings within said sixty (60) calendar day period, and, thereafter, complete such foreclosure proceeding or otherwise acquire Tenant's interest under this Lease with reasonable and continuous diligence in the case of a default which cannot be cured in the manners set forth in (i) or (ii) above.

With respect to (ii) or (iii) above, no Mortgagee shall be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such a notice has been cured or, if for any other reason such Mortgagee elects to discontinue the same. The Mortgagee's period for taking any such action shall be extended by the period of any stay if the Mortgagee is prohibited from taking any action described in (ii) or (iii) above by order of any court having jurisdiction over any bankruptcy or similar proceedings involving Tenant.

(c) If this Lease is terminated by Landlord on account of any Event of Default or is terminated as a result of the rejection of this Lease by a trustee in a bankruptcy proceeding involving Tenant and the Mortgagee shall have arranged to the reasonable satisfaction of Landlord to cure all then-existing defaults of Tenant under this Lease which are reasonably within the Mortgagee's ability to cure, then Landlord, within thirty (30) calendar days after receiving a written request therefor which request shall be given within thirty (30) calendar days after such termination, and upon payment to it of all expenses (including reasonable attorneys' fees and expenses) incident thereto, shall execute and deliver a new lease of the Premises to the Mortgagee or its nominee or to a purchaser, assignee or transferee, as the case may be, which new lease shall contain the same terms and provisions of this Lease.

(d) The Mortgagee may exercise, with respect to the Premises and Project or any portion thereof, any right, power or remedy under such Leasehold Mortgage which does not materially conflict with the provisions of this Lease in the event of a default under any Leasehold Mortgage.

(e) During the period that a Mortgagee shall be in possession of the Premises and/or Project and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the Rent specified in this Lease and other charges of whatsoever nature payable by Tenant hereunder which have been accrued and are unpaid and which will thereafter accrue during said period, to the extent the amount of such charges are known or reasonably ascertainable by the Mortgagee. It shall be an Event of Default if, following the acquisition of Tenant's leasehold estate by the Mortgagee or its designee, the Mortgagee or party acquiring title to Tenant's leasehold estate fails to commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion, except (i) such defaults which cannot in the exercise of reasonable diligence be cured or performed by the Mortgagee or party

acquiring title to Tenant's leasehold estate, and (ii) non-monetary defaults requiring performance of some affirmative obligations susceptible of cure by Mortgagee upon obtaining possession of the Premises and which the Mortgagee confirms in writing to landlord that the Mortgagee will require its successor to accomplish and which in all events shall be accomplished by the Mortgagee or its successor within ninety (90) calendar days following the obtaining of possession of the Premises by Mortgagee or its designee. Any default that cannot reasonably be cured by the Mortgagee or party acquiring title to Tenant's leasehold estate shall be, and shall be deemed to have been, waived by Landlord (but only with respect to the Mortgagee or other party acquiring said title) upon completion of the foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser at the foreclosure sale or who otherwise acquires Tenant's interest in the Premises. The Parties agree that the foregoing provision shall not be deemed or construed to preclude Landlord from exercising any of Landlord's rights or remedies against Tenant personally if and to the extent otherwise permitted under the terms of this Lease.

(f) Nothing herein shall preclude Landlord from exercising any of its rights or remedies with respect to any other default by Tenant during any period of any such forbearance, subject to the rights of any Mortgagee as herein provided.

(g) All notices by Landlord to a Mortgagee shall be given, in the manner provided under Section 19.5, addressed to the Mortgagee at the address last specified to Landlord by the Mortgagee, and any such notice shall be deemed to have been given, served, and received by the Mortgagee three (3) calendar days after mailing of said notice by Landlord.

(h) The Mortgagee whose Leasehold Mortgage would be senior in priority if there were a foreclosure shall prevail if two (2) or more Mortgagees exercise their rights hereunder, and there is a conflict which renders it impossible to comply with all such requests. Any Mortgagee who pays any Rent or other sums due hereunder which relate to periods other than during its actual ownership of the leasehold estate shall be subrogated to any and all rights which may be asserted against Tenant by Landlord with respect to such period of time.

(i) Landlord shall have no obligation to pay any fees and expenses of any kind or description incurred in connection with the procurement of any Leasehold Mortgages pursuant to this Article XIV.

(j) Landlord agrees to include in this Lease by mutually agreed amendment from time-to-time any provision which may reasonably be requested by any proposed lender for the purpose of implementing the Mortgagee-protection provisions contained in this Lease and allowing such lender reasonable means to protect or preserve the lien of the leasehold mortgage on the occurrence of a default under the terms of this Lease; provided, however, that such amendment shall not have an adverse effect on Landlord's rights or obligations under this Lease. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment agreed to by Landlord, acting within Landlord's sole and absolute discretion.

All amendments or modifications to, or any voluntary termination or cancellation of (other than as expressly permitted hereunder), this Lease shall require the written approval of any Mortgagee (if its respective Mortgage so requires).

14.3 Nonsubordination of Fee. In no event will Landlord be required to subordinate or subject its fee interest in the Premises to the lien of any Mortgagee or any other person or entity providing financing to Tenant for any purpose. All such financing shall be the sole responsibility of Tenant.

14.4 Equipment Financing. Landlord understands that Tenant may lease and/or purchase with purchase money financing certain Furnishings, which may be installed in or used in connection with the Project from time-to-time during the Term. Landlord hereby agrees, upon written request of Tenant, to release, waive or subordinate its landlord's lien to such equipment leases, retained title contracts, security interest or other forms of purchase money financing and to execute documents, in form and substance reasonably satisfactory to Landlord, that permit the equipment lessors, title and lien holders, as applicable, the right to enter the Premises for the sole purpose of exercising their rights to the Furnishings subject to such leases, retained title contracts, security interest or other forms of purchase money financing.

14.5 Cross Collateralization of Premises. Tenant shall not assign, hypothecate, Mortgage, pledge or alienate Tenant's leasehold estate and rights hereunder (including Tenant's interest in any subleases, license agreements and concession agreements) to a lender as security for the payment of indebtedness or Tenant which mortgage, pledge or other security agreement does not provide for the full release and reconveyance of such mortgage pledge or security interest upon payment of a sum equal to the maximum amount of financing permitted by Section 14.1 (less any principal sums paid under the loan agreements and plus any sum expended by the Mortgagee in the exercise of its rights under the loan agreements).

ARTICLE XV WASTE AND GOVERNMENTAL REGULATIONS

15.1 Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste or nuisance in or upon the Project or the Premises. This provision shall in no way preclude or restrict Tenant in the lawful performance of its rights to operate the Project pursuant to the provisions of this Lease.

15.2 Governmental Regulations. Tenant, at its sole cost and expense, shall comply with and observe, without exception, all of the laws, rules, ordinances, orders, regulations and requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, having jurisdiction over the Premises, the Project and/or the operations to be conducted by Tenant thereon or thereat. Without limiting the generality of the foregoing, Tenant shall obtain all permits and licenses (such as building permits and operating permits and licenses) as may be required by any such governmental authorities and shall make such alterations, changes, additions or improvements in the Premises, the Project and its operations thereat as may be required by any such governmental authorities (and approved by Landlord), including structural changes. Landlord shall cooperate to the extent reasonably necessary to permit Tenant to comply with the provisions of this Section 15.2 within the time periods necessary for such compliance.

15.3 Tenant's Right to Contest Governmental Regulations. Tenant shall have the right to contest by appropriate proceedings conducted in good faith and with reasonable diligence, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 15.2. Tenant may delay compliance with any law, ordinance, rule regulation or requirement until the final determination of such proceeding if compliance may legally be delayed pending the prosecution of any proceeding with the incurrence of any lien, charge or liability of any kind against the Premises or Tenant's interest therein and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith. Even if such lien, charge or civil liability would be incurred by reason of any such delay, Tenant may, following reasonable notice to Landlord, contest as aforesaid and delay as aforesaid, provided that such contest or delay does not subject Landlord to criminal liability, damages or expense, and provided that Tenant furnishes Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay. Landlord shall not be required to join in any proceedings referred to in this Section 15.3 unless the provisions of any applicable law, rule or regulation then in effect shall require that such proceedings be brought by and/or in the name of Landlord or shall otherwise require that Landlord be a party thereto, in which event Landlord shall join in the proceeding or permit the same to be brought in its name, provided Tenant shall pay all expenses in connection therewith. Tenant shall not contest the validity or application of any use permits or approvals affecting the Premises and in existence as of the date of this Lease.

ARTICLE XVI EMINENT DOMAIN

16.1 Lease Governs. Subject to the rights of any Mortgagee, the rights and obligations of the Parties with respect to any Award, as defined in Section 16.5, shall be as provided in this Article XVI if there is any Taking during the Term of this Lease.

16.2 Termination of Lease. This Lease shall terminate effective on the date of surrender of possession of the Premises, or so much thereof or interest therein as has been taken, to the condemning authority in the event of a Total Taking. Tenant shall continue to pay all Rent due hereunder and, in all respects, keep, observe and perform all of the terms, covenants and conditions of this Lease to be kept, observed and performed by Tenant until the date of such termination.

16.3 Partial Talking; Rent Abatement. If there is a Partial Taking, this Lease shall remain in full force and effect with respect to that portion of the Premises not taken, and a fair and equitable proportion of the Rent shall be abated according to the nature and extent of the Partial Taking, and the duration and extent of the interruption of Tenant's operations due to such taking and restoration of the Project.

16.4 Partial Taking; Restoration. If there is a Partial Taking, Tenant may, at its sole cost and expense, whether or not the condemnation award on account of such Taking shall be sufficient for the purpose, promptly commence and diligently proceed to effect restoration of the Project on the remaining portion of the Premises as nearly as possible to their value, condition and character immediately prior to such Taking.

16.5 Distribution of Award. All awards and damages received on account of any Taking, whether partial or total (including all amounts in respect to both the Premises, improvements constructed thereon, and personal property located thereon or thereat), including

interest received, if any, whether such award or damages are paid in respect to the Taking of the fee or leasehold interest in the Premises (hereinafter collectively referred to as the "**Award**"), shall be paid promptly by the person(s) receiving the same to an escrow agent mutually acceptable to Landlord, Tenant, and any Mortgagee, to be released as hereinafter provided upon appropriate instruction from the parties hereto. The Award may be paid to a Mortgagee who will then act as the escrow agent if such Mortgagee agrees in writing for express benefit of Landlord and Tenant to be bound by the terms of Sections 16.6 and 16.8 below. The Mortgagee whose lien shall have the highest priority shall be selected to act as escrow agent if there shall be more than one (1) Mortgagee who shall so agree in writing.

16.6 Allocation of Award; Partial Taking. Any Award in a Partial Taking shall be distributed by the aforementioned escrow agent in the following order of priority:

(a) First, to Landlord, Tenant and all Mortgagees, as herein provided, as reimbursement for all costs and expenses incurred in the condemnation proceeding unless Landlord is the condemning authority;

(b) Second, to Tenant, as reimbursement for the costs and expenses or restoration of the Project, as such costs and expenses are incurred by Tenant;

(c) Third, to the Mortgagees, in the order of their respective priorities, such sum as is necessary to reduce the aggregate principal amount of the liens thereof unless and to the extent such liens are to remain against the Leasehold; and

(d) Fourth, if Landlord and Tenant are unable to agree upon the allocation of the balance of the Award, if any, it shall be deposited by said escrow agent into a court of competent jurisdiction to be equitably allocated between Landlord and Tenant based on the respective interests of Landlord and Tenant in the balance of said Award as determined by said court after taking into account the interests of Landlord and Tenant previously compensated in the distributions provided for in (b) and (c) of this Section 16.6.

16.7 Allocation of Award; Temporary Taking. In the event of a Taking for temporary use or occupancy, this Lease shall continue in full force and effect without reduction or abatement of any Rent payable hereunder, and Tenant shall be entitled to claim, recover and retain any Award made on account of such Temporary Taking remaining after paying the reasonable costs and expenses of Tenant incurred in collecting such Award; provided, however, that if the period of such Temporary Taking extends beyond the Term of this Lease, such Award shall be apportioned between Landlord and Tenant as of the date of expiration of the Term of this Lease.

16.8 Allocation of Award; Total Taking. Any Award in a Total Taking shall be distributed by the aforementioned escrow agent in the following priority:

(a) First, to Landlord, Tenant and all Mortgagees, as herein provided, as reimbursement for all costs and expenses incurred by each of them in the collection of the Award, including fees and expenses incurred in the condemnation proceeding;

(b) Second, to the Mortgagees, in the order of their respective priorities, such sum as is necessary to satisfy and discharge the liens thereof; and

(c) Third, if Landlord and Tenant are unable to agree upon the allocation of the balance of the Award, if any, it shall be deposited by said escrow agent into a court of competent jurisdiction to be equitably allocated between Landlord and Tenant based on the respective interests of Landlord and Tenant in the balance of said Award as determined by said court after taking into account the interests of Landlord and Tenant previously compensated in the distribution provided for in Section 16.8(a).

The determination of the value of Tenant's and Landlord's respective interests in the Project and the Premises for the purposes of Section 16.8(c) shall be made as if the Lease were to continue in full force and effect until the Expiration Date.

16.9 Conduct of Proceedings. Subject to the rights of any Mortgagee to participate therein, Tenant and Landlord shall jointly commence, appear in and prosecute any action or proceeding involving a Taking of the Premises, or any part thereof or interest therein, by condemnation or under the power of eminent domain, or otherwise and shall jointly make any compromise or settlement in connection therewith.

16.10 Notices. Upon any Party receiving notice of or becoming aware of any condemnation proceedings, such Party shall promptly give written notice to the other Party in the manner specified in Section 19.5 below.

ARTICLE XVII DEFAULT PROVISIONS

17.1 Events of Default. The occurrence of any one (1) or more of the following shall constitute a default by Tenant under this Lease:

(a) Failure of Tenant to pay any Rent or Additional Rent due hereunder within three (3) calendar days after written notice from Landlord; provided however, that any such notice shall be in lieu of, and not in addition to, any notice required by the Code of Civil Procedure of the State of California, as amended from time-to-time; or

(b) Any failure by Tenant to perform any of the other terms, conditions or covenants of this Lease to be observed or performed by Tenant other than a failure to pay any Rent or Additional Rent due hereunder within thirty (30) calendar days after written notice from Landlord; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required by the Code of Civil Procedure of the State of California, as amended from time-to-time. A default by Tenant described in this Section 17.1(b) which is not reasonably susceptible of cure within thirty (30) calendar days after receipt of Landlord's notice of default shall be deemed cured if Tenant commences to cure said default within thirty (30) calendar days of receipt of Landlord's notice of default and Tenant, in fact, diligently proceeds to cure said default and does cure said default within a reasonable period of time thereafter; or

(c) Tenant becoming insolvent or makes a filing in any debtor proceeding, or should any adjudications in bankruptcy be rendered against Tenant, or should Tenant take or have taken against it, in any court pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and should the same not be discharged within one hundred twenty (120) calendar days thereafter; or

(d) Tenant making an assignment for the benefit of creditors, or petition for or enter into an arrangement; or

(e) The abandonment or vacation of the Project by Tenant for a period of fifteen (15) consecutive calendar days after written notice to Tenant (except for such abandonment or vacation attributable to any event of *Force Majeure* or by the remodeling, reconstruction, alteration or repair of the Project); or

(f) The appointment of a trustee or receiver to take possession of substantially all of the assets of Tenant located at the Premises where possession is not restored within one hundred twenty (120) calendar days; or

(g) Tenant permitting this Lease or any substantial portion of its property on the Premises or any portion of its interest in the Premises or the Project to be taken under any writ of attachment or execution, and should the same not be discharged within ninety (90) calendar days thereafter.

17.2 Remedies Upon Default.

(a) Except as provided in Section 17.4 and subject to the rights of Mortgagees, should there be an Event of Default by Tenant under this Lease and should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord shall be entitled to proceed in accordance with and recover the amounts specified in California Civil Code Sections 1951.4. Landlord may either terminate this Lease, or it may from time-to-time without terminating the Lease, make such alterations and repairs as may be necessary to continue operation of business at the Premises, and relet the Premises, or any part thereof, for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rent and charges and upon such terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all Rent received by Landlord shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees and expenses and of costs of such alternations and repairs; third, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Tenant shall pay any such deficiency to Landlord if such Rent received from such reletting during any month is less than that which would be due during that month from Tenant hereunder. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time elect to terminate this Lease for such Event of Default. Should Landlord at any time terminate this Lease for any such Event of Default, in addition to any other remedies it may have, it may recover from Tenant all damages it may reasonably incur by reason of such Event of Default, including the cost of recovering the Premises and its reasonable attorneys' fees and expenses.

(b) Following an Event of Default by tenant hereunder, Tenant shall promptly deliver to Landlord all plans and specifications and all working drawings prepared in connection with the development or remodeling of the Project not previously delivered to Landlord. Tenant's obligations under Section 17.2(b) shall survive the expiration or earlier termination of this Lease.

17.3 Landlord Acting for Tenant's Account. If Tenant shall fail in the performance of any provision, covenant or condition on its part to be performed under this Lease, Landlord may, at its option, any time after the expiration of any applicable notice and cure period granted to Tenant and Mortgagees under this Lease (unless Landlord reasonably believes there to be an emergency threatening damage to Landlord's interest in the Premises or the Project, in which event no notice is required and Landlord may act immediately), perform the same for the account of, and at the expense of Tenant. The sums so paid or reasonably incurred by Landlord, together with interest at the default Rate, costs and damages shall be due from and paid by Tenant, as Additional Rental, on demand.

17.4 Limited Liability; Non-Recourse Ground Lease.

(a) Notwithstanding anything to the contrary contained in this Lease, including without limitation the remedies of Landlord contained in this Article XVII, except as otherwise provided in Subsection (b) below, if at any time Tenant shall fail to perform or pay any covenant or obligation on its part to be performed or paid hereunder, and as a consequence thereof, Landlord or its successors and assigns shall obtain a money judgment against Tenant, Landlord agrees to look solely to the interest of Tenant in the Project for the satisfaction of such judgment, and if such interest is insufficient to satisfy the judgment amount, Landlord shall have no right of action nor shall Tenant be liable for any insufficiency. Notwithstanding any provision to the contrary in this Section, the City fully retains the right to seek and obtain a monetary judgment against, without limitation: (a) The Tenant's agents, contractors, and subcontractors; (b) Tenant's employees acting outside the scope of their employment; (c) The Tenant's insurance carriers; (d) The Tenant's third-party contractors (including independent contractors); or (e) Any unaffiliated individual, entity, or third party, for any costs, expenses, damages, or liabilities arising from or connected with this Lease or the Premises.

(b) Notwithstanding the foregoing provisions of Subsection (a) above, nothing herein is intended to relieve Tenant from the performance of any of its obligations hereunder, but rather to limit Tenant's liabilities as aforesaid. Nothing in Subsection (a) shall be deemed to prejudice the rights of Landlord against Tenant, and Tenant shall be fully liable to Landlord for damages suffered by Landlord, to the extent provided by law:

(i) as a result of fraud, misrepresentation or gross negligence by Tenant;

(ii) as the result of the retention of any rental or other income arising with respect to the Premises which is collected by Tenant after Landlord has given notice to Tenant that it is in default under the Lease (to the full extent of such rental or other income collected by Tenant after the giving of any such notice);

(iii) for the fair market value as of the time of giving of any notice referred to in (ii) hereinabove of any personal property of fixtures located, attached and/or used in connection with the Project which are removed or disposed of by Tenant; and

(iv) as the result of the misapplication of any proceeds under any insurance policies, condemnation awards or settlements attributable to all or any portion of the Premises or Project.

ARTICLE XVIII LANDLORD'S ACCESS

18.1 Landlord's Right of Access. Upon reasonable prior notice to Tenant, Landlord and Landlord's agents shall have the right to enter the Premises and/or the Project during regular business hours for the purpose of determining Tenant's compliance with any provision, covenant or condition on Tenant's part to be performed under this Lease; provided, however, that Landlord shall not interfere with the normal conduct of Tenant's business on the Premises. Tenant agrees to have available to Landlord at reasonable times and upon reasonable notice a representative who may accompany Landlord's representative in the exercise by Landlord of its right of entry and access. Landlord agrees to indemnify, defend and hold Tenant harmless from and against all losses, costs, damages, or expenses incurred for any portion of a claim attributable to the negligence or willful misconduct of Landlord or its employees, as provided under Section 18.1. Landlord further agrees to defend Tenant under section 18.1 (with counsel reasonably acceptable to Tenant), if the preponderance of the evidence demonstrates that the claim arose from the active negligence or willful misconduct of Landlord or its employees.

ARTICLE XIX MISCELLANEOUS

19.1 Waiver. The waiver by either Landlord or Tenant 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 subsequent acceptance of any Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord or Tenant, unless such waiver is in writing signed by the Party against whom such waiver is asserted.

19.2 Entire Lease. This Lease sets forth all the covenants, promises, conditions and understandings between Landlord and Tenant, oral or written, relating to the subject matter hereof. No subsequent alterations, amendments, changes or additions to this Lease shall be binding upon Landlord and Tenant unless reduced to a writing, signed by them and approved by the Mortgagees, if and to the extent required under their respective Mortgages. Pursuant to the Beacon Bay Bill (Chapter 74 of Statutes of 1978, as amended), by approval of this form of lease and the range of consideration set forth herein, the State Lands Commission authorizes Landlord and Tenant to enter into written amendments of this Lease, including, but not limited to, an amendment for the purpose of restoring the Term to a full fifty (50) years, provided that the Lease remains in the same form, except for typographical corrections or other non-substantive changes, and Base Rent is increased in accordance with the same methodology as set forth in this Lease, without the need for further review by the State Lands Commission.

19.3 Termination of Existing Lease. Concurrently with execution of this Lease by the Parties, the Existing Lease is hereby terminated; provided, however, that any accrued and

unpaid rental obligations of Tenant thereunder not included in the rental obligations of this Lease shall be immediately due and payable and remain in full force and effect under this Lease.

19.4 Force Majeure. The performance of any act required hereunder shall be excused for the period of any delay, hindrance or prevention of such act due to an event of *Force Majeure* and the period for the performance of any act shall be extended for a period equivalent to the period of such delay. The performance of such act shall be excused if either party shall be indefinitely prevented from the performance of any act required hereunder by reason of such event of *Force Majeure*. No event of *Force Majeure* shall excuse the timely payment of money when due hereunder except as otherwise expressly provided in this Lease.

19.5 Notices. Any notice, request, demand, instruction or other communication to be given to either Party hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, twenty-four (24) hours after deposited with a reliable overnight carrier, guaranteeing next day delivery, postage prepaid, addressed as set forth below, or forty-eight (48) hours after mailed by United States Registered mail, return receipt requested, postage prepaid as follows:

If to Landlord: City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92658
Attention: City Manager

With copy to: City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92658
Attention: City Attorney

If to Tenant: c/o International Bay Clubs, Inc.
1221 West Coast Highway
Newport Beach, California 92663
Attention: General Manager

With copy to: Newport Pacific Law, P.C.
23 Corporate Plaza Drive, Suite 150
Newport Beach, California 92660

Eagle Four Partners
1400 Newport Center Drive, Suite 230
Newport Beach, California 92660
Attention: Kory J. Kramer

And: Tenant's Mortgagee(s) provided Landlord has received
Written notice of and the address of such Mortgagee(s)

Any notice party may change its address for purposes of receiving notice hereunder by giving written notice to the other party pursuant to the provisions hereof. Refusal to accept delivery of any notice, demand, instruction or other communication shall be deemed to be delivery thereof. In the event of a partial assignment of either Landlord's or Tenant's interest under this Lease, no notice or payment shall be given or made to any such partial assignee, but only to one (1) person,

firm or corporation as shall have been duly designated by an instrument executed and acknowledged by all such partial assignees and a duplicate original shall have been served upon the other party hereto. Notice or payment shall be given or made only to the last assignee of this Lease as a whole or the one (1) person, firm or corporation named in the most recent designation duly made and served. Neither Tenant nor Landlord shall have any liability to see to the proper distribution of any notice or payment so made to the other party.

19.6 Captions and Section Numbers. The captions, section numbers, article numbers and index appearing in this Lease are inserted only as a matter of convenience, and in no way define, limit, construe or describe the scope or intent of such section or article, nor in any way affect this Lease.

19.7 Construction of Language. The language in all parts of this Lease shall be construed simply, according to its fair meaning, and not strictly for or against either Landlord or Tenant. The term "permit" shall be interpreted to include "cause to be permitted or suffered to be permitted," and the term "include" shall be interpreted not to imply any limitation on the more general preceding provision, unless in each instance otherwise expressly provided in this Lease.

19.8 Broker's Commission. In connection with the transaction contemplated by this Lease, Landlord and Tenant each represents to the other that it has not entered into any agreement or incurred any obligation which might result in the obligation to pay a brokerage commission or finder's fee with respect to this transaction. Landlord and Tenant each agree to indemnify, defend, protect and hold the other harmless from and against any and all losses, claims, damages, costs or expenses (including attorneys' fees) which the other may incur as a result of any claim made by any person to a right to brokerage commission or finder's fee in connection with this transaction to the extent such claim is based, or purportedly based, on the acts or omissions of Landlord or Tenant, as the case may be.

19.9 Limitation of Landlord's Obligations. Landlord shall not be called upon or required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Premises.

19.10 Landlord's or Tenant's Discretion. Landlord or Tenant, as applicable, shall not have a right to unreasonably withhold, condition or delay such consent or approval if Landlord's or Tenant's consent or approval is required hereunder unless the provision of the Lease states that such approval or consent is in the sole or absolute discretion of the applicable Party. Whenever Landlord's or Tenant's approval or consent is required under this Lease, Landlord or Tenant, as applicable, shall be deemed to have granted such approval or consent if Landlord or Tenant, as applicable, has failed to respond to such request within the period of time expressly given such Party to respond under the applicable section hereof or if no deadline for a response is given under the applicable section, within thirty (30) calendar days of its receipt of such written request delivered in accordance with the terms of Section 19.6.

19.11 Interest. Interest shall accrue at the Lease Interest Rate on any sums owed by Tenant to Landlord, or vice versa, starting from the first date of delinquency and continuing until the full amount including interest is paid; provided, however, that if the due date for any payment of Rent or other amounts due hereunder does not fall on a Business Day, then the due date for such payment shall be extended until the first Business Day following such date.

19.12 Successors. Except as herein otherwise provided the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of Landlord and Tenant.

19.13 Applicable Law. This Lease and all provisions hereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws of the State of California without giving effect to conflict of law's provisions. Venue shall be in Orange County, California.

19.14 Landlord's and Tenant's Rights are Cumulative. The rights and remedies conferred upon both Landlord and Tenant in this Lease and by law are cumulative.

19.15 Saving Clause. If any provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by any Party hereunder or substantially increase the burden on any Party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Lease.

19.16 Attorneys' Fees and Expenses. In the event of any litigation or other action arising under this Lease the prevailing Party shall not be entitled to attorneys' fees.

19.17 Injunctive Relief. In addition to any remedies expressly mentioned in this Lease, the other Party shall have the right of injunction and the right to invoke any remedy allowed at law or in equity if there is any breach or threatened breach by either Party of any of the covenants or provisions of this Lease.

19.18 Appraisal. If an appraisal is required under the terms of this Lease for the purposes of determining "fair market value," unless otherwise specified herein, such appraisal shall be determined by the appraisal by three (3) disinterested real estate appraisers, each with at least ten (10) years' experience in the appraisal of similar property interests, one (1) appraiser being chosen by Landlord, one (1) appraiser by Tenant, and the third appraiser by the other two (2) appraisers. The average of the two (2) appraisals closest in value shall be deemed the "fair market value." Landlord shall pay the costs of the appraiser selected by Landlord, Tenant shall pay the costs of the appraiser selected by Tenant, and Landlord and Tenant shall split the costs of the third appraiser.

19.19 Recording. Landlord and Tenant shall execute for purposes of recordation in the Office of the County Recorder a memorandum or short form of this Lease in the form attached hereto as **Exhibit C**, and incorporated herein by reference. The cost and expenses of recording the memorandum or short form of the Lease shall be borne by the Party asking for the memorandum to be recorded. Each Party agrees that it will not record the Lease in its entirety.

19.20 Incorporation of Preamble, Recitals and Exhibits. The preamble, recitals and exhibits hereto are hereby incorporated into this Lease and made a part hereof.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed and delivered this Lease as of the day and year first written above.

LANDLORD:

CITY OF NEWPORT BEACH,
a California municipal corporation

By: _____
Lauren Kleiman
Mayor

Attest:

Lena Shumway
City Clerk

Approved as to Form:

CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

TENANT:

BALBOA BAY CLUB VENTURES, LLC,
a California limited liability company

By: _____
Kevin C. Martin
President

By: _____
Todd M. Pickup
Secretary

[END OF SIGNATURES]

EXHIBIT A

LEGAL DESCRIPTION & PREMISES DEPICTION

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF NEWPORT BEACH, DESCRIBED AS FOLLOWS;

PARCEL 1:

THAT PORTION OF LOT 171, BLOCK 54 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, AND THAT PORTION OF THE NAVIGABLE TIDE AND SUBMERGED LANDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDING FROM US. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, SAID POINT BEING DISTANCE SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 1498.00 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS, RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, SAID POINT ALSO BEING ON THE SOUTHEASTERLY BOUNDARY LINE OF PARCEL 1, PER A DEED OF TRUST RECORDED MARCH 30, 1966 IN BOOK 7884, PAGE 298 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY OF THE COUNTY RECORDER OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY LINE, THE FOLLOWING COURSES: NORTH 28 DEGREES 58' 53" EAST 130.00 FEET; THENCE NORTH 27 DEGREES 00' 00" WEST 16.66 FEET; THENCE NORTH 28 DEGREES 58' 53" EAST 195.71 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT-OF-WAY OF THE CALIFORNIA STATE.

HIGHWAY ORA-60-B, THENCE LEAVING SAID SOUTHEASTELY BOUNDARY, SOUTH 74 DEGREES 21' 30" EAST ALONG SAID SOUTHWESTERLY LINE, 130.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHLY, HAVING A RADIUS OF 2550.00 FEET; THENCE EASTERLY 715.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16 DEGREES 04' 41" TO AN INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF TRACT NO. 1140, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 36, PAGE 28 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE THENCE SOUTH 28 DEGREES 58' 53" WEST 705.03 FEET TO SAID PIERHEAD LINE; THENCE NORTH 61 DEGREES 01' 07" WEST 776.91 FEET ALONG SAID PIERHEAD LINE, TO THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PERCEL 1: THENCE ALONG SAID PROLONGATION AND SAID SOUTHEASTERLY LINE, NORTH 28 DEGREES 58' 53" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT CERTAIN PARCEL OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE, EXTENDING FROM U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700.00 FEET FROM THE INTERESECCION OF SAID BULKHEAD LINE WITH THE SOUTHWESTELY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE MOST SOUTHERLY CORNER OF LOT H TRACT NO. 919 AS PER MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERLINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2050.00 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27" 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET; THENCE SOUTH 28 DEGREES 50' 53" WEST 195.71 FEET; THENCE SOUTH 27 DEGREES 00' 00" EAST 16.66 FEET; THENCE SOUTH 28 DEGREES 58' 53" WEST 210.00 FEET TO SAID PIERHEAD LINE; THENCE NORTH 61 DEGREES 01' 07" WEST ALONG SAID PIERHEAD LINE, A DISTANCE OF 798.00 FEET TO A POINT WHICH BEARS SOUTH 28 DEGREES 58' 53" WEST 80.00 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 28 DEGREES 58' 53" EAST 80.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT OF BEGINNING BEING AT RIGHT ANGLES TO ENGINEER'S STATION 7+95.46 IN THE CENTERLINE OF SAID HIGHWAY; THENCE SOUTH 15 DEGREES 38' 30" WEST 44.00 FEET; THENCE NORTH 74 DEGREES 21' 30" WEST 34.00 FEET; THENCE NORTH 15 DEGREES 38' 30" EAST TO AN INTERSECTION WITH THE SAID SOUTHERLY LINE OF THE STATE HIGHWAY; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THAT CERTAIN PARCEL OF LAND INCLUDED WITHIN A STRIP OF A LAND 25.00 FEET IN WIDTH, THE NORTHEASTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDING FROM U.S. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE MOST SOUTHERLY CORNER OF LOT H OF TRACT NO. 919, AS PER MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERSINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2050.00 FEET; THENCE SOUTHEASTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27", 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 74 DEGREES 21' 30" EAST 130.08 FEET TO THE BEGINNING OF A CURVE ON SAID SOUTHWESTERLY LINE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2550.00 FEET; THENCE SOUTHEASTERLY 715.56 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 16 DEGREES 04' 40" TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF TRACT NO. 1140, AS PER MAP RECORDED IN BOOK 36, PAGE 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THE SOUTHWESTERLY LINE OF SAID 25.00-FOOT STRIP IS TO BE SHORTENED SO AS TO TERMINATE IN SAID NORTHWESTERLY PROLONGATION AND LENGTHENED SO AS TO TERMINATE ON A LINE WHICH BEARS SOUTH 28 DEGREES 58' 53" WEST FROM THE TRUE POINT OF THE BEGINNING.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR AUTO PARKING PURPOSES OVER THE SOUTHWESTERLY 20.00 FEET OF THE NORTHEASTERLY 45.00 FEET OF THAT CERTAIN PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDED FROM U.S. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700.00 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH

THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE SOUTHERLY CORNER OF LOT H OF TRACT NO. 919, AS SHOWN ON A MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERLINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2050.00 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27", 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 28 DEGREES 58' 53" WEST 195.71 FEET; THENCE SOUTH 27 DEGREES 00' 00" EAST 16.66 FEET; THENCE SOUTH 28 DEGREES 58' 53" WEST 480.00 FEET TO A LINE PARALLEL WITH SOUTHWESTERLY 350.00 FEET FROM SAID BULKHEAD LINE; THENCE SOUTH 61 DEGREES 01' 17" EAST 235.68 FEET ALONG SAID PARALLEL LINE; THENCE NORTH 29 DEGREES 30' 13" EAST 697.99 FEET; THENCE NORTH 11 DEGREES 45' 40" EAST 49.32 FEET TO SAID SOUTHWESTERLY LINE OF THE STATE HIGHWAY, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2,550.00 FEET; THENCE NORTHWESTERLY 118.56 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 2 DEGREES 39' 50" TO THE NORTHWESTERLY TERMINUS THEREOF; THENCE NORTH 74 DEGREES 21' 30" WEST 130.08 FEET TO THE TRUE POINT OF BEGINNING.





EXHIBIT B

VALUATION METHODOLOGY

Sales Comparison Approach:

The sales comparison approach considers that an informed purchaser would pay no more for a property than the cost of acquiring another property with the same utility. It is the process of analyzing sales (or leases) of similar properties, with dates of sale (lease) near in time to the date of valuation in order to derive an indication of the subject property value. This approach is most applicable when an active market provides sufficient quantities of reliable data which can be verified from authoritative sources.

In addition to rental survey information, the sales comparison approach also provides the basis in estimating the underlying land value for the subject property. However, special consideration must be given not only to current market conditions, but also to the tidelands classification of the subject ownership (see Condition of Title). In addition, the lack of recent data tends to limit the overall reliability of the sales comparison approach.

Cost Approach:

Use of the Cost Approach is limited since this appraisal excludes consideration of the existing leasehold improvements. Technically, the cost approach has been utilized in identifying elements of accrued depreciation and determining the necessity for renovation of certain leasehold improvements (see Improvement Description).

Income Approach:

As applicable to an income producing property, the income approach involves a set of procedures utilized to convert the anticipated benefits of net cash flow and property reversion into property value.

In application to the subject appraisal problem, the historical income produced from the various revenue generating sources of the leasehold operation have been processed. This analysis provides the basis for estimates of stabilized income and projecting future income proposed leasehold renovation.

In addition, the residual net operating income provides a basis to measure the appropriate level of land rent applicable to the individual revenue sources.

Return on Asset Value:

Many ground leases provide for rent and/or revaluation of rent to be based upon a percentage of underlying land value. Comparison and measurement of economic rent is typically expressed as an annualized percentage rate. Utilizing rates of return on competitive investment alternatives as applied to the indicated site value (derived from sales comparison and residual analysis) provides an additional measure of economic land rent.

Reconciliation:

The final step in the valuation process involves reconciling the various techniques and methods to a final conclusion of fair market rental value. The mixture of uses comprising the highest and best use of the site require rental estimates for various use classifications.

For this reason and depending upon the availability and accuracy of applicable data, certain rent categories may be best related to the survey data of the sales comparison approach while other categories may be more accurately estimated based upon the residual analysis of the income approach. The return on asset value provides a check to the cumulative rent generated from the various categories.

EXHIBIT C
MEMORANDUM OF GROUND LEASE

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Newport Beach
100 Civic Center Drive
P.O. Box 1768
Newport Beach, California 92658-8915
Attn: City Clerk

(Exempt from Recording Fees Pursuant to Cal. Gov. § 27383)

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GROUND LEASE

This Memorandum of Ground Lease ("Memorandum") is entered into and effective as of _____, _____, ("Commencement Date"), by and between **THE CITY OF NEWPORT BEACH**, a charter city and California municipal corporation ("Landlord"), and **BALBOA BAY CLUB VENTURES, LLC**, a California limited liability company ("**Tenant**").

RECITALS

- A. Landlord and Tenant have entered into that certain Ground Lease ("**Lease**") dated as of the Commencement Date relating to certain real property located in the City of Newport Beach, County of Orange, State of California described more particularly on **Exhibit A** attached hereto and by this reference made a part hereof ("**Premises**") Landlord and Tenant each desires to execute this Memorandum for recordation in the real property records of the County of Orange in order to memorialize the existence of the Lease.

NOW THEREFORE, with reference to the foregoing recital the parties hereto agree as follows:

1. **Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Premises, on the terms and conditions set forth in the Lease.
2. **Term.** The term of the Lease shall be for a period of fifty (50) years commencing upon the Commencement Date, unless sooner terminated pursuant to the provisions of the Lease.
3. **Incorporation of Lease.** This instrument is a memorandum of the Lease and is subject to all of the terms and conditions of the Lease. The terms of the Lease shall prevail if there is any inconsistency between the terms of this Memorandum and the terms of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date first set forth above.

LANDLORD:

CITY OF NEWPORT BEACH,
a California municipal corporation

By: _____
Joe Stapleton
Mayor

Attest:

Leilani I. Brown
City Clerk

Approved as to Form:

CITY ATTORNEY'S OFFICE

Aaron C. Harp
City Attorney

TENANT:

BALBOA BAY CLUB VENTURES, LLC,
a California limited liability company

By: _____
Kevin C. Martin
President

By: _____
Todd M. Pickup
Secretary

Exhibit A

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF NEWPORT BEACH, DESCRIBED AS FOLLOWS;

PARCEL 1:

THAT PORTION OF LOT 171, BLOCK 54 OF IRVINE'S SUBDIVISION, AS SHOWN ON A MAP RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, AND THAT PORTION OF THE NAVIGABLE TIDE AND SUBMERGED LANDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDING FROM U.S. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, SAID POINT BEING DISTANCE SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 1498.00 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS, RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, SAID POINT ALSO BEING ON THE SOUTHEASTERLY BOUNDARY LINE OF PARCEL 1, PER A DEED OF TRUST RECORDED MARCH 30, 1966 IN BOOK 7884, PAGE 298 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY OF THE COUNTY RECORDER OF SAID ORANGE COUNTY; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY LINE, THE FOLLOWING COURSES: NORTH 28 DEGREES 58' 53" EAST 130.00 FEET; THENCE NORTH 27 DEGREES 00' 00" WEST 16.66 FEET; THENCE NORTH 28 DEGREES 58' 53" EAST 195.71 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT-OF-WAY OF THE CALIFORNIA STATE.

HIGHWAY ORA-60-B, THENCE LEAVING SAID SOUTHEASTELY BOUNDARY, SOUTH 74 DEGREES 21' 30" EAST ALONG SAID SOUTHWESTERLY LINE, 130.08 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHL, HAVING A RADIUS OF 2550.00 FEET; THENCE EASTERLY 715.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16 DEGREES 04' 41" TO AN INTERSECTION WITH THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF TRACT NO. 1140, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 36, PAGE 28 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE THENCE SOUTH 28 DEGREES 58' 53" WEST 705.03 FEET TO SAID PIERHEAD LINE; THENCE NORTH 61 DEGREES 01' 07" WEST 776.91 FEET ALONG SAID PIERHEAD LINE, TO THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PERCEL 1: THENCE ALONG SAID PROLONGATION AND SAID SOUTHEASTERLY LINE, NORTH 28 DEGREES 58' 53" EAST 80.00 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THAT CERTAIN PARCEL OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE, EXTENDING FROM U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700.00 FEET FROM THE INTERESECCION OF SAID BULKHEAD LINE WITH THE SOUTHWESTELY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE MOST SOUTHERLY CORNER OF LOT H TRACT NO. 919 AS PER MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERLINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2050.00 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27" 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET; THENCE SOUTH 28 DEGREES 50' 53" WEST 195.71 FEET; THENCE SOUTH 27 DEGREES 00' 00" EAST 16.66 FEET; THENCE SOUTH 28 DEGREES 58' 53" WEST 210.00 FEET TO SAID PIERHEAD LINE; THENCE NORTH 61 DEGREES 01' 07" WEST ALONG SAID PIERHEAD LINE, A DISTANCE OF 798.00 FEET TO A POINT WHICH BEARS SOUTH 28 DEGREES 58' 53" WEST 80.00 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 28 DEGREES 58' 53" EAST 80.00 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT OF BEGINNING BEING AT RIGHT ANGLES TO ENGINEER'S STATION 7+95.46 IN THE CENTERLINE OF SAID HIGHWAY; THENCE SOUTH 15 DEGREES 38' 30" WEST 44.00 FEET; THENCE NORTH 74 DEGREES 21' 30" WEST 34.00 FEET; THENCE NORTH 15 DEGREES 38' 30" EAST TO AN INTERSECTION WITH THE SAID SOUTHERLY LINE OF THE STATE HIGHWAY; THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THAT CERTAIN PARCEL OF LAND INCLUDED WITHIN A STRIP OF A LAND 25.00 FEET IN WIDTH, THE NORTHEASTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDING FROM U.S. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE MOST SOUTHERLY CORNER OF LOT H OF TRACT NO. 919, AS PER MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERSINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIOUS OF 2050.00 FEET; THENCE SOUTHEASTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27", 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 74 DEGREES 21' 30" EAST 130.08 FEET TO THE BEGINNING OF A CURVE ON SAID SOUTHWESTERLY LINE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2550.00 FEET; THENCE SOUTHEASTERLY 715.56 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 16 DEGREES 04' 40" TO THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF TRACT NO. 1140, AS PER MAP RECORDED IN BOOK 36, PAGE 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THE SOUTHWESTERLY LINE OF SAID 25.00-FOOT STRIP IS TO BE SHORTENED SO AS TO TERMINATE IN SAID NORTHWESTERLY PROLONGATION AND LENGTHENED SO AS TO TERMINATE ON A LINE WHICH BEARS SOUTH 28 DEGREES 58' 53" WEST FROM THE TRUE POINT OF THE BEGINNING.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR AUTO PARKING PURPOSES OVER THE SOUTHWESTERLY 20.00 FEET OF THE NORTHEASTERLY 45.00 FEET OF THAT CERTAIN PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE U.S. BULKHEAD LINE EXTENDED FROM U.S. BULKHEAD STATION NO. 129 TO U.S. BULKHEAD STATION NO. 130, AS SAID BULKHEAD LINE AND BULKHEAD STATIONS, INCLUDING THE PIERHEAD LINES AND STATIONS, SAID PIERHEAD LINES BEING PARALLEL WITH AND 80 FEET BAYWARD OF SAID BULKHEAD LINES, ARE LAID OUT AND SHOWN ON A MAP OF NEWPORT BAY, CALIFORNIA, SHOWING HARBOR LINES APPROVED BY THE WAR DEPARTMENT, JANUARY 18, 1917, WHICH SAID POINT IS DISTANT SOUTH 61 DEGREES 01' 07" EAST, MEASURED ALONG SAID BULKHEAD LINE, 700.00 FEET FROM THE INTERSECTION OF SAID BULKHEAD LINE WITH THE SOUTHWESTERLY PROLONGATION OF THE CENTERLINE OF IRVINE AVENUE, AS

SHOWN ON A MAP OF FIRST ADDITION TO NEWPORT HEIGHTS RECORDED IN BOOK 4, PAGE 94 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT OF INTERSECTION BEING THE SOUTHERLY CORNER OF LOT H OF TRACT NO. 919, AS SHOWN ON A MAP RECORDED IN BOOK 29, PAGES 31 TO 34 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 28 DEGREES 58' 53" EAST 154.19 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY ORA-60-B, SAID POINT BEING RADIAL TO ENGINEER'S STATION 6+56.15 IN THE CENTERLINE OF SAID HIGHWAY, SAID RADIAL BEARS NORTH 19 DEGREES 37' 57" EAST FROM SAID POINT, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2050.00 FEET; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE, THROUGH A CENTRAL ANGLE OF 3 DEGREES 59' 27", 142.79 FEET TO A TANGENT LINE; THENCE SOUTH 74 DEGREES 21' 30" EAST ALONG SAID TANGENT LINE AND SAID SOUTHWESTERLY LINE, 662.08 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 28 DEGREES 58' 53" WEST 195.71 FEET; THENCE SOUTH 27 DEGREES 00' 00" EAST 16.66 FEET; THENCE SOUTH 28 DEGREES 58' 53" WEST 480.00 FEET TO A LINE PARALLEL WITH SOUTHWESTERLY 350.00 FEET FROM SAID BULKHEAD LINE; THENCE SOUTH 61 DEGREES 01' 17" EAST 235.68 FEET ALONG SAID PARALLEL LINE; THENCE NORTH 29 DEGREES 30' 13" EAST 697.99 FEET; THENCE NORTH 11 DEGREES 45' 40" EAST 49.32 FEET TO SAID SOUTHWESTERLY LINE OF THE STATE HIGHWAY, SAID SOUTHWESTERLY LINE BEING A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 2,550.00 FEET; THENCE NORTHWESTERLY 118.56 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 2 DEGREES 39' 50" TO THE NORTHWESTERLY TERMINUS THEREOF; THENCE NORTH 74 DEGREES 21' 30" WEST 130.08 FEET TO THE TRUE POINT OF BEGINNING.





ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
(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)

ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
(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.

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Signature _____ (Seal)

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