

**DUPLICATE**



**CITY OF SAN DIEGO**

**PERCENTAGE LEASE AND LICENSE  
AGREEMENT**

***BY AND BETWEEN***

**THE CITY OF SAN DIEGO,  
A CALIFORNIA MUNICIPAL CORPORATION**

***AND***

**LHO MISSION BAY ROSIE HOTEL, L.P.,  
A Delaware limited partnership**

DOCUMENT NO. **R-311896**  
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SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO**  
**PERCENTAGE LEASE AND LICENSE AGREEMENT**

THIS CITY OF SAN DIEGO PERCENTAGE LEASE AND LICENSE AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership ("LESSEE"), to be effective as of JUL 27 2018, 2018 (the "Effective Date").

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

**RECITALS**

- A. CITY is the owner of that certain real property ("Premises") located in Mission Bay Park in the City of San Diego, County of San Diego, State of California, and as further set forth in Section 1.1, below, with a hotel on the Premises commonly known as the "Hilton San Diego Resort and Spa", and more particularly described as the Premises in **Exhibit A: Legal Description of Premises and License Area** and **Exhibit B: Plat Map of the Premises and License Area**, attached hereto.
- B. CITY is the owner of that certain real property ("License Area") consisting of approximately 0.87 acres of land located in the City of San Diego, County of San Diego, State of California, adjacent to the Premises, and more particularly described as the License Area in **Exhibit A: Legal Description of Premises and License Area** and **Exhibit B: Plat Map of the Premises and License Area**, attached hereto.
- C. The Premises and License Area shall be referred to hereafter collectively as the "Property."
- D. The Premises was leased to the Del E. Webb Mission Bay Hotel Company in 1960 and developed as the "Del Webb's Ocean House." The leasehold was subsequently assigned to the Mears Hotel Company and a new 50-year lease ("the 1965 Lease") with the Mears Hotel Company was approved in 1965.
- E. The Hilton Hotel Corporation became the owner of fifty percent of leasehold interest of the Mears Hotel Company in the 1965 Lease by that Assignment of Fifty Percent (50%) of Leasehold Interest and Consent Assignment dated August 8, 1966.
- F. The 1965 Lease was terminated and replaced by that certain City of San Diego Percentage Lease dated September 12, 2000, between CITY and the Hilton San Diego Corporation, filed in the Office of the San Diego City Clerk as document No. RR-293815 ("the 2000 Lease").
- G. LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership, became successor

in interest of the Hilton San Diego Corporation in the 2000 Lease, by that certain Agreement of Purchase and Sale dated for reference purposes October, 31, 2005. Concurrently, LHO Mission Bay Rosie Hotel, L.P. entered into a lease dated October 31, 2005 ("Operating Lease"), with LHO Mission Bay Rosie Lessee, Inc ("SUBLESSEE") which is affiliated with LHO Mission Bay Rosie Hotel, L.P. Also concurrently, SUBLESSEE entered into a management agreement, dated October 31, 2005 ("Management Agreement") with Mission Bay Management LLC. CITY consented to the assignment of the 2000 Lease pursuant to that certain City of San Diego Consent to Assignment of Percentage Lease Agreement dated December 2, 2005.

- H. The 2000 Lease expires on December 31, 2045.
- I. LESSEE requests a license to maintain the License Area as further set forth in this Agreement.
- J. LESSEE has requested this Agreement in part to support LESSEE's investment of approximately Fifteen Million Dollars (\$15,000,000) in upgrades and renovation of the 357 hotel rooms at the Premises.
- K. It is expected that the future upgrades and renovation of the leasehold by LESSEE ("Renovation"), as further set forth in this Agreement, will increase the value of the leasehold, the Premises, and the improvements thereon, to the benefit of tourists, and the CITY, and also will likely reposition the Hilton San Diego Resort and Spa to produce increased rents and Transient Occupancy Tax to CITY by improved utilization of the Premises.
- L. All aspects of Renovation shall conform with all applicable laws, rules, regulations, policies, requirements, and conditions in effect at that time.

All Renovation shall be completed within sixty (60) months of the Effective Date of this Agreement, subject to delays caused by force majeure events. For purposes of this Agreement, "force majeure events" shall mean events beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, inability to obtain necessary governmental permits and approvals (including building permits or certificates of occupancy), unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God.

## **SECTION 1: PREMISES; USES**

- 1.1 **Premises.** CITY leases to LESSEE and LESSEE leases from CITY (the "Lease") all of that CITY-owned real property (the "Premises") located at 1775 E. Mission Bay Drive, San Diego, California 92109, consisting of approximately 17.737 acres of land and 0.526 acres of water in Mission Bay Park and more particularly described in **Exhibit A: Legal Description of Premises and License Area**, and **Exhibit B: Plat Map of the Premises**

**and License Area**, attached hereto, and with a hotel commonly known as the "Hilton San Diego Resort and Spa."

- 1.2 **Supersedes Prior Agreements.** By the execution and delivery of this Agreement, and subject to the approval and authorization of this Agreement by the City Council as set forth in Section 11.1 below, which approval and authorization is attached hereto as **Exhibit D: CITY Council Resolution No. R-311896**, CITY and LESSEE hereby terminate the 2000 Lease as of the Effective Date of this Agreement. It is mutually agreed that this Agreement shall supersede any and all prior agreements between the parties, and their predecessors in interest, related to all or any portion of the Premises and License Area. The 2000 Lease shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.
- 1.3 **Allowed Uses on the Premises.** LESSEE may only use the Premises for the following purposes (the "Allowed Uses") in compliance with all laws, rules and regulations of competent governmental authority: (a) the operation, maintenance of a resort hotel and spa, including hotel banquet facilities; one or more restaurants; one or more cocktail lounges, coffee shops; lobby shops for the sale of clothing, jewelry, novelties, sundries and personal services such as hairstyling; snack bars; bicycle rentals; swimming pools; cabanas; boat docks and boat rentals; playground areas; administrative facilities and parking for use of LESSEE'S guests, licensees, and the general public; (b) other services and uses which are ancillary to and compatible with the uses set forth in subsection (a) above, including without limitation whirlpool(s), tennis courts and(or) other recreational amenities, telephone service, in-room movie and game rentals, wireless telecommunications equipment, rentals of audio-visual and other meeting/banquet equipment, activities for children and other guests, beverage and snack vending machines, game machines, laundry machines, automated teller machines, catering, and alcoholic beverage service outside of the restaurants and lounges.
- LESSEE is not allowed to use or maintain the Premises for any other purpose whatsoever without CITY's prior written consent in each instance.
- 1.4 **Non-exclusive License.** CITY grants to LESSEE the non-exclusive license ("License"), for the term of this Agreement, to maintain the CITY-owned License Area, for the benefit of the CITY and general public.
- 1.4.1 **License Uses.** The License Area uses ("License Area Uses") shall mean maintenance of the License Area, at LESSEE's sole cost and expense, including any grass cutting and trimming; watering; repairs and servicing of watering facilities such as, but not limited to, sprinkler systems; seeding; sodding; reseeding; fertilizing; landscaping; and any preventive treatments to the License Area, all to CITY's satisfaction. If at any time during the term of this Agreement, LESSEE determines that it no longer wishes to maintain the

License Area, LESSEE shall provide CITY with sixty (60) day prior written notice of such determination and the License shall terminate on the sixtieth (60th) day after CITY's receipt of LESSEE's written notice.

- 1.4.2 **License Not a Lease.** Notwithstanding any provision of this Agreement to the contrary, the License Area is not part of the Premises and the License to use the License Area is not a lease. The License is a license to maintain CITY-owned property, and may be revoked at will by CITY, in its sole discretion, upon sixty (60) days prior written notice to LESSEE. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by LESSEE as a result of such revocation or any termination of the License. LESSEE expressly waives any claim for expense or loss which LESSEE might incur as a result of CITY's revocation or any termination of the License. If the License is revoked or terminated, the Lease of this Agreement shall continue in full force and effect.
- 1.4.3 **No Holdover.** If LESSEE continues to occupy the License Area after the expiration or earlier termination of the License, such occupancy shall neither constitute a renewal or extension of the License, nor give LESSEE any rights in or to the License Area.
- 1.4.4 **Indemnity.** In consideration of the maintenance by LESSEE of the License Area, CITY hereby indemnifies and holds free and harmless LESSEE, its agents, officers and employees from any claims or liabilities for damage to property of any persons whatsoever, and for personal injuries or death of any persons whatsoever, including any costs and expenses incurred by LESSEE on account of any such claims and liabilities arising out of, or alleged to arise out of any act or omission of CITY, its agents, employees or representatives in or about the License Area.
- 1.4.5 **Terms Apply to License Area.** All terms and conditions of this Agreement with regard to the Premises and the Lease that do not conflict with the terms and conditions of this Section 1.4 regarding the License Area shall apply to LESSEE's use and occupancy of the License Area.
- 1.5 **Mission Bay Park Master Plan.** This Agreement is subject to the City of San Diego Mission Bay Park Master Plan Update, adopted August 2, 1994, by City Council Resolutions No's R-284393, R-284399 and R-284400, amended August 1, 1995, by City Council Resolution No. 286199, May 13, 1997, by City Council Resolution No. 288657, July 9, 2002, by City Council Resolution No. 296786, and as may be amended from time to time.
- 1.6 **Business Objective.** LESSEE shall diligently and continually conduct its business on the Premises to maximize "Gross Revenue," as defined in Section 4.2, below.

- 1.7 **Superior Interests.** Subject to LESSEE's Reserved Rights, as defined in this Section 1.7, this Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record ("Superior Interests"). LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such Superior Interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, Superior Interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the Superior Interest.

Notwithstanding anything to the contrary in the foregoing, LESSEE does not waive, and hereby reserves, any rights to dispute any such liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises ("Reserved Rights"), and shall pay all CITY costs and attorneys' fees associated with any CITY involvement with LESSEE's Reserved Rights. **FURTHER, NO THIRD PARTY CAN RELY UPON THIS SECTION 1.7 TO CREATE A SUPERIOR INTEREST THAT WOULD OTHERWISE NOT BE SUPERIOR, WERE IT NOT FOR THE PRIOR PARAGRAPH.**

LESSEE agrees to protect, defend, indemnify, and hold CITY and its elected officials, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with any and all claims, suits or actions by any third parties by reason of any such Superior Interest, and all expenses of investigating and defending against same, including without limitation reasonable attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless pursuant to this Section 1.7 shall not include any established liability arising from the actions of CITY and its elected officials, officers, employees, representatives, and agents. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 1.8 **Governmental Approvals.** By entering into this Agreement, neither CITY nor the CITY's City Council is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's renovation plans for the Premises, and failure of the CITY or CITY's City Council to approve any plans or grant any required permits for renovation shall not give rise to any claim, liability, obligation, or cause of action related to this Agreement.

- 1.9 **CITY's Consent, Approval.** CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), without need for further resolution by the City Council, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.10 **Quiet Possession.** LESSEE, performing the covenants and agreements in this Agreement, shall at all times during the term of this Agreement peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Agreement shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.11 **Reservation of Rights.**
- 1.11.1 **Mineral Rights.** CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- 1.11.2 **Easements.** CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- 1.11.3 **Repairs.** CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and municipal services.
- 1.11.4 **Noninterference.** However, CITY shall not unreasonably or substantially interfere with LESSEE's use of the Premises. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights and the costs of repairing any damage to LESSEE's improvements located on the Premises to their then-existing condition.
- 1.12 **Competent Management.** LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent of financial malfeasance.
- 1.13 **Security.** LESSEE shall at all times provide, at LESSEE's sole cost and expense, security measures to use reasonable care to protect persons and property on the Premises, including without limitation maintaining a plan for adequate patrol of all areas of the Premises with the goal of preserving order and preventing theft, vandalism and other improper or unlawful use of the Premises or any of the facilities thereon.

- 1.14 Public Use; No Discrimination. LESSEE shall allow full and continuous public use of the Premises. LESSEE shall make all facilities and services on the Premises available to the public without unlawful discrimination, in accordance with Section 11 hereof.
- 1.15 Protection of Environment. LESSEE shall, at LESSEE's sole cost and expense:
- (a) Take all reasonable precautions to prevent pollution or littering of the atmosphere, land and water on, from, in or about the Premises, including without limitation the discharge of petroleum products, directly or indirectly into Mission Bay;
  - (b) Maintain noise levels on the Premises to prevent a nuisance to persons and property in and in the vicinity of Mission Bay Park and the Premises; and
  - (c) Maintain levels of light emissions from the Premises to prevent a nuisance to persons and property in and in the vicinity of Mission Bay Park and the Premises, and to prevent negatively affecting automobile, boat and airplane operations in and in the vicinity of Mission Bay Park and the Premises.
- 1.16 Parking. LESSEE shall provide and maintain onsite parking on the Premises with the capacity of not less than 464 hotel guest parking spaces provided that access to parking spaces may be controlled by an automated parking gate system, in accordance with all development plans as approved by CITY. Notwithstanding the foregoing and subject to the terms and conditions of CITY's advance approval in each instance, LESSEE shall not, other than temporarily and only then in the ordinary course of business, store or maintain any personal property on or near any parking lot and thereby cause any interference in any way with the ability to park in the parking lots on the Premises.
- 1.17 Operating Plan – Lifeguard Division Approval. At least sixty (60) days prior to each October 1 during the Term, as set forth in Section 2.1, below of this Agreement, LESSEE shall, at its sole cost and expense, submit to CITY a written, annual operating plan describing how LESSEE intends to conduct each of the Allowed Uses in the waters of Mission Bay. Each such operating plan shall be in form and contain content reasonably satisfactory to CITY. Except as required by law, LESSEE shall not make any changes to an existing CITY-approved operating plan without CITY's prior written approval in each instance, which may not be unreasonably withheld or delayed. LESSEE shall conduct each Allowed Use in the waters of Mission Bay in accordance with its most recently CITY-approved operating plan. CITY acknowledges that LESSEE has submitted an operating plan for the first Agreement year, which has been approved by the CITY.

## **SECTION 2: TERM**

- 2.1 Term. The term of this Agreement ("Term") shall be fifty (50) years, commencing on the Effective Date, if the Effective Date is the first day of that month, otherwise the Term

shall commence on the first day of the month following the Effective Date. Agreement year ("Agreement Year") as used in this Agreement shall mean the first twelve-month period during the Term as set forth in this Section 2.1, and each twelve-month period thereafter.

- 2.2 **Holdover.** Any holding over by LESSEE after the expiration of this Agreement shall not be considered a renewal or extension of this Agreement. LESSEE's occupancy of the Premises after the expiration of this Agreement shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Agreement shall continue in full force and effect, except that the rent shall be one hundred twenty-five percent (125%) of the then rental rate.
- 2.3 **Surrender of Premises.** Upon the expiration or earlier termination of this Agreement, LESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY. Upon the expiration or earlier termination of this Agreement, within five (5) days after receipt of written demand therefor, LESSEE shall execute and deliver to CITY a valid and recordable quitclaim deed quitclaiming all its rights in and to all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises, subject, however, to LESSEE's right to contest such early termination, and in no event shall this Section 2.3 or any such recordation be deemed a waiver of LESSEE's right to contest an early termination.

### **SECTION 3: OPERATIONS ON THE PREMISES**

- 3.1 **Operation of Premises.** LESSEE shall conduct its business and operate the Premises continuously throughout the Term. LESSEE shall diligently furnish services to the public in a creditable manner in conformity with all applicable laws, rules and regulations. LESSEE shall ensure that the type and quality of food-handling services furnished by LESSEE qualifies for the conditions and requirements of the "A Card" issued by the County of San Diego Department of Environmental Health to operators of food-handling establishments.
- 3.2 **Local Coastal Program.** If a local coastal program ("Local Coastal Program") is adopted for the Mission Bay Park segment of City of San Diego's Local Coastal Program, and if the Local Coastal Program provides for the collection of a traffic impact mitigation fee from commercial lessees in Mission Bay Park to fund all or a portion of the cost of a beach shuttle or other substantially-similar public-access improvements, LESSEE shall contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program, provided the amount payable by LESSEE shall be reasonable and shall not exceed the amount LESSEE would have paid had the entire amount to be funded by traffic impact mitigation fees been reasonably,

equitably, and fairly apportioned among all of the commercial lessees in Mission Bay Park. **This provision shall not be altered or amended without the prior written approval of the California Coastal Commission.**

- 3.3 **Trash and Refuse.** LESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. LESSEE shall not locate refuse containers outside the Premises. LESSEE shall ensure that such containers are covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. LESSEE shall ensure that the contents of the containers are disposed of at authorized landfills or other garbage reception areas as provided under applicable law at the time of collection.

#### **SECTION 4: RENT**

- 4.1 **Rent.** LESSEE shall pay rent to CITY on an Agreement Year basis in the amount of the greater of: (a) a percentage rent (the "Percentage Rent," defined below) for such Agreement Year; and (b) a minimum annual rent (the "Minimum Annual Rent," defined below). Within thirty (30) days after the end of each month during the Term, LESSEE shall deliver to CITY a schedule of LESSEE's "Gross Revenue" (defined below), for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by percentage rent category, and deductions categorized by type. Concurrently with the delivery of such schedule(s) and statement(s), LESSEE shall pay to CITY the Percentage Rent for that month. If the total Percentage Rent payable during an Agreement Year is less than the Minimum Annual Rent for that Agreement Year, LESSEE shall make a lump-sum payment to CITY of the difference between the Percentage Rent and the Minimum Annual Rent for that Agreement Year. Such a lump-sum payment shall be made concurrently with the Percentage Rent payment for the first month of the following Agreement Year.
- 4.2 **Gross Revenue.** "Gross Revenue" shall mean all revenue derived from all CITY-approved uses of the Premises, including without limitation all revenue by sublessees or licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include (collectively the "Non-Gross Revenue"): (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) income from the sale of furniture, fixtures or equipment; (c) refunds for goods returned for resale on the Premises or refunds of deposits; (d) employee meals (unless given in lieu of pay or if reportable for sales tax purposes); (f) insurance or condemnation proceeds, with the exception of business interruption insurance proceeds; (g) rent received by LESSEE from sublessees or licensees (including operating sublessees), if said sublessees or licensees generate revenue, whether earned or received, from CITY-approved uses of the Premises; or (h)

revenue received by providers of audio/visual services, with the exception of commissions or fees paid to LESSEE or sublessees by such providers. LESSEE shall clearly indicate the amount of all such Non-Gross Revenue on its books and records.

- 4.3 **Minimum Annual Rent.** The Minimum Annual Rent for the first five (5) Agreement Years shall be One Million Nine Hundred Twenty Thousand Dollars (\$1,920,000).

4.3.1. **Minimum Annual Rent Adjustment.** The Minimum Annual Rent shall be adjusted every five (5) years commencing on the sixth (6<sup>th</sup>) Agreement Year. As of the first day of the sixth (6<sup>th</sup>) Agreement Year, and every five (5) years thereafter, the Minimum Annual Rent shall be recalculated to equal eighty percent (80%) of the annual average of all rents payable during the preceding three (3) Agreement Years, including without limitation the Minimum Annual Rent and Percentage Rent. Notwithstanding the foregoing, no such recalculation of the Minimum Annual Rent shall reduce the Minimum Annual Rent in effect immediately prior to the recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Revenue schedules and Percentage Rent statements. Until such calculations are completed, LESSEE shall continue paying the most recent Minimum Annual Rent. LESSEE further acknowledges that any adjustment shall apply retroactively and shall be payable by LESSEE as in effect of the first day of the Agreement year in which the adjustment is made. Within thirty (30) days after CITY notifies LESSEE of the new Minimum Annual Rent, LESSEE shall pay to CITY any and all rent deficiencies between the previous Minimum Annual Rent and the retroactive, adjusted Minimum Annual Rent.

- 4.4 **Additional Rent.** As consideration for this Agreement, LESSEE shall pay to CITY a one-time payment of Five Hundred Thousand Dollars (\$500,000), ("Additional Rent"). Additional Rent shall be paid within ten (10) days of the Effective Date.

- 4.5 **Percentage Rent.** "Percentage Rent" shall mean rent in an amount equal to the sum of the percentages of Gross Revenue derived from certain designated business activities, applied as follows:

| <b><u>Percentage of Gross Revenue</u></b> | <b><u>Business Activities</u></b>                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Seven and Three Quarter Percent (7.75%)   | Rental of rooms, cottages or other living accommodations, resort fees, cancellation and attrition, group commission. Provided, however, LESSEE may deduct from such gross income before computing the rent due CITY, any commission or fee paid to a travel agent as a result of procurement or attempted procurement by said agent, bureau or agency for said rooms, cottages, and other |

|                                   |                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | living accommodations; provided further, that such deduction shall not exceed ten percent (10%) of such gross income; and provided further, that no deductions shall be allowed with respect to fees paid to any such agency or bureau if LESSEE has any financial interest therein or if reasonable back up for deductions is not provided. |
| Seven Percent (7%)                | Operation of cocktail lounges and any bar dispensing alcoholic beverages, or from any other operation, concession or facility engaged in the sale of alcoholic beverages, including mini bars.                                                                                                                                               |
| Five Percent (5%)                 | Operation of cocktail lounges and any bar dispensing non-alcoholic beverages, or from any other operation, concession or facility engaged in the sale of non-alcoholic beverages, including mini bars.                                                                                                                                       |
| Three and one Half Percent (3.5%) | Operations involving the serving of meals or dispensing of food, including without limitation coffee shops, restaurants, cocktail lounges and mini bars.                                                                                                                                                                                     |
| Ten Percent (10%)                 | Any boat rentals or fares in conjunction with the operation of any boat under this Agreement.                                                                                                                                                                                                                                                |
| Ten Percent (10%)                 | Operation of the parking lot.                                                                                                                                                                                                                                                                                                                |
| Seven Percent (7%)                | Operation of a gift shop.                                                                                                                                                                                                                                                                                                                    |
| Twenty Five Percent (25%)         | Of commission or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending machines or devices.                                                                                                                                                                                          |
| Three and One Half Percent (3.5%) | Mandatory gratuities or service and delivery charges.                                                                                                                                                                                                                                                                                        |
| Fifty Percent (50%)               | Wireless telecommunication equipment installed or operated on or from the Premises.                                                                                                                                                                                                                                                          |

|                                       |                                                                                                  |
|---------------------------------------|--------------------------------------------------------------------------------------------------|
| Fifteen Percent (15%)                 | All in-room telephones.                                                                          |
| Ten Percent (10%)                     | ATM Machine transaction fees.                                                                    |
| Ten Percent (10%)                     | Audio visual commission paid to LESSEE or sublessees.                                            |
| Seven and One Half Percent (7.5%)     | Public room rental.                                                                              |
| Seven and One Half Percent (7.5%)     | Spa Services Retail                                                                              |
| Ten Percent (10%)                     | Spa services, excluding retail.                                                                  |
| Ten Percent (10%)                     | Resort Services (e.g. tennis court fees, tennis dues and initiation fees, and equipment rentals) |
| Fifteen Percent (15%)                 | Movies Revenue                                                                                   |
| Twelve and One-Half Percent (12-1/2%) | Shipping and handling charges.                                                                   |
| Twelve and One Half Percent (12.5%)   | Any other source resulting from use or occupancy of the Premises.                                |

If LESSEE requests a use of the Premises in addition to the Allowed Uses and CITY approves said requested use, CITY and LESSEE shall determine by agreement the Percentage Rent calculation applicable to such use prior to CITY's approval of the use. Without express, written consent to the proposed use and an express, written agreement regarding the applicable Percentage Rent for said use, the use shall be deemed an unauthorized use, as set forth in Section 4.7 of this Agreement, and one-hundred percent (100%) of Gross Revenue therefrom shall be payable to CITY.

- 4.6 **Percentage Rent Adjustments.** Upon at least one hundred eighty (180) days prior written notice to LESSEE, CITY may, but shall not be obligated to, adjust the Percentage Rent upward, and only upward, on the commencement of the eleventh (11<sup>th</sup>), twenty-first (21<sup>th</sup>), thirty-first (31<sup>th</sup>), and the forty-first (41<sup>th</sup>) Agreement Years to reflect the then-current fair market rent for the Premises and the Allowed Uses, as evidenced by then-recent leases for similar premises similarly improved, operated and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. The new Percentage Rent shall be determined by an appraisal by a qualified professional independent real estate appraiser selected by LESSEE from the list of appraisers approved by CITY. LESSEE and CITY agree to accept and be bound by the percentage rates determined by the appraiser selected to complete the assignment.

In establishing the percentage rates for categories set forth in this Agreement, the appraiser shall consider CITY'S interest in the property as a fee simple absolute estate, and as vacant and available on the open market for the authorized purposes of this Agreement at the commencement of the rental period under review. The appraiser will be guided by prevailing market percentage rates for similar operations primarily within the Southern California communities as listed above, if available.

The new Percentage Rent shall be effective and due as of the first day of the applicable Agreement Year, regardless of when the appraisal is completed. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the applicable commencement of the appropriate Agreement Year of adjustment, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as hereinabove established. If any Percentage Rent deficiencies are created by the adjustment process set forth in this section, LESSEE shall pay to CITY any and all such rent deficiencies within ninety (90) days after CITY's notice of the Percentage Rent adjustment.

In no event shall the adjusted percentage rate be less than the percentage rate in existence at the time of the adjustment.

- 4.7 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Agreement, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of LESSEE under this Agreement. The unauthorized use charge shall otherwise be considered "rent" under this Agreement, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Agreement.

- 4.8 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer  
City of San Diego  
P.O. Box 129030  
San Diego, California 92112-9030  
or hand-delivered to:

The Office of the City Treasurer  
Civic Center Plaza

1200 Third Avenue, First Floor  
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 4.9 **Records.** LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by the system in place on the Effective Date, which is approved by CITY.

- 4.9.1 **Financial Statements.** Within sixty (60) days after the end of each Agreement Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue for the Agreement Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. If LESSEE submits any statements or information clearly marked confidential or proprietary, CITY shall protect and treat the same with confidentiality to the extent permitted by law and in conformity with the California Public Records Act ("Act"). Should LESSEE request confidentiality and non-disclosure regarding any statement or information, LESSEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information in the event CITY receives a request under the Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Agreement is or is not a public record subject to disclosure under the Act. In the event CITY elects to withhold any requested information based on LESSEE's request to withhold such requested information,

LESSEE shall defend, at LESSEE's sole expense, any legal actions or challenges seeking to obtain from CITY any information requested under the Act that CITY may have withheld at LESSEE's request. Furthermore, LESSEE shall release, indemnify, and hold CITY, and its elected officials, officers and employees, harmless for or from any claim or liability, and defend any action brought against CITY, resulting from CITY's disclosure or non-disclosure of any information requested pursuant to the Act.

- 4.9.2 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records and documentation available for inspection and audit by CITY promptly following the notification of commencement of the audit and in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises in accordance with the format in place on the Effective Date or such other format which is approved by CITY in writing. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises, as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Agreement. Failure to maintain records, make them available for inspection, or provide summary schedules and supporting documentation requested by the City is a breach of this Lease and cause for termination, subject to LESSEE's right to cure pursuant to this Lease. In the absence of records, summary schedules, and supporting documentation, City will disallow unsupported deductions and may estimate amount of rent due using any reasonable source. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. Notwithstanding anything to the contrary contained herein, CITY's right to audit the books and operations shall expire for each Agreement Year on the date five (5) years from the end of that Agreement Year
- 4.9.3 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:
- (a) For any given Agreement Year, if an audit reveals an underpayment of rent of more than five percent (5%), calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or

- (b) LESSEE failed to maintain true, accurate and complete books, records, accounts and supporting source documents as required by this Agreement.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Agreement. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Agreement. If no future rents are then due under this Agreement, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.10 **Delinquent Payments.** If LESSEE fails to make any payment under this Agreement when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Agreement may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

## **SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING**

- 5.1 **Leasehold Encumbrances.** Subject to CITY's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, LESSEE may encumber LESSEE's leasehold estate or pledge its interest in this Agreement by deed of trust or other security instrument and/or to pledge the direct or indirect interest in LESSEE to one or more mezzanine lenders to assure the payment of LESSEE's direct or indirect debts. During the last twenty (20) years of the Term, the proceeds of any such loan or loans must be devoted exclusively to debt repayment, purchase, payment of additional consideration to CITY (as set forth in Section 5.3 of this Agreement), and capital expenditures for the purpose of rehabilitating, improving, repairing or maintaining the Premises. The principal amount of all encumbrances of the leasehold estate shall not exceed seventy-five percent (75%) of the value of the leasehold at the time such encumbrance is placed on LESSEE's leasehold estate, as determined by an independent MAI appraiser, reasonably approved by the CITY (which may be the same as the lender's

appraiser), which appraisal shall be prepared at LESSEE's sole cost and expense. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Agreement, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Agreement.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Agreement with all the rights, privileges, and duties granted and imposed in this Agreement.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Agreement or its rights hereunder to its designee, if the designee is a reputable, qualified, and financially responsible person or entity, at least equal to or greater than as of the Effective Date, in the reasonable opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Agreement and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof.

Pursuant to, and to the extent required by, San Diego City Charter section 225, all mortgagees, beneficiaries, designees and nominees shall make a full and complete disclosure of the name and identity of any and all persons or entities proposed to be directly or indirectly involved in this Agreement and the precise nature of all interests of all persons or entities therein. Every person or entity which will have an interest in this Agreement must be reviewed and approved by CITY in advance. The CITY's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community and such persons or entities are able, in CITY's reasonable opinion, to comply with this Agreement and have financial capability equal or greater than LESSEE and possess or engage a third party with management skills equal or greater than LESSEE. Notwithstanding the foregoing, (a) if LESSEE, mortgagee or any assignee or transferee of this Agreement, or the parent of any of them, is a publicly traded company on a nationally recognized exchange, such entity shall not be required to identify the shareholders of the publicly traded entity, so long as those shareholders are not directly or indirectly involved in this Agreement, and (b) if San Diego City Charter section 225 is amended with regard to the amount of disclosure required of persons having an interest in leases with the CITY, this Agreement shall be deemed automatically modified, without the need for further CITY Council action, to be consistent with the disclosure requirements in the amended San Diego City Charter section 225.

5.1.1 Subject to Section 5.1.3 below, CITY shall not be required to subject its fee estate and interest in the Premises to the lien of any leasehold financing or mortgage sought or obtained by LESSEE.

5.1.2 The term of the leasehold encumbrance shall not exceed the Term.

5.1.3 In the event that CITY encumbers its leased fee interest in the Premises by a deed of trust, lease, sublease, mortgage or other similar type document including an indenture with respect to bonds such as general obligation bonds and lease revenue bonds (each, an "Encumbrance Document"), then, in such event one of the following shall occur: (i) CITY shall cause any holder of an Encumbrance Document ("Fee Lender") to execute and deliver any commercially reasonable instrument (in recordable form) that LESSEE may reasonably request to evidence, confirm and/or acknowledge that this Agreement (and any modifications, amendments, restatements or supplements to this Agreement and to any new lease or replacement of this Agreement entered into pursuant to the terms of or in connection with this Agreement, and to any consented-to encumbrance) be recognized and continue in full force and effect in the event said Fee Lender (or any purchaser of the loan or other obligation secured by the Encumbrance Document at a foreclosure sale) attains title to CITY's interest in the Premises (a "Recognition Agreement"); or (ii) such Encumbrance Document itself shall either (A) contain a provision substantially similar to that set forth on Exhibit E, attached hereto, or (B) provide evidence, confirmation and/or acknowledgement that this Agreement (and any modifications, amendments, restatements or supplements to this Agreement and to any new lease or replacement of this Agreement entered into pursuant to the terms of or in connection with this Agreement, and to any consented-to encumbrance) be recognized and continue in full force and effect in the event said Fee Lender (or any purchaser of the loan or other obligation secured by the Encumbrance Document at a foreclosure sale) attains title to CITY's interest in the Premises.

5.2 Assignment and Subletting. Other than with respect to a certain sublease to LHO Mission Bay Rosie Lessee, Inc., a Delaware corporation, as that corporation is owned and organized as of the date of CITY's execution of this Agreement, LESSEE shall not assign this Agreement or any interest in this Agreement, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent which shall not be unreasonably withheld. Any such consent shall not be deemed consent to any subsequent assignment, subletting, occupation or use by another person. Neither this Agreement nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Agreement and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.

- 5.2.1 **Consent Conditions.** CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Agreement be revised to comply with then-current CITY lease provisions (except as to Sections 1.3, 1.7, 1.10, 1.11, 2, 4.2, 5, 6.3, 6.4, 10.1 and 11.3), the rent shall be adjusted upward, and only upward, to the then market rent, and that the sublease be subject and subordinate to each and every provision of this Agreement.
- 5.2.2 **Charter Section 225.** Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in this Agreement, and in any sublease or assignment, and the precise nature of all interests of all such persons Except as provided in Section 5.1 above, every person or entity proposed to have an interest in this Agreement must be reviewed and approved by CITY, which approval shall not be unreasonably withheld.
- 5.2.3 **Sale or Transfer of Stock.** Sale or transfer of stock, or divestment of any interest in LESSEE in excess of five percent (5%) either in a single transaction or as a result of cumulative transactions, shall be considered an assignment of interest and shall be treated in accordance with the provisions of Section 5.2, Assignment and Subletting and Section 5.3, Additional Consideration. Notwithstanding the foregoing, Sections 5.2 and 5.3 shall not apply to transfer of stock of any stockholder or other ownership interest to a Controlled Affiliate. "Controlled Affiliate" shall mean an entity directly controlling, controlled by or under common control with Lessee, or any person or entity owning or controlling fifty percent (50%) or more of the outstanding voting securities of LESSEE. Concurrently with such exempt sale or transfer of stock, LESSEE shall provide written notice to CITY of any such exempt sale or transfer of stock and shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in such sale or transfer of stock in accordance with Section 5.2.2, above.
- 5.3 **Additional Consideration to CITY.** In the event of a voluntary Assignment (as defined in Section 5.2 which shall not be deemed to include a mortgage foreclosure or deed in lieu of foreclosure and subsequent assignment thereof; in the event of a subletting of the majority portion of the leasehold interest in the Premises (other than operating leases to affiliates to operate the Premises); or in the event of a refinancing creating an encumbrance against the leasehold (as defined in Section 5.1), LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved Assignment of this Agreement, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any new loan or encumbrance against the property over and above (i) the amount of the encumbrance then in place or used to acquire the Premises plus, if applicable, (ii) the cost of the new improvements constructed on the Premises as required

or allowed under this Agreement. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. For purposes of determining the two percent (2%) of consideration, costs of closing the transaction (e.g., commissions, title policies, appraisal and survey costs) shall be excluded from the gross amount paid provided that such amounts shall not exceed two percent (2%) of the proceeds of the transaction, and such closing costs shall be the only exclusions from such proceeds in determining the two percent (2%). In the event of an assignment of this Agreement or a transfer as referenced in Section 5.2.3 above which is done in combination with the transfer of one or more other properties, the amount paid for the interest in the Premises being transferred (for purposes of determining the two percent (2%) of the gross amount payable to the CITY) shall be the appraised value of the Premises as determined by a qualified professional independent real estate appraiser selected by LESSEE from the list of appraisers approved by CITY. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. For majority subleases, such additional consideration shall be payable to CITY when accrued regardless of actual receipt by LESSEE. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void.

## **SECTION 6: DEFAULT AND REMEDIES**

- 6.1 **Default.** LESSEE shall be in default of this Agreement if any of the following occurs:
- (a) LESSEE fails to make any payment required under this Agreement when due and fails to cure the breach within five (5) business days following written notice thereof from CITY;
  - (b) LESSEE breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
  - (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law and, in the case of an involuntary bankruptcy only, where such petition is not dismissed within sixty (60) days;
  - (d) LESSEE is adjudicated a bankrupt; or

(e) LESSEE makes a general assignment for the benefit of creditors.

6.2 **Remedies.** Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate this Agreement and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by LESSEE under this Agreement.

6.3 **Default if Leasehold is Encumbered.** Notwithstanding anything to the contrary contained in this Section 6, if there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Agreement and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY shall extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure, as determined in CITY'S sole discretion. If the mortgagee or

beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 6.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE and mortgagee or beneficiary;
- 6.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and any leasehold mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- 6.3.3 CITY may terminate this Agreement as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all obligations for any penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary, provided that such approval by the mortgagee or beneficiary will not be unreasonably withheld so long as any such new lessee meets mortgagee's or beneficiary's customary "know your customer" and OFAC requirements, has financial capability equal to or greater than LESSEE and possesses or engages a third party which possesses management skills equal to or greater than LESSEE, and satisfies mortgagee's or beneficiary's other customary and reasonable loan assumption requirements, including execution of a customary and reasonable loan assumption agreement. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, which approval shall not be unreasonably withheld, shall have the right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Agreement. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Agreement will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement with all the rights and obligations of LESSEE, such substitution shall be subject to the curing of the default, by the mortgagee or beneficiary if such default is capable of being cured by such mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Agreement.

- 6.4 Assurance to Leasehold Beneficiary. Notwithstanding anything to the contrary contained

in this Agreement, in the event LESSEE shall subject the leasehold under this Agreement to one or more deeds of trust, pledges of interest, or other security instruments to secure an obligation permitted hereunder as approved by CITY, and if LESSEE or the beneficiary under such deed of trust-, pledge or other security instrument (each, a "Leasehold Beneficiary") shall send to CITY a true copy thereof, together with written notice specifying the name and address of the Leasehold Beneficiary and the pertinent recording information with respect to such deeds of trust, CITY agrees that so long as any such deeds of trust shall remain unsatisfied of record or until notice of satisfaction is given by the Leasehold Beneficiary to CITY, the following provisions shall apply:

a. There shall be no cancellation, surrender or modification of this agreement by joint action of CITY and LESSEE without prior written notice, and the cure periods available each Leasehold Beneficiary as set forth in Sections 6.3 and 6.4(j), to each Leasehold Beneficiary.

b. CITY shall, upon serving LESSEE with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Beneficiary. Notice of LESSEE'S default and all notices by LESSEE to a Leasehold Beneficiary shall be given by United States mail or overnight courier, postage prepaid, addressed to the Leasehold Beneficiary at the address last designated in writing to CITY by the Leasehold Beneficiary. The Leasehold Beneficiary, upon serving LESSEE with a notice of default under the provisions of any leasehold deed of trust, shall simultaneously serve a copy of such notice of default upon CITY, addressed to CITY at the address last designated in writing to the Leasehold Beneficiary by CITY.

c. The Leasehold Beneficiary shall thereupon have thirty (30) days from the notice from CITY to cure the default, or if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion, whether such default consists of the failure to pay rent or the failure to perform any other obligation (subject to the provisions set forth below), and CITY shall accept such performance by or at the instigation of such Leasehold Beneficiary as if the same had been done by LESSEE.

d. In case of a default by LESSEE in the payment of money required to be paid under this Agreement, CITY shall take no action to effect a termination of this Agreement because of such default unless Leasehold Beneficiary's cure period, as set forth in paragraph c above, has expired without Leasehold Beneficiary curing such monetary default.

e. In the case of any default other than a monetary default by LESSEE, CITY shall take no action to effect a termination of this Agreement by reason thereof unless such default has continued beyond the grace period available to LESSEE for curing said default, and then only after CITY shall have given Leasehold Beneficiary thirty (30) days after the expiration of

LESSEE'S grace period for curing such default to do the following (provided that LESSEE or such Leasehold Beneficiary shall have paid, and shall continue to pay, to CITY all monetary amounts then required to be paid hereunder), to wit:

(1) Commence and diligently proceed to cure such default, if such default is susceptible of being cured by the Leasehold Beneficiary without the Leasehold Beneficiary obtaining possession of the Premises; or

(2) Commence and diligently proceed to obtain possession of the Premises (including possession by a receiver) and to cure such default in the case of a default which is susceptible of being cured when the Leasehold Beneficiary has obtained possession thereof; or

(3) Institute foreclosure proceedings and thereafter to complete such foreclosure proceedings or otherwise acquire LESSEE'S interest under this agreement with reasonable and continuous diligence, unless precluded from doing so by circumstances beyond the reasonable control of the Leasehold Beneficiary, such as a stay of proceedings or an injunction granted by a court. A Leasehold Beneficiary shall not 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.

f. As long as there is a Leasehold Beneficiary, neither the bankruptcy nor the insolvency of LESSEE shall operate or permit CITY to terminate this Agreement as long as all rent continue to be paid in accordance with the terms of this agreement. During the period that a Leasehold Beneficiary shall be in possession of the Premises, the Leasehold Beneficiary shall pay, or cause to be paid, all rent and all charges payable by LESSEE hereunder.

g. Any sale of this Agreement and the leasehold estate in any proceedings for the foreclosure of any deeds of trust, or the assignment or transfer of this Agreement and the leasehold estate in lieu of the foreclosure of any deeds of trust shall be deemed to be permitted sale, transfer or assignment of this agreement and of the leasehold estate hereby created; provided; however, such transferee must be in good standing and of good general reputation in its business community, trade or industry and shall be of good moral character with no prurient interests and subject to San Diego City Charter section 225; provided, further, that a sale, transfer or assignment pursuant to this Section 6.4(g) to any lender previously approved by CITY, or a designee wholly owned by such previously approved lender, shall be automatically deemed to have met the conditions of City of San Diego Charter Section 225.

h. Following the acquisition of LESSEE'S leasehold estate by the Leasehold

Beneficiary or its designee, either as a result of the foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Beneficiary or party acquiring title to the leasehold estate shall, as promptly as possible, commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion.

i. If this Agreement shall terminate for any reason or be rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, to the extent permitted by applicable law, either Leasehold Beneficiary, or a person designated by such Leasehold Beneficiary, shall have the right, exercisable by notice to CITY within ninety (90) days after the effective date of such termination, to enter into a new lease of the Premises with CITY. The term of the new lease shall begin on the date of the execution of the new lease and shall continue for the remainder of the Term. The new lease shall otherwise contain the same terms and conditions as those set forth herein, except for requirements which are no longer applicable or have already been performed. The new lease shall require the lessee thereunder promptly to commence and diligently proceed to remedy all defaults on the part of LESSEE hereunder. At the time of execution and delivery of the new lease, the Leasehold Beneficiary or its designee shall have remedied all defaults on the part of LESSEE that are susceptible of being remedied by the payment of money required under the terms of this Agreement, including loss of rent from date of termination to date of commencement of such new lease.

j. In the event of a default by LESSEE and LESSEE'S failure to cure such default within the grace period available to LESSEE, the Leasehold Beneficiary shall, within thirty (30) days after the exercise of each of the rights granted to the Leasehold Beneficiary pursuant to Sections 6.3 and 6.4 collectively, the "Leasehold Beneficiary Rights" and, as a condition for the perfection of such rights, notify CITY of the exercise of any such rights. Within thirty (30) days following CITY'S receipt of the Leasehold Beneficiary's notice, CITY may request the Leasehold Beneficiary to submit to CITY an itemized written statement, certified by an officer of Leasehold Beneficiary, of all sums then owing to Leasehold Beneficiary secured by the leasehold deed of trust. A copy of CITY'S request shall be sent simultaneously to LESSEE. CITY shall have, at any time no earlier than thirty (30) and no later than sixty (60) days after delivery of each such certified statements, the option to purchase the interest of the Leasehold Beneficiary in the leasehold by paying to the Leasehold Beneficiary all sums owing on the date of purchase that are secured by the leasehold deeds of trust, and upon payment of such sums all rights of the Leasehold Beneficiary under Section 6.4 of this Agreement shall cease and terminate and CITY shall thereupon have the right to terminate this Agreement or pursue any other remedy provided herein, as if there were no Leasehold Beneficiary. The failure of CITY to exercise the option granted to CITY under this Section 6.4 with respect to the exercise by the Leasehold Beneficiary of

any of Leasehold Beneficiary's rights shall not preclude CITY from exercising such option with respect to any subsequent exercise of any such rights.

k. If two (2) or more Leasehold Beneficiaries each exercise their rights hereunder and there is conflict which renders it impossible to comply with all such requests, the Leasehold Beneficiary whose leasehold deed of trust would be senior in priority if there were a foreclosure shall prevail. CITY shall be entitled to rely on a mortgage title insurance policy issued by a title insurer licensed to do business in California for determining such priority and shall incur no liability of any kind whatsoever to LESSEE or to any Leasehold Beneficiary because of such reliance.

l. No Leasehold Beneficiary shall become personally liable for the performance or observance of any covenants to be performed by LESSEE unless and until the Leasehold Beneficiary becomes the owner of the LESSEE'S interest hereunder upon the exercise of any remedy provided for in the leasehold deeds of trust or unless and until the Leasehold Beneficiary enters into a new lease with LESSEE pursuant to this Section 6.4.

m. CITY agrees that the name of the Leasehold Beneficiary may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by LESSEE hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Agreement and that the leasehold deed of trust or collateral document shall so provide.

n. CITY agrees promptly after submission to execute, acknowledge and deliver any agreements with reasonable modifications to this Agreement requested by any Leasehold Beneficiary, provided that such modifications do not decrease LESSEE'S obligations or decrease CITY'S rights pursuant to this Agreement, or make any substantive, material or adverse change to the terms of this Agreement or CITY's rights pursuant to this Agreement.

o. If the proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Beneficiary and distributed pursuant to the provisions of this Agreement, the Leasehold Beneficiary may reserve its rights to apply to the deed of trust debt all, or any part of, such proceeds which are not required for the repair and restoration of the premises. In the event of a total or substantially total taking or loss, any related insurance proceeds or portion of the condemnation award allocable to LESSEE's interest in respect of such total or substantially total loss or taking of the Premises, to the extent not applied by LESSEE to repair or restoration of the Premises, will be applied first to the payment of the outstanding balance of the loan or loans.

6.5 Abandonment by LESSEE. If LESSEE abandons the Premises, this Agreement shall continue in effect as long as CITY does not terminate this Agreement, and CITY may

enforce all of its rights and remedies under this Agreement, including without limitation the right to recover rent as it becomes due, plus damages.

- 6.6 **Waiver.** Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

## **SECTION 7: EMINENT DOMAIN**

- 7.1 **Eminent Domain.** If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or LESSEE's beneficiary or mortgagee) shall be as follows:
- 7.1.1 **Full Taking.** If the entire Premises are taken, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 7.1.2 **Partial Taking - Remainder Unusable.** If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for continued Lease operation, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 7.1.3 **Partial Taking - Remainder Usable.** If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 7.1.4 **Award.** Subject to 6.4(o) of this Agreement, all monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any

award attributable to the taking of, or damages to, LESSEE's then-remaining leasehold interest in installations or improvements owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

7.1.5 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Agreement.

7.2 No Inverse Condemnation. The exercise of any CITY right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for condemnation or inverse condemnation.

## **SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE**

8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Agreement, and all expenses of investigating and defending against same, including without limitation reasonable attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

8.2 Insurance. LESSEE shall obtain and maintain throughout the Term, and any extension of said Term, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's

written approval of same, which shall not be unreasonably withheld) for:

- (1) Commercial General Liability Insurance, providing coverage on the Premises, for bodily injury, including death, personal injury, and property damage with limits of at least Twenty Million Dollars (\$20,000,000) per occurrence, subject to an annual aggregate of at least Twenty Million Dollars (\$20,000,000).
- (2) Fire, extended coverage and vandalism insurance policy in all insurable property on the Premises in an amount to cover one hundred percent (100%) of replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in the rebuilding or repairing the damaged property. If there is a mortgage, pledge or trust deed on the leasehold; hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provisions reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
- (3) Automobile Liability Insurance, providing coverage on the Premises for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- (4) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

8.2.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form;], "The City of San Diego, its elected officials, officers, employees, representatives and agents" shall be named as additional insureds in all policies.

8.2.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY with respect to LESSEE's obligations under this Lease.

8.2.3 Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

8.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any

insurance policy are the sole responsibility of LESSEE and must be disclosed and reasonably acceptable to CITY at the time evidence of insurance is provided based on what is customary for comparable properties.

- 8.2.5 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 8.2.6 **Modification.** To assure protection from and against the kind and extent of risk existing with the Allowed Uses or any other CITY-approved uses, CITY, at its discretion, may require the revision of amounts and coverage at any time by giving LESSEE sixty (60) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses or approved uses.
- 8.2.7 **Accident Reports.** LESSEE shall immediately report to CITY any accident causing more than \$25,000 worth of property damage or all serious injury to persons on the Premises. For purposes of this Section 8.2.7, "serious injury" is defined as a "personal injury which results in death; dismemberment; significant disfigurement; a fracture; loss of a fetus; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury." Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 8.2.8 **Causes of Loss - Special Form Property Insurance.** LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses on the Premises under this Lease or the Premises, in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate or certificates of such

insurance to CITY's Real Estate Assets Department.

## **SECTION 9: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE**

- 9.1 **Waste, Damage, or Destruction.** LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.
- 9.2 **Acceptance of Premises.** LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 9.3 **Entry and Inspection.** CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. Provided, however, that CITY recognizes that registered guests of the hotel have a reasonable expectation of privacy in their hotel room during the period of their stay and that, in such case, LESSEE is not able to grant access to such portions of the Premises in the absence of an emergency or as authorized by law. Provided further that CITY's right to entry and inspection, in the absence of any emergency or as authorized by law, shall require reasonable notice and be limited to reasonable business hours.
- 9.4 **Maintenance.** LESSEE shall maintain the Premises in a decent, safe, healthy and sanitary condition satisfactory to CITY, including without limitation performing all regular building and grounds maintenance and repair, and all maintenance, repair, and services to the structural components of improvements on the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. LESSEE shall, at its sole cost and expense, obtain and maintain trash receptacles and trash-removal service. CITY shall have no obligation or responsibility to remove debris, or to maintain, repair or replace improvements on the Premises.
- 9.5 **No Dredging of Mission Bay.** CITY shall have no obligation to dredge Mission Bay or any part of the Premises and License Area. LESSEE expressly waives any claim against CITY from any responsibility or liability related to any real or perceived need for such dredging. LESSEE expressly agrees that it shall not seek indemnity from CITY for any responsibility or liability related to any real or perceived need for such dredging.

- 9.6 **Improvements/Alterations.** No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval, which shall not be unreasonably withheld. However, LESSEE may make decorative interior changes and interior room renovations without prior CITY approval, as long as all applicable permits otherwise required under applicable laws are properly obtained. This provision shall not relieve LESSEE of any maintenance or repair obligation under this Agreement. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations to the Premises.
- 9.7 **Utilities.** LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 9.8 **Construction Bond.** If LESSEE constructs, alters or renovates improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, or major alteration or renovation a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 9.9 **Liens.** LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 9.10 **Taxes.** Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation taxes upon licenses and permits, and including taxes upon the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE

acknowledges that this Agreement may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE alone shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

- 9.11 **Signs.** LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's written consent, which shall not be unreasonably withheld. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
- 9.12 **Ownership of Improvements and Personal Property.** LESSEE shall own all improvements, fixtures, structures and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Agreement, all such improvements, fixtures, structures and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE upon termination or one hundred-eighty (180) days prior to the expiration of this Agreement, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than one hundred eighty (180) days after the expiration or earlier termination of this Agreement. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- 9.13 **Personal Property.** LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of this Agreement, or as soon as practicable after termination of this Agreement. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- 9.14 **Late Removal.** Notwithstanding any provision of this Agreement to the contrary, LESSEE shall pay rent to CITY for any period of time needed after the expiration or earlier termination of this Agreement to remove improvements or personal property as required by this Agreement, whether removal is done by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by a qualified appraiser.

- 9.15 **CITY's Right to Acquire Personal Property.** If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or earlier termination of this Agreement, CITY shall have the first right to acquire such personal property. If CITY elects to acquire such personal property CITY at its discretion will notify LESSEE one hundred eighty (180) days prior to expiration of the Term or two (2) days prior to termination of the Term, and shall be subject to CITY and LESSEE agreeing upon an acceptable price to be paid by CITY to LESSEE for such personal property.
- 9.16 **Unavoidable Delay.** If the performance of an act required by this Agreement is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 9.17 **Hazardous Substances.** LESSEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises, except for those substances that are customarily and regularly used in the operation of LESSEE's business, and are stored and utilized in accordance with all manufacturer's instructions and applicable laws and regulations. LESSEE and LESSEE'S sublessees, agents and contractors shall not store, utilize, or sell any hazardous substance on the Premises without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. "Hazardous substances" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 9.17.1 **Remediation.** If LESSEE'S occupancy, use, development, maintenance, or restoration of the Permit Area (LESSEE'S Operations) results in a release of a hazardous substance, LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules and regulations of governmental authorities.
- 9.17.2 **Indemnity.** LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S Operations on the Premises or area surrounding the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to

natural resources or the public, and costs of any health assessment or health effect studies.

- 9.17.3 **Removal.** If LESSEE or LESSEE's contractor, agent or sublessee has received approval and permits to store, utilize, generate or install, or otherwise bring hazardous substances to the Premises, LESSEE and/or LESSEE's contractor, agent or sublessee shall remove all hazardous substances in all containers, equipment or devices from the Premises immediately upon or prior to the expiration or earlier termination of this Agreement. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous substances or containers, equipment or devices containing hazardous substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 9.17.4 **Notice of Release.** If LESSEE knows or has reasonable cause to believe that a hazardous substance has been released on, under, or from the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to Title 19 of the California Code of Regulations, and deliver a written report thereof to CITY within three (3) business days of receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Premises.
- 9.17.5 **Environmental Assessment.** Upon reasonable cause to believe that LESSEE'S Operations resulted in any hazardous substance being released on or beneath the Premises or area surrounding the Premises, CITY may cause an environmental assessment to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEES' sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations on, in, or under the Premises or the area surrounding the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, or require restricted use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and to effect unrestricted and lawful re-use of the Premises, and estimates of the cost of such remediation or

removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and LESSEE shall pay all costs and expenses therefor.

## **SECTION 10: RENOVATION PLAN**

- 10.1 **Renovation Plan.** LESSEE shall renovate the Premises in accordance with the renovation plan (the "Renovation Plan") approved by CITY, in its reasonable discretion as lessor under this Agreement and/or any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the development and operation of the Premises unless delays caused by force majeure events as referenced in Recital J above. A summary of the Renovation Plan requirements as of the Effective Date, are set forth in **Exhibit C: Renovation Plan Summary**, attached hereto, and said Renovation Plan Summary has been approved by CITY as lessor under this Agreement. LESSEE shall complete the Renovation Plan on the schedule set forth in Exhibit C, provided, however, CITY, in its sole discretion, may grant an extension of up to eighteen months (18) for completion of the Renovation Plan.
- 10.2 **Liquidated Damages.** The parties agree that the damages to CITY resulting from LESSEE's failure to complete the improvements identified in the Renovation Plan by the scheduled completion dates would be extremely difficult to determine. Therefore, the parties agree that if LESSEE fails to complete the Renovation Plan as required by this Agreement by the scheduled completion dates, subject to any extension as provided in Section 10.1 above, LESSEE shall pay to CITY the amount, of Two Hundred Fifty Dollars (\$250) as liquidated damages, and not as a penalty, for each day after the applicable scheduled completion date until completion of development. Such liquidated damages shall be deemed additional rent due and payable upon CITY's demand therefor.
- 10.3 **Coastal Commission: Permits.** LESSEE shall, at its sole cost and expense, seek and obtain from the California Coastal Commission and all other competent governmental authorities all necessary permits for any development, redevelopment or renovation of the Premises, or for any changes to any applicable permit now in effect for the Premises.
- 10.4 **Enforcement of Living on Board Vessels Regulations.** LESSEE shall be responsible for the enforcement, both within and in connection with the Premises, of the following living on board vessels regulation:

"It is unlawful for any person to remain overnight on board any vessel in Mission Bay Park unless the vessel has a functional, self-contained toilet on board that does not discharge into the waters of the Bay. It is unlawful for any owner of any vessel to occupy it or allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year. A vessel is presumed to be occupied overnight when there are one or more persons on board

after midnight. The lessees of land in Mission Bay Park are primarily responsible for the enforcement of this subsection, 63.25.71(a), on the water abutting their leased lands.”

The above living on board vessels regulation is presently set forth in the San Diego Municipal Code Section 63.25.71, “Living on Board Vessels, Overnight Anchorage Regulated,” and is subject to amendment or modification by the City Council. LESSEE shall comply or secure compliance with any amendment or modification to this Municipal Code provision.

## **SETION 11: GENERAL PROVISIONS**

- 11.1 **City Council Action Required.** This Agreement is expressly conditioned on City Council approval and authorization, which may or may not be granted. CITY shall not be obligated for any loss, financial or otherwise, incurred by LESSEE as a result of the City Council’s failure to grant such approval and authorization. By signing this Agreement, LESSEE expressly waives any claim for expense or loss which LESSEE incurs as a result of the failure to obtain the City Council’s approval and authorization.
- 11.2 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or by United States Postal Service, postage prepaid and addressed as follows:

If to LESSEE:

c/o LaSalle Hotel Properties  
7550 Wisconsin Avenue, 10<sup>th</sup> Floor  
Bethesda, Maryland 20814  
Attention: Chief Operating Officer

If to CITY:

THE CITY OF SAN DIEGO  
Attention: Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700 (MS 51A)  
San Diego, California 92101

- 11.3 **Compliance with Law.** LESSEE shall at all times in the construction, redevelopment, renovation, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE’s sole cost and expense. LESSEE shall promptly, upon request by CITY, deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).

**11.4 Restriction on Food Containers.** LESSEE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall LESSEE obtain or keep a such customer food packaging at or on the Property. LESSEE's food packaging for all foods shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Property. No biodegradable or compostable packaging is to be used by LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Property for immediate consumption at the Property or elsewhere in the Property. "Takeout food" means all food or beverage to be consumed off of the Property or elsewhere in the Property. "Supplied/Resale food" means foods or beverages which are supplied by a third party to LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Property. LESSEE should also limit its distribution of plastic bags to its customers.

**11.5 California Public Records Act.** CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the Act. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the Act. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

**11.5.1** CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the Act.

**11.5.1.1 LESSEE's Waiver.** LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN,

**EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S  
DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION  
REQUESTED PURSUANT TO THE ACT.**

- 11.6 **Equal Opportunity.** LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Agreement so that such provisions will be binding upon each sublessee and contractor. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if authorized by law and required by CITY, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the City of San Diego's goals for the employment of African Americans, Native Americans, Asians, Latinos, women and people with disabilities. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 11.7 **Equal Benefits.** LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Agreement, LESSEE certifies that it will maintain such equal benefits throughout the term of this Agreement. LESSEE's failure to maintain equal benefits shall be a default of this Agreement.
- 11.8 **Equal Pay Ordinance.** Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 11.8.1 **LESSEE and Sublessee Requirement.** The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- 11.8.2 **Notice Requirement.** LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site
- 11.9 **Disabled Access Compliance.** LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other

applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

- 11.9.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 11.9.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 11.9.3 LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
- 11.9.4 Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
- 11.9.5 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 11.9.6 LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Agreement.
- 11.10 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
  - 11.10.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
  - 11.10.2 Establish a drug-free awareness program to inform employees about all of the following:
    - 11.10.2.1 The dangers of drug abuse in the workplace;
    - 11.10.2.2 LESSEE's policy of maintaining a drug-free workplace;

11.10.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and

11.10.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts related to this Agreement language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

11.11 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.

11.12 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Agreement and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

11.13 Water Quality – Best Management Practices. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Property in a manner which aids in the protection of CITY's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

11.14 Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination

against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

- 11.15 **Accessibility Assessment.** In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

- 11.16 **Cumulative Remedies.** CITY's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 11.17 **Survival.** Any obligation which accrues under this Agreement prior to its expiration or earlier termination shall survive such expiration or earlier termination.
- 11.18 **Joint and Several Liability.** If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Agreement.
- 11.19 **No Affiliation.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 11.20 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto.
- 11.21 **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement is

found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

- 11.22 **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
- 11.23 **Memorandum of Agreement.** Upon the request of CITY or LESSEE, the parties shall execute a memorandum of this Agreement in form reasonably satisfactory to the parties which either party may record in the land records of San Diego County.
- 11.24 **Estoppel Certificate.** At the request of either party, the other party shall, within thirty (30) working days after such request, execute and deliver to the requesting party or its designee an estoppel certificate confirming that (a) this Agreement has not been modified or amended and is in full force and effect or that this Agreement has not been modified or amended except for any amendments, in accordance with this Agreement, specified in such certificate and that this Agreement, as so modified, is in full force and effect, (b) to the knowledge of the other party, there are no defaults under this Agreement or that there are no defaults under this Agreement except as specified in such certificate, and (c) the date to which rent has been paid under this Agreement.

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IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

LESSEE:

LHO MISSION BAY ROSIE HOTEL, L.P., a  
Delaware limited partnership

By: LHO Mission Bay Rosie Hotel, L.L.C.,  
its general partner

By: LaSalle Hotel Operating Partnership, L.P.,  
its managing member

By: LaSalle Hotel Properties, its general partner

By: [Signature]  
Name: Ian Gaum  
Title: Chief Investment Officer

CITY:

THE CITY OF SAN DIEGO, a California municipal  
corporation

By: [Signature]  
Cybele C. Thompson, RPA, FMA, CCIM, LEED, AP  
Director, Real Estate Assets Department

*Approved as to form:*

MARA W. ELLIOTT, CITY ATTORNEY

By: [Signature]  
Hilda R. Mendoza  
Deputy City Attorney

Date: August 21, 2018

Exhibit A: Legal Description of Premises and License Area

Exhibit B: Flat Map of the Premises and License Area

Exhibit C: Renovation Plan Summary

Exhibit D: CITY Council Resolution No.

Exhibit E: Non-Disturbance Provision

**Exhibit A: Legal Description of Premises and License Area**

**LEGAL DESCRIPTION:**

**"E. MISSION BAY HILTON – LEASE AREA"**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**PARCEL 1**

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY- AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO CONTROL MONUMENT STATION AND THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "MORENA" HAVING NAD83 LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6 OF NORTH 1866406.4480 AND EAST 6267555.7820 AS SHOWN ON THE RECORD OF SURVEY FILED IN SAID COUNTY ROS 16891.

THENCE SOUTH 31°17'32" WEST 1517.72 FEET TO THE POINT OF BEGINNING, HAVING NAD83 LAMBERT ZONE 6 COORDINATES OF NORTH 1865109.5110 AND EAST 6266767.4770 TO **THE POINT OF BEGINNING**:

- (1) THENCE SOUTH 12°43'53" WEST 316.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 77°16'07" WEST;
  - (2) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 189.34 FEET THROUGH A CENTRAL ANGLE OF 04°24'04" TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 81°40'11" WEST;
  - (3) THENCE SOUTH 81°40'11" EAST 30.00 FEET;
  - (4) THENCE SOUTH 08°02'09" WEST 25.00 FEET;
  - (5) THENCE NORTH 82°15'28" WEST 30.00 FEET TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 82°15'28" WEST;
-

- (6) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 449.33 FEET THROUGH A CENTRAL ANGLE OF 10°26'39", TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS SOUTH 87°17'53" WEST;
- (7) THENCE SOUTH 67°09'03" WEST 423.61 FEET;
- (8) THENCE NORTH 26°55'52" WEST 40.50 TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 19.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 26°55'52" EAST;
- (9) THENCE WESTERLY, NORTHWESTERLY, NORTHERLY, AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE 59.69 FEET THROUGH A CENTRAL ANGLE OF 180°00'00", TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 26°55'52" WEST;
- (10) THENCE NORTH 26°55'52" WEST 137.80 FEET;
- (11) THENCE NORTH 23°05'58" WEST 40.40 FEET;
- (12) THENCE NORTH 09°31'58" WEST 52.70 FEET;
- (13) THENCE NORTH 01°54'02" EAST 57.30 FEET;
- (14) THENCE NORTH 73°41'18" WEST 30.71 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 167.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 16°18'42" WEST;
- (15) THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE 249.08 FEET THROUGH A CENTRAL ANGLE OF 85°27'20", TO A POINT HEREINAFTER REFERRED TO AS **POINT "A"**, TO WHICH A RADIAL LINE BEARS NORTH 78°13'58" WEST;
- (16) THENCE NORTH 85°45'22" EAST 19.30 FEET;
- (17) THENCE NORTH 06°41'15" EAST 30.00 FEET;
- (18) THENCE NORTH 87°43'56" WEST 3.03 FEET;
- (19) THENCE NORTH 02°16'02" EAST 38.87 FEET TO A POINT HEREINAFTER REFERRED TO AS **POINT "B"**;
- (20) THENCE NORTH 06°21'58" WEST 17.00 FEET;
- (21) THENCE NORTH 10°30'58" WEST 50.60 FEET;
- (22) THENCE NORTH 21°26'58" WEST 53.20 FEET;
- (23) THENCE NORTH 29°00'58" WEST 56.40 FEET;
- (24) THENCE NORTH 24°36'58" WEST 54.30 FEET;
- (25) THENCE NORTH 16°46'58" WEST 19.80 FEET;
- (26) THENCE NORTH 15°03'57" WEST 31.86 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1525.13 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 83°20'24" WEST;
- (27) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 84.96 FEET THROUGH A CENTRAL ANGLE OF 03°11'30" TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2142.16 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 86°31'54" WEST;
- (28) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 55.46 FEET THROUGH A CENTRAL ANGLE OF 01°29'00" TO AN INTERSECTION WITH A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 19.00 FEET, A RADIAL LINE TO SAID INTERSECTION BEARS SOUTH 01°59'06" EAST;

- (29) THENCE WESTERLY, NORTHWESTERLY, NORTHERLY, NORTHEASTERLY, AND EASTERLY ALONG THE ARC OF SAID CURVE 60.04 FEET THROUGH A CENTRAL ANGLE OF 181°01'00" TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2142.16 FEET. A RADIAL LINE TO SAID POINT BEARS SOUTH 89°01'54" WEST;
- (30) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 222.34 FEET THROUGH A CENTRAL ANGLE OF 05°56'49", TO WHICH A RADIAL LINE BEARS NORTH 85°01'18" WEST;
- (31) THENCE SOUTH 80°26'56" EAST 873.32 FEET TO THE **POINT OF BEGINNING**.

EXCEPTING THEREFROM ALL GAS, OIL, MINERALS OR WATER UPON OR BENEATH SAID LAND. RESERVING AN EASEMENT AND RIGHT OF WAY FOR SLOPE RIGHTS IN EXCAVATION OR EMBANKMENT OVER THE EASTERLY 10.00 FEET THEREOF.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 17.679 ACRES (770,114.80 SQUARE FEET MORE OR LESS)

### **PARCEL 2: (PIER AND WALKWAY)**

THE REVOCABLE PERMISSION TO MAINTAIN A CONCRETE WALKWAY AND PORTIONS OF A PIER SERVING PARCEL NO. 3, BEING A STRIP 13.00 FEET WIDE LYING 6.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT **POINT "B"** AS SET OUT AND ESTABLISHED IN PARCEL NO. 1 ABOVE;

THENCE NORTH 06°21'58" WEST 12.00 FEET TO THE **POINT OF BEGINNING**;

- (1) THENCE SOUTH 73°46'04" WEST 96.34 FEET TO THE MEAN HIGH TIDE LINE OF MISSION BAY.

THE SIDELINES OF SAID 13.00 FOOT STRIP TO BE EXTENDED OR SHORTENED TO TERMINATE AS FOLLOWS:

ON THE WEST, AT THE MEAN HIGH TIDE LINE AND ON THE EAST, AT THE WESTERLY LINE OF ABOVE SAID PARCEL NO. 1.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.029 ACRES (1,253.35 SQUARE FEET MORE OR LESS)

### **PARCEL 3: (DOCKS)**

A 155.00 FOOT WIDE STRIP OF LAND SOUTHWESTERLY OF THE MEAN HIGH TIDE LINE LYING 77.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE POINT OF BEGINNING FOR AFORESAID **PARCEL NO. 2:**

(1) THENCE SOUTH 73°46'04" WEST 252.00 FEET.

ON THE EAST, THE SIDE LINES OF SAID 155.00 FOOT STRIP ARE TO BE EXTENDED OR SHORTENED TO TERMINATE AT THE MEAN HIGH TIDE LINE.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.526 ACRES (22,898.84 SQUARE FEET MORE OR LESS)

**PARCEL 4: (BOAT DOCK BUILDING)**

BEING THE REVOCABLE PERMISSION TO MAINTAIN A BOAT DOCK BUILDING ON THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT **POINT "A"** AS SET OUT AND ESTABLISHED IN PARCEL NO. 1 ABOVE:

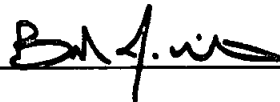
- (1) THENCE NORTH 78°13'55" WEST 23.11 FEET;
- (2) THENCE NORTH 07°23'30" EAST 28.40 FEET;
- (3) THENCE SOUTH 87°43'58" EAST 38.71 FEET;
- (4) THENCE SOUTH 87°43'56" EAST 3.03 FEET;
- (5) THENCE SOUTH 06°41'15" WEST 30.00 FEET;
- (6) THENCE SOUTH 85°45'22" WEST 19.30 FEET TO THE **POINT OF BEGINNING.**

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.029 ACRES (1,281.35 SQUARE FEET MORE OR LESS)

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature



Date

October 9, 2016



**Exhibit "A"**

**LEGAL DESCRIPTION:  
"License Area"**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**PLANTING STRIPS**

A 40 FOOT STRIP OF LAND OVER AND ACROSS THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY- AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO CONTROL MONUMENT STATION AND THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "MORENA" HAVING NAD83 LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6 OF NORTH 1866406.4480 AND EAST 6267555.7820 AS SHOWN ON THE RECORD OF SURVEY FILED IN SAID COUNTY ROS 16891.

THENCE SOUTH 31°17'32" WEST 1517.72 FEET TO THE POINT OF BEGINNING, HAVING NAD83 LAMBERT ZONE 6 COORDINATES OF NORTH 1865109.5110 AND EAST 6266767.4770 TO **THE POINT OF BEGINNING**;

- (1) THENCE SOUTH 12°43'53" WEST 316.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 77°16'07" WEST;
- (2) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 189.34 FEET THROUGH A CENTRAL ANGLE OF 04°24'04" TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 81°40'11" WEST;
- (3) THENCE SOUTH 81°40'11" EAST 30.00 FEET;
- (4) THENCE SOUTH 08°02'09" WEST 25.00 FEET;
- (5) THENCE NORTH 82°15'28" WEST 30.00 FEET TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 82°15'28" WEST;

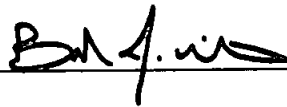
- (6) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 449.33 FEET THROUGH A CENTRAL ANGLE OF  $10^{\circ}26'39''$ , TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS SOUTH  $87^{\circ}17'53''$  WEST;
- (7) THENCE NORTH  $67^{\circ}09'03''$  EAST 42.65 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 2425.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH  $87^{\circ}38'42''$  WEST;
- (8) THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $15^{\circ}05'11''$  AN ARC LENGTH OF 638.52 FEET;
- (9) THENCE NORTH  $12^{\circ}43'53''$  EAST A DISTANCE OF 318.23 FEET;
- (10) THENCE NORTH  $80^{\circ}26'56''$  WEST A DISTANCE OF 40.06 FEET TO **THE POINT OF BEGINNING.**

CONTAINING AN APROXIMATE AREA OF 37,979 SQUARE FEET OR 0.87 ACRES MORE OR LESS.

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

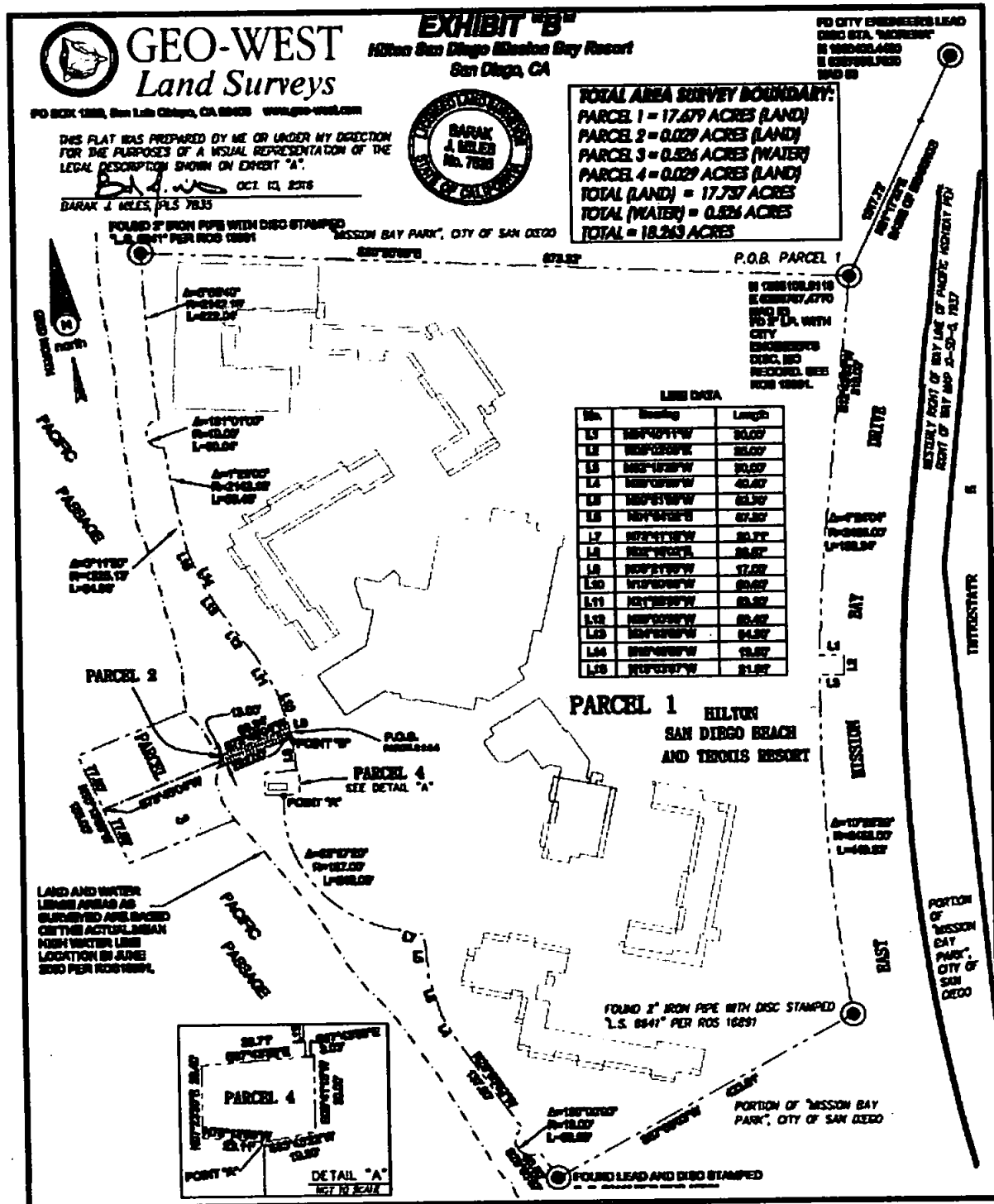
Signature



Date

November 22, 2016







**GEO-WEST**  
Land Surveys

PO BOX 1383, San Luis Obispo, CA 93408 www.geo-west.com

THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION  
FOR THE PURPOSES OF A VISUAL REPRESENTATION OF THE  
LEGAL DESCRIPTION SHOWN ON EXHIBIT "A".

*Barak J. Miles* NOV. 22, 2018  
BARAK J. MILES, PLS 7835

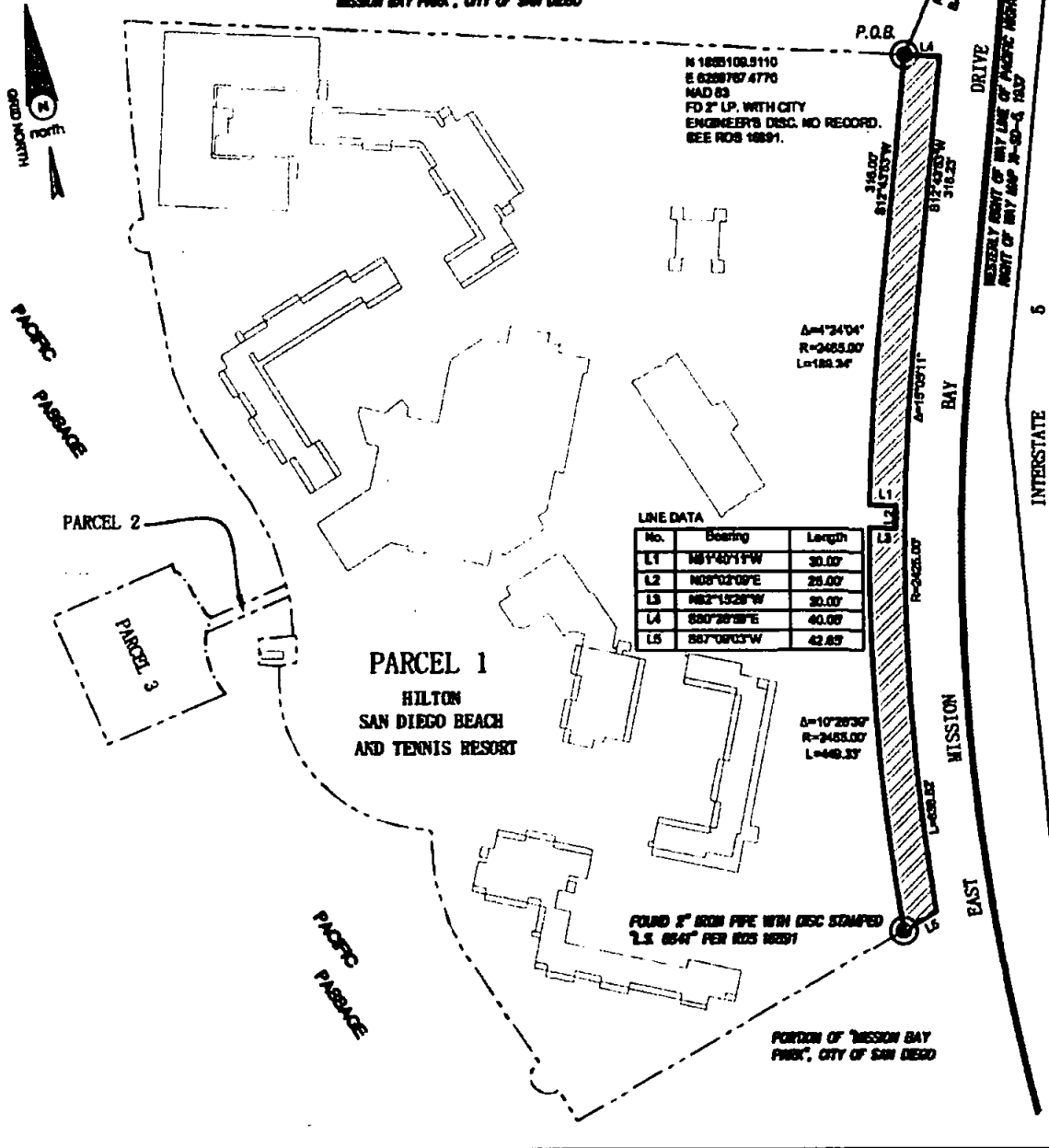


## EXHIBIT "B" License Area

Hilton San Diego Mission Bay Resort  
San Diego, CA

**TOTAL AREA SURVEY BOUNDARY:**  
PLANTING STRIP = 0.87 ACRES (LAND)

FD CITY ENGINEER'S LEAD &  
DISC STA. "MORENA"  
N 1885408.4480  
E 6267535.7820  
MAD 83



### **Exhibit C: Renovation Plan Summary**

- Architectural Conceptual Plans.- [See Attachment 2]
- Financial Plan: Approximately \$15,000,000 in renovation costs to be paid in cash provided by LESSEE. The average cost of Renovation per room is \$42,000. The number of rooms is 357.
- Renovation Plan:
  - Renovation Plan Description and Schedule: See Attachment #1
  - Renovation Renderings or Pictures: See Attachment #2
  - Renovation Plan Costs: See Attachment #3

#### **Proposed Renovation Teams:**

|                    |                      |
|--------------------|----------------------|
| Rossi Architects   | Architect            |
| License # C018176  | General Architecture |
| Jones Lang LaSalle | Project Manager      |

- Renovation Schedule: Plans and specifications for the Renovation shall be submitted to the CITY within nine (9) months from the Effective Date of the Agreement, and Renovation is to start within the latter of (i) eighteen (18) months of the Effective Date of the Agreement or (ii) two (2) months after CITY has approved such plans and specifications, and Renovation is scheduled to be completed within sixty (60) months of the Effective Date of the Agreement ("Renovation Period").

## **Attachment #1 to Renovation Plan Summary**

### **Renovation Plan Item Description and Schedule**

All projects associated with the Renovation of the Premises are expected to start within eighteen (18) months of the Effective Date of the Agreement, and are scheduled to be completed within sixty (60) months of the Effective Date of the Agreement.

a. **Guestrooms.**

LESSEE will complete upgrade of each hotel room and replacement of existing soft goods and case goods including the following: (a) headboards; (b) TV's; (c) drapes; (d) new paint and/or new wall vinyl; (e) new lighting; (f) new night stands; (g) new soft seating; (h) new patio furniture; (g) new coffee tables; and (j) new artwork.

b. **Bathrooms.**

LESSEE will perform and complete upgrade of the existing bathrooms including the following: (a) replacement of the tubs in at least seventy-five (75) rooms with walk-in showers; (b) replace tubs as needed in the other rooms; (c) replace surrounding tile work in the non-walk-in shower rooms; (d) new tile floor, (e) new paint and/or new wall vinyl; (f) new vanities in the villa rooms and replacement of vanities in the tower rooms as needed; (g) new brightwork; (h) new lightings.

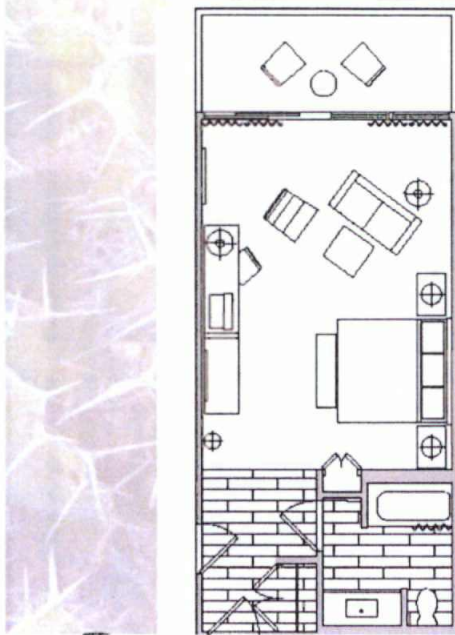
c. **Other.**

LESSEE may also upgrade various parts of the Premises, including, without limitation, the meeting spaces and public areas, such as lobbies, corridors, restaurants, spa, and grounds as set forth on Attachment #2.

**Attachment #2, Renovation Renderings or Pictures**

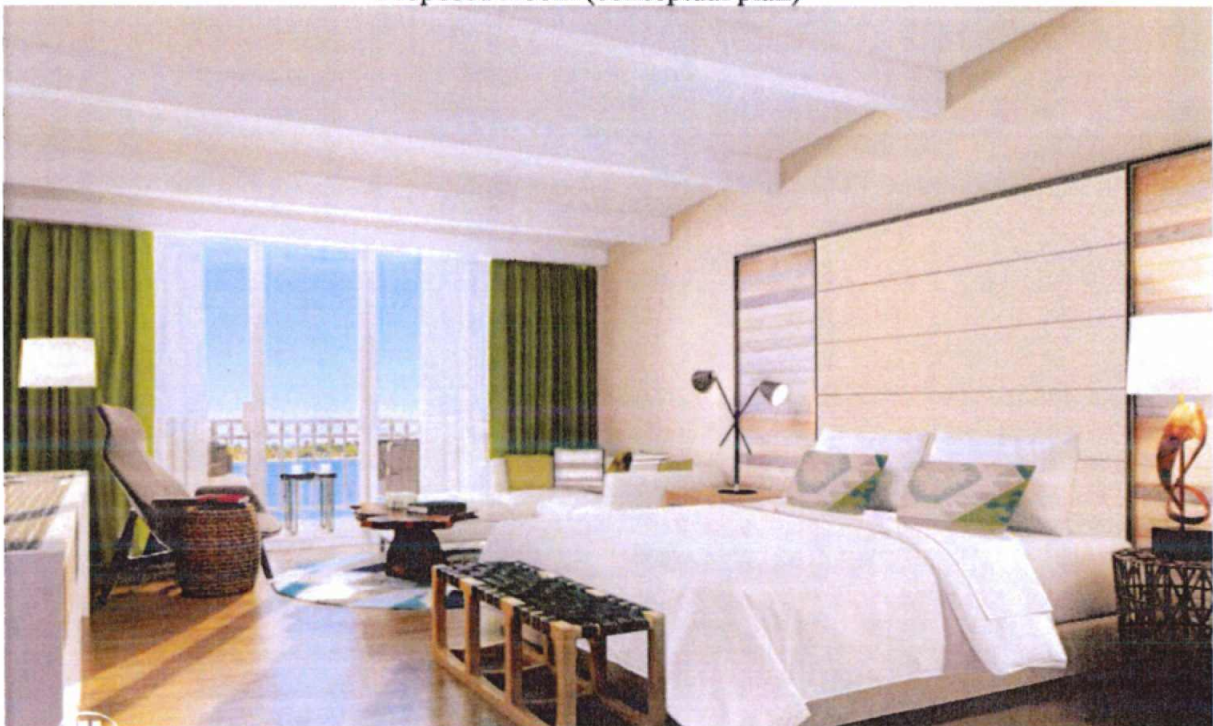
Existing Room

**EXISTING GUESTROOM**



BEFORE

**Proposed Room (conceptual plan)**



Proposed Guest Room Elevations (conceptual plan)  
GUESTROOM ELEVATION



Proposed Bathroom (conceptual plan)  
PROPOSED BATHROOM



## Existing Corridors

### CORRIDOR | EXISTING IMAGES



## Proposed Corridors (conceptual plan)

### CORRIDOR



## ELEVATOR BANK

### Existing Elevators Bank



IMAGES FROM TOWER, 1ST FLOOR



IMAGES FROM TOWER, UPPER LEVEL FLOORS

## ELEVATOR BANK

### Proposed Elevator Bank (conceptual plan)



OVERALL FEELING



Note: all conceptual plans are subject to minor modifications and City approval

### **Attachment #3 to Renovation Plan Summary**

#### **Renovation Plan Cost Estimates**

| <b><u>Renovation Items</u></b>     |           | <b><u>Cost</u></b>         |
|------------------------------------|-----------|----------------------------|
| <b>Professional Fees</b>           | <b>\$</b> | <b>1,000,000.00</b>        |
| <b>Construction</b>                | <b>\$</b> | <b>7,500,000.00</b>        |
| <b>FF&amp;E</b>                    | <b>\$</b> | <b>5,500,000.00</b>        |
| <b>General Project Contingency</b> | <b>\$</b> | <b><u>1,000,000.00</u></b> |
| <b>Total Estimated Cost</b>        | <b>\$</b> | <b>15,000,000.00</b>       |

**Exhibit D: CITY Council Resolution No. \_\_\_\_\_**  
*[to follow behind this page]*

RESOLUTION NUMBER R- 311896

DATE OF FINAL PASSAGE JUL 27 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING THE EXECUTION OF THE CITY  
OF SAN DIEGO PERCENTAGE LEASE AND LICENSE  
AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND  
LHO MISSION BAY ROSIE HOTEL, L.P., FOR THE  
PROPERTY LOCATED AT 1775 EAST MISSION BAY DRIVE,  
SAN DIEGO, CALIFORNIA.

WHEREAS, the City of San Diego (City) owns approximately 17.74 acres of land and  
0.87 acres of water (collectively the "Premises") which is improved with a hotel and dock known  
as the Hilton San Diego Resort and Spa (Hilton Hotel), which is located at 1775 East Mission  
Bay Drive, San Diego, California, in Mission Bay; and

WHEREAS, City further owns 0.87 acres of land adjacent to the Premises (License  
Area); and

WHEREAS, the Premises was leased to the Del E. Webb Mission Bay Hotel Company in  
1960 and was developed as the "Del Webb's Ocean House." The leasehold was subsequently  
assigned to the Mears Hotel Company and a new 50-year lease (1965 Lease) with the Mears  
Hotel Company was approved in 1965; and

WHEREAS, the Hilton Hotel Corporation became owner of fifty percent of the leasehold  
interest of the Mears Hotel Company in the 1965 Lease by the Assignment of Fifty Percent  
(50%) of Leasehold Interest and Consent Assignment, dated August 8, 1966; and

WHEREAS, the 1965 Lease was terminated and replaced by the City of San Diego  
Percentage Lease dated September 12, 2000, between City and the Hilton San Diego  
Corporation, filed in the Office of the San Diego City Clerk as document No. RR-293815 (2000  
Lease); and

WHEREAS, LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership (Lessee), became successor in interest of the Hilton San Diego Corporation in the 2000 Lease, by the Agreement of Purchase and Sale dated for reference purposes October 31, 2005.

Concurrently, Lessee entered into a lease dated October 31, 2005 (Operating Lease), with LHO Mission Bay Rosie Lessee, Inc ("Sublessee") which is affiliated with Lessee. Also, concurrently, Sublessee entered into a management agreement, dated October 31, 2005 (Management Agreement) with Mission Bay Management LLC. City consented to the assignment of the 2000 Lease pursuant to the City of San Diego Consent to Assignment of Percentage Lease Agreement dated December 2, 2005; and

WHEREAS, the 2000 Lease is scheduled to expire on December 31, 2045; and

WHEREAS, Lessee has requested a new 50-year lease and license agreement (Agreement) and proposes an additional investment of approximately \$15,000,000 to the leasehold improvements to further upgrade and renovate the 357 hotel rooms and various parts of the Premises, including the meeting spaces and public areas, such as lobbies, corridors, restaurants, spa, and grounds; and

WHEREAS, the expected proposed investment will increase the value of the Premises and reposition the Hilton Hotel to a higher competitive level to produce increased gross income and subsequently pay higher rent and transient occupancy tax to the City; and

WHEREAS, it is estimated that, as a result of such investment, the rent to the City will be increased by approximately \$242,754 in the first year after improvements are completed; and

WHEREAS, the initial rent under the proposed Agreement will be the greater of \$1,920,000 annually or the percentage of gross revenue of the business activities on the

Premises; the rent will thereafter increase beginning on the commencement of the sixth lease year; and

WHEREAS, the Lessee will also assume the maintenance of the License Area by cutting the grass, watering and trimming the trees, and providing repairs and servicing of the irrigation system; and

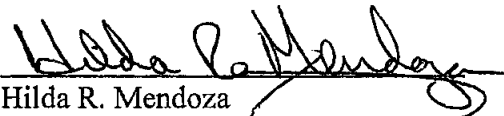
WHEREAS, the proposed Agreement includes the termination of the 2000 Lease; and

WHEREAS, the market value of the real estate subject to the Agreement, as appraised by an independent fee appraiser, is \$31,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute the City of San Diego Percentage Lease and License Agreement with LHO Mission Bay Rosie Hotel, L.P., a Delaware limited partnership, for City-owned property located at 1775 E. Mission Bay Drive, the terms of which are more fully set forth therein, and which is on file in the Office of the City Clerk as Document No.

RR- **311896**.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Hilda R. Mendoza  
Deputy City Attorney

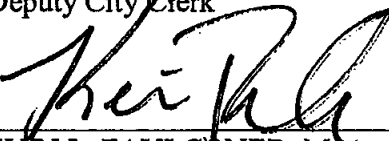
HRM:js:als  
07/05/2018  
Or.Dept:Real Estate Assets  
Doc. No.: 1781813

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 23 2018.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 7/27/18  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 23 2018, by the following vote:

| Councilmembers  | Yeas                                | Nays                     | Not Present              | Recused                  |
|-----------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Barbara Bry     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lorie Zapf      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Ward      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Myrle Cole      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mark Kersey     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Cate      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Scott Sherman   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| David Alvarez   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Georgette Gomez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage JUL 27 2018.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. PAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Linda Irwin, Depury

Office of the City Clerk, San Diego, California

Resolution Number R- **311896**

Passed by the Council of The City of San Diego on July 23, 2018, by the following vote:

YEAS: BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,  
ALVAREZ, GÓMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

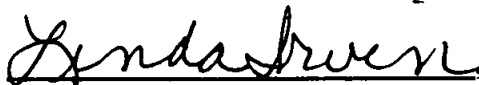
By:  Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of  
RESOLUTION NO. R-311896, approved on July 23, 2018. The date of final passage is  
July 27, 2018.

**ELIZABETH S. MALAND**

City Clerk of the City of San Diego, California

(Seal)

By:  Deputy

## **EXHIBIT E**

### **NON-DISTURBANCE PROVISION**

The Authority acknowledges and agrees for itself and the Trustee that its rights with respect to the Ground Lease Sites are expressly subject to the Existing Leases and the rights of the lessees and their successors and assigns thereunder. The Trustee will not re-enter or re-let the Ground Lease Sites. Notwithstanding anything to the contrary in the Lease or the Indenture, the Authority and the Trustee must not disturb the peaceful possession of the lessees and their successors and assigns to which they are entitled under the Existing Leases.

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

LaSalle Hotel Properties  
7550 Wisconsin Avenue, 10<sup>th</sup> Floor  
Bethesda, Maryland 20814  
Attention: Ian Gaum

*Legal*

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is made as of August 21, 2018 (the "Effective Date"), by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("Lessor"), and **LHO MISSION BAY ROSIE HOTEL, L.P.**, a Delaware limited partnership ("Lessee").

**RECITALS**

A. Lessor is the owner of the real property located in Mission Bay Park in the City of San Diego, County of San Diego, State of California, and legally described in Exhibit A attached hereto (the "Premises"); and

B. Lessor and Hilton San Diego Corporation (the "Original Lessee") were parties to that certain City of San Diego Percentage Lease, dated September 12, 2000, between Lessor and Original Lessee, for the Premises, filed in the Office of the San Diego City Clerk as Document No. RR-293815 (the "Original Lease"); and

C. Original Lessee assigned its interest in the Original Lease to Lessee; and Lessor and Lessee have terminated the Original Lease and entered into that certain City of San Diego Percentage Lease and License Agreement, dated as of July 27, 2018 (the "Lease"), for the Premises, with a term ending July 31, 2068, in place of the Original Lease.

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

1. Lease. This Memorandum is intended solely to provide public notice of the Lease and make the existence of the Lease a matter of public record.

2. Governing Law. This Memorandum will be governed by, and construed in accordance with, California law.

3. Successors and Assigns. This Memorandum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4. Counterparts. This Memorandum may be executed in several counterparts, and by the parties hereto in separate counterparts, and each counterpart, when so executed and delivered shall constitute an original, and all such separate counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

**"Lessor":**

THE CITY OF SAN DIEGO,  
a California municipal corporation

By: \_\_\_\_\_  
Name: Cybele Thompson  
Its: Director, Real Estate Assets

*Approved as to form:*

MARA W. ELLIOTT, CITY ATTORNEY

By: Hilda R. Mendoza  
Hilda R. Mendoza  
Deputy City Attorney  
Date: August 21, 2018

**"Lessee":**

LHO MISSION BAY ROSIE HOTEL, L.P., a  
Delaware limited partnership

By: LHO Mission Bay Rosie Hotel, L.L.C.,  
its general partner

By: LaSalle Hotel Operating Partnership, L.P.,  
its managing member

By: LaSalle Hotel Properties, its general partner

By: Ian Graum  
Name: Ian Graum  
Title: Chief Investment

## **CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

**CIVIL CODE §1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA )  
 ) §  
COUNTY OF San Diego )

On August 21, 2018 before me, Teresa Dolores Morse, Notary Public,  
*Date Here Insert Name and Title of Officer*

personally appeared Cybele L. Thompson  
Name of Signer

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



I certify under the 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.

*Place Notary Seal Above*

**Signature**

Signature Luisa Salinas Nurse

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Maryland  
County of Montgomery

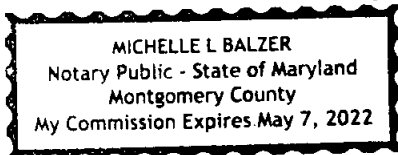
On April 24, 2018, before me, Michelle L. Balzer,  
(insert name of notary)

Notary Public, personally appeared Ian Gawn,  
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.

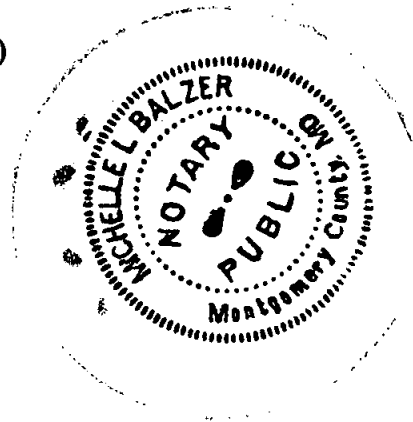
I certify under PENALTY OF PERJURY under the laws of the State of Maryland that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature Michelle L. Balzer



(Seal)



## **EXHIBIT A**

### **LEGAL DESCRIPTION:**

#### **"E. MISSION BAY HILTON – LEASE AREA"**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

### **PARCEL 1**

THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY- AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO CONTROL MONUMENT STATION AND THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "MORENA" HAVING NAD83 LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6 OF NORTH 1866406.4480 AND EAST 6267555.7820 AS SHOWN ON THE RECORD OF SURVEY FILED IN SAID COUNTY ROS 16891.

THENCE SOUTH 31°17'32" WEST 1517.72 FEET TO THE POINT OF BEGINNING, HAVING NAD83 LAMBERT ZONE 6 COORDINATES OF NORTH 1865109.5110 AND EAST 6266767.4770 TO **THE POINT OF BEGINNING**;

- (1) THENCE SOUTH 12°43'53" WEST 316.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 77°16'07" WEST;
  - (2) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 189.34 FEET THROUGH A CENTRAL ANGLE OF 04°24'04" TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 81°40'11" WEST;
  - (3) THENCE SOUTH 81°40'11" EAST 30.00 FEET;
  - (4) THENCE SOUTH 08°02'09" WEST 25.00 FEET;
  - (5) THENCE NORTH 82°15'28" WEST 30.00 FEET TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 82°15'28" WEST;
-

- (6) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 449.33 FEET THROUGH A CENTRAL ANGLE OF 10°26'39", TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS SOUTH 87°17'53" WEST;
- (7) THENCE SOUTH 67°09'03" WEST 423.61 FEET;
- (8) THENCE NORTH 26°55'52" WEST 40.50 TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 19.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 26°55'52" EAST;
- (9) THENCE WESTERLY, NORTHWESTERLY, NORTHERLY, AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE 59.69 FEET THROUGH A CENTRAL ANGLE OF 180°00'00", TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 26°55'52" WEST;
- (10) THENCE NORTH 26°55'52" WEST 137.80 FEET;
- (11) THENCE NORTH 23°05'58" WEST 40.40 FEET;
- (12) THENCE NORTH 09°31'58" WEST 52.70 FEET;
- (13) THENCE NORTH 01°54'02" EAST 57.30 FEET;
- (14) THENCE NORTH 73°41'18" WEST 30.71 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 167.00 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 16°18'42" WEST;
- (15) THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE 249.08 FEET THROUGH A CENTRAL ANGLE OF 85°27'20", TO A POINT HEREINAFTER REFERRED TO AS **POINT "A"**, TO WHICH A RADIAL LINE BEARS NORTH 78°13'58" WEST;
- (16) THENCE NORTH 85°45'22" EAST 19.30 FEET;
- (17) THENCE NORTH 06°41'15" EAST 30.00 FEET;
- (18) THENCE NORTH 87°43'56" WEST 3.03 FEET;
- (19) THENCE NORTH 02°16'02" EAST 38.87 FEET TO A POINT HEREINAFTER REFERRED TO AS **POINT "B"**;
- (20) THENCE NORTH 06°21'58" WEST 17.00 FEET;
- (21) THENCE NORTH 10°30'58" WEST 50.60 FEET;
- (22) THENCE NORTH 21°26'58" WEST 53.20 FEET;
- (23) THENCE NORTH 29°00'58" WEST 56.40 FEET;
- (24) THENCE NORTH 24°36'58" WEST 54.30 FEET;
- (25) THENCE NORTH 16°46'58" WEST 19.80 FEET;
- (26) THENCE NORTH 15°03'57" WEST 31.86 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1525.13 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 83°20'24" WEST;
- (27) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 84.96 FEET THROUGH A CENTRAL ANGLE OF 03°11'30" TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2142.16 FEET, TO WHICH A RADIAL LINE BEARS SOUTH 86°31'54" WEST;
- (28) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 55.46 FEET THROUGH A CENTRAL ANGLE OF 01°29'00" TO AN INTERSECTION WITH A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 19.00 FEET, A RADIAL LINE TO SAID INTERSECTION BEARS SOUTH 01°59'06" EAST;

- (29) THENCE WESTERLY, NORTHWESTERLY, NORTHERLY, NORTHEASTERLY, AND EASTERLY ALONG THE ARC OF SAID CURVE 60.04 FEET THROUGH A CENTRAL ANGLE OF 181°01'00" TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2142.16 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 89°01'54" WEST;
- (30) THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 222.34 FEET THROUGH A CENTRAL ANGLE OF 05°56'49", TO WHICH A RADIAL LINE BEARS NORTH 85°01'18" WEST;
- (31) THENCE SOUTH 80°26'56" EAST 873.32 FEET TO THE **POINT OF BEGINNING**.

EXCEPTING THEREFROM ALL GAS, OIL, MINERALS OR WATER UPON OR BENEATH SAID LAND. RESERVING AN EASEMENT AND RIGHT OF WAY FOR SLOPE RIGHTS IN EXCAVATION OR EMBANKMENT OVER THE EASTERLY 10.00 FEET THEREOF.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 17.679 ACRES (770,114.80 SQUARE FEET MORE OR LESS)

### **PARCEL 2: (PIER AND WALKWAY)**

THE REVOCABLE PERMISSION TO MAINTAIN A CONCRETE WALKWAY AND PORTIONS OF A PIER SERVING PARCEL NO. 3, BEING A STRIP 13.00 FEET WIDE LYING 6.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT **POINT "B"** AS SET OUT AND ESTABLISHED IN PARCEL NO. 1 ABOVE;

THENCE NORTH 06°21'58" WEST 12.00 FEET TO THE **POINT OF BEGINNING**;

- (1) THENCE SOUTH 73°46'04" WEST 96.34 FEET TO THE MEAN HIGH TIDE LINE OF MISSION BAY.

THE SIDELINES OF SAID 13.00 FOOT STRIP TO BE EXTENDED OR SHORTENED TO TERMINATE AS FOLLOWS:

ON THE WEST, AT THE MEAN HIGH TIDE LINE AND ON THE EAST, AT THE WESTERLY LINE OF ABOVE SAID PARCEL NO. 1.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.029 ACRES (1,253.35 SQUARE FEET MORE OR LESS)

### **PARCEL 3: (DOCKS)**

A 155.00 FOOT WIDE STRIP OF LAND SOUTHWESTERLY OF THE MEAN HIGH TIDE LINE LYING 77.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE POINT OF BEGINNING FOR AFORESAID **PARCEL NO. 2;**

(1) THENCE SOUTH 73°46'04" WEST 252.00 FEET.

ON THE EAST, THE SIDE LINES OF SAID 155.00 FOOT STRIP ARE TO BE EXTENDED OR SHORTENED TO TERMINATE AT THE MEAN HIGH TIDE LINE.

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.526 ACRES (22,898.84 SQUARE FEET MORE OR LESS)

**PARCEL 4: (BOAT DOCK BUILDING)**

BEING THE REVOCABLE PERMISSION TO MAINTAIN A BOAT DOCK BUILDING ON THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT **POINT "A"** AS SET OUT AND ESTABLISHED IN PARCEL NO. 1 ABOVE;

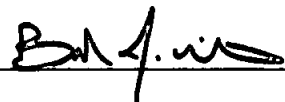
- (1) THENCE NORTH 78°13'55" WEST 23.11 FEET;
- (2) THENCE NORTH 07°23'30" EAST 28.40 FEET;
- (3) THENCE SOUTH 87°43'58" EAST 38.71 FEET;
- (4) THENCE SOUTH 87°43'56" EAST 3.03 FEET;
- (5) THENCE SOUTH 06°41'15" WEST 30.00 FEET;
- (6) THENCE SOUTH 85°45'22" WEST 19.30 FEET TO THE **POINT OF BEGINNING.**

THE ABOVE DESCRIBED PARCEL CONTAINS AN AREA OF 0.029 ACRES (1,281.35 SQUARE FEET MORE OR LESS)

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature



Date

October 9, 2016



**Exhibit "A"**

**LEGAL DESCRIPTION:**

**"License Area"**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

**PLANTING STRIPS**

A 40 FOOT STRIP OF LAND OVER AND ACROSS THAT PORTION OF THE TIDELANDS AND SUBMERGED OR FILLED LANDS OF MISSION BAY - FORMERLY FALSE BAY- AND A PORTION OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, ALL BEING IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT CITY OF SAN DIEGO CONTROL MONUMENT STATION AND THE UNITED STATES COAST AND GEODETIC SURVEY TRIANGULATION STATION "MORENA" HAVING NAD83 LAMBERT GRID COORDINATES, CALIFORNIA ZONE 6 OF NORTH 1866406.4480 AND EAST 6267555.7820 AS SHOWN ON THE RECORD OF SURVEY FILED IN SAID COUNTY ROS 16891.

THENCE SOUTH 31°17'32" WEST 1517.72 FEET TO THE POINT OF BEGINNING, HAVING NAD83 LAMBERT ZONE 6 COORDINATES OF NORTH 1865109.5110 AND EAST 6266767.4770 TO **THE POINT OF BEGINNING**;

- (1) THENCE SOUTH 12°43'53" WEST 316.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET, TO WHICH A RADIAL LINE BEARS NORTH 77°16'07" WEST;
- (2) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 189.34 FEET THROUGH A CENTRAL ANGLE OF 04°24'04" TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS NORTH 81°40'11" WEST;
- (3) THENCE SOUTH 81°40'11" EAST 30.00 FEET;
- (4) THENCE SOUTH 08°02'09" WEST 25.00 FEET;
- (5) THENCE NORTH 82°15'28" WEST 30.00 FEET TO A POINT ON A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 2465.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 82°15'28" WEST;

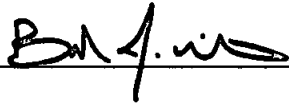
- (6) THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 449.33 FEET THROUGH A CENTRAL ANGLE OF 10°26'39", TO A POINT ON SAID CURVE, TO WHICH A RADIAL LINE BEARS SOUTH 87°17'53" WEST;
- (7) THENCE NORTH 67°09'03" EAST 42.65 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 2425.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH 87°38'42" WEST;
- (8) THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°05'11" AN ARC LENGTH OF 638.52 FEET;
- (9) THENCE NORTH 12°43'53" EAST A DISTANCE OF 318.23 FEET;
- (10) THENCE NORTH 80°26'56" WEST A DISTANCE OF 40.06 FEET TO **THE POINT OF BEGINNING.**

CONTAINING AN APROXIMATE AREA OF 37,979 SQUARE FEET OR 0.87 ACRES MORE OR LESS.

**END OF DESCRIPTION**

This real property description has been prepared by me,  
or under my direction, in conformance with the  
Professional Land Surveyors Act.

Signature



Date

November 22, 2016

