

ORDINANCE NO. 7,695–N.S.

LEASE AGREEMENT WITH 200 MARINA BLVD, LLC, THE OWNER OF THE DOUBLETREE HOTEL LOCATED AT THE BERKELEY MARINA

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The City Manager, or designee, is hereby authorized to execute a lease agreement and any amendments thereto with 200 Marina Blvd, LLC, the owner of the Doubletree Hotel located at the Berkeley Marina, for a term of approximately sixty (60) years. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 2. The minimum rent will increase from \$306,000/year to \$841,591/year, and rent payments are more often driven by percentage rent, which will remain at 5% of room revenue and 2.5% of food and beverage revenue. Minimum rent will increase by CPI annually, and both minimum rent and percentage rent will be reset in 2040. The City will get free access to conference facilities for up to nine event days per year. Revenue from this lease will be deposited into the Marina Fund, budget code 825-5903-363.80-00.

In addition, the Doubletree will make a one-time payment to the City in the amount of \$3 million upon execution of the lease as part of the Capital Improvement Agreement, to allow the City to complete the planned improvements to Marina streets. Revenue from this agreement will be deposited into the Marina Fund, budget code 825-5903-347.60-99.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on April 14, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

GROUND LEASE

by and between

**CITY OF BERKELEY
("Landlord")**

and

**200 MARINA BOULEVARD, BERKELEY, LLC
("Tenant")**

Dated _____, 20__

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<u>Exhibit A</u>	Site Map
<u>Exhibit B1</u>	Premises Legal Description
<u>Exhibit B2</u>	Initial Premises Legal Description
<u>Exhibit C</u>	State Tidelands Grant
<u>Exhibit D</u>	City Reserved Rights Driveway/Drive Aisle Area
<u>Exhibit E</u>	Current Concessionaires
<u>Exhibit F</u>	STR Chain Scales for North America and Caribbean
<u>Exhibit G</u>	Memorandum of Ground Lease
<u>Exhibit H</u>	Existing Ground Leasehold Mortgage
<u>Exhibit I</u>	Maintenance Standards

**BASIC LEASE INFORMATION
(Ground Lease)**

1. "Landlord"

CITY OF BERKELEY, a public body corporate and politic

Notice Address:

City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Manager
Telephone: (510) 981-7000
Facsimile: (510) 981-7099

With a copy to:

City of Berkeley
2180 Milvia Street
Berkeley, California 94704
Attention: City Attorney
Telephone: (510) 981-6991
Facsimile: (510) 981-6960

2. "Tenant"

200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company

Notice Address:

c/o Junson Assets Management LLC
Units 5211-12, 52/F, The Center
99 Queen's Road Central, Hong Kong
Attention: Asset Management & Legal
Facsimile: +852 2815 2599
E-Mail: asset.list@junsoncapital.com;
legal.list@junsoncapital.com

And

c/o Junson Assets Management LLC
140 East 45th Street, 20th FL
New York, NY 10017
Attention: Asset Management & Legal

With a copy to:

Sherry Meyerhoff Hanson & Crance LLP
610 Newport Center Drive, Suite 1350
Newport Beach, California 92660
Attention: Andrew P. Hanson, Esq.
Telephone: (949) 719-2199
Facsimile: (949) 719-1212

**BASIC LEASE INFORMATION
(Ground Lease)**

3. **“Effective Date”** The later of (i) the date of last execution and (ii) the date that is 30 days after the Landlord’s City Council’s adoption of the Ordinance by which this Ground Lease is approved.
4. **“Inception Date”** August 7, 1969 (see Recital D).
5. **“Premises,” “Existing Improvements,” “Alterations” and “Improvements”** The **“Premises”** are the entire approximately 13.780 acre parcel of land commonly known and referred to as 200 Marina Boulevard on the Berkeley Marina, Berkeley, California (being a portion of APN 60-2545-1), as generally shown on the map attached hereto as Exhibit A (**“Site Map”**) and more particularly described in Exhibit B1. The **“Existing Improvements”** including without limitation the currently existing approximately 378 unit hotel, restaurant, parking area, floats and berths, landscaping, and auxiliary structure/charter yacht facility, are as generally described in Subsection 1.1B below. The **“Alterations”** are all other construction, reconstruction, alterations, additions, or improvements or remodeling, in, on, or about the Improvements, as described in Section 7.1 below. The **“Improvements”** are the Existing Improvements, as modified by the Alterations from time to time.
6. **“Permitted Use”** To construct, maintain and operate on the Premises a major first-class hotel and related facilities (**“Hotel”**), including a first-class restaurant and cocktail lounge (**“Restaurant”**), with an **“STR Chain Scale”** rating issued by Smith Travel Research (STR) of **“Upscale”** or better, in full compliance with the then-applicable Franchise Agreement (as defined in Section 3.5 below), all for the convenience and promotion of commerce, navigation and fishery in the **“Berkeley Marina”** (as defined in Berkeley Municipal Code Section 6.20.010.A) and for no other purpose. The Hotel, Restaurant, and Charter Yacht Facility (as defined in Subsection 1.1B.6 below), together with parking areas and ancillary facilities on the Premises, are collectively referred to as the **“Hotel Facilities.”** The Hotel is currently operated as the **“DoubleTree By Hilton Hotel Berkeley Marina.”**
7. **“Commencement Date”** Tenant and its predecessors have leased the Premises (the **“Original Ground Lease”**), and developed, constructed, operated and maintained various hotel, restaurant and other facilities thereon since August 7, 1969 (**“Inception Date”**). The Commencement Date of this Agreement will be the Effective Date.
8. **“Ground Lease Term”** Approximately 61 additional years, commencing on the Commencement Date and (if not earlier expired or terminated) ending December 31, 2080. The **“Expiration Date”** is the date the Ground Lease Term expires.

BASIC LEASE INFORMATION
(Ground Lease)

9. **“Ground Lease Year”** The 12-month period from January 1 to and including the next succeeding December 31; *provided*, that if the Commencement Date is not a January 1, **“Ground Lease Year 1”** shall be the period from the Commencement Date to and including the next succeeding December 31. The last Ground Lease Year shall be the period from the January 1 immediately preceding the Expiration Date to and including the Expiration Date.
10. **“Annual Rent”**
- A. Generally. Payable as provided in Section 2.3 below, the greater of:
1. **“Minimum Ground Rent”** in the amount of Seventy Thousand One Hundred Thirty Three and no/100th Dollars (\$70,133) per month (approximately \$841,591 per year); or
 2. **“Percentage Rent”** equal to the sum of 5% of **“Hotel Gross Receipts”** and 2.5% of **“Food and Beverage Gross Receipts,”** each as adjusted from time to time as provided herein and as defined in Section 2.4 below. Except as otherwise expressly provided in this Ground Lease, Percentage Rent shall be calculated (and if due paid) on a quarterly basis.
- B. Annual Rent for Calendar Year 2020. Regardless of whether the Commencement Date is January 1, 2020 or thereafter, Annual Rent for the period January 1, 2020 through December 31, 2020 shall be determined as if the Commencement Date were January 1, 2020.
- C. Adjustments. Minimum Ground Rent and Percentage Rent are subject to adjustment on the “CPI Adjustment Dates,” “Minimum Ground Rent Adjustment Dates” and “Percentage Rent Adjustment Dates” (each as defined below), as provided in Sections 2.6 and 2.7 below.
11. **“CPI Adjustment Dates”** January 1, 2021, and each January 1 thereafter during the Ground Lease Term. See Subsection 2.6A below.
12. **“Minimum Ground Rent Adjustment Dates”** January 1, 2040, and each 10 years thereafter during the Ground Lease Term. See Subsection 2.6B below.
13. **“Percentage Rent Adjustment Dates”** January 1, 2040, and each 10 years thereafter during the Ground Lease Term. See Section 2.7 below.
14. **“Hornblower Sublease”** That certain Agreement for Use of Dock and Other Facilities, dated May 28, 2008 between Boykin Berkeley, LLC and Hornblower Yachts, Inc. (**“Hornblower”**), as to which Landlord consented, subject to certain conditions, pursuant to that certain May 30, 2008 letter from Landlord to Boykin Berkeley, LLC and Hornblower, acknowledged and

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agreed to by Boykin Berkeley, LLC and Hornblower (“**City Hornblower Consent**”).

15. “**Concessionaires**” See Subsections 1.1C and 2.4C and Section 13.3 below, and Exhibit E.
16. “**STR Chain Scale Rating**” of “**Upscale**” See Subsection 1.1E and ARTICLE 3 below, and Exhibit F.
17. “**Ground Lease Security**” None
18. “**Consumer Price Index**” or “**CPI**” The United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-Hayward, California (1982-1984 equals 100), or the successor of such index, as reasonably determined by Landlord.
19. “**Maintenance Standards**” See Exhibit I.
20. “**Existing Ground Leasehold Mortgagee**” and **Related Matters** Cantor Commercial Real Estate Lending, L.P., a Delaware limited partnership, as lender under a note, deed of trust, assignment of leases and other obligations identified on Exhibit H attached hereto (“**Existing Ground Leasehold Mortgage**”), as to which Landlord consented pursuant to that certain Ground Lessor Consent and Estoppel Certificate from Landlord to Tenant, dated August 4, 2017 (“**Consent Agreement and Estoppel**”). See Subsection 1.1D below.

The Existing Ground Leasehold Mortgagee’s current address for notice under ARTICLE 15 below is as follows:

Cantor Commercial Real Estate Lending, L.P.
110 East 59th Street, 6th Floor
New York, New York 10022
Attention: Legal Department
Facsimile No.: (212) 610-3623
E-Mail: legal@ccre.com

With a copy to:

Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071
Attention: Mark Osher
Facsimile No.: (213) 229 - 6694
E-Mail: mosher@gibsondunn.com

And a copy to:

**BASIC LEASE INFORMATION
(Ground Lease)**

Berkeley Point Capital LLC
One Beacon Street, 14th Floor
Boston, Massachusetts 02108
Attention: Director Loan Servicing
Facsimile No.: (617) 722-5050
E-Mail: servicing.requests@berkpoint.com

**21. "Brand/Flag/Chain"
and Related Matters**

Tenant's current "**Brand/Flag/Chain**" is: DoubleTree by Hilton

Its current "**Franchisor**" is: Hilton Franchise Holding LLC, a
Delaware limited liability company

Its principal business address is:

7930 Jones Branch Drive, Suite 1100
McLean, Virginia 22102

Its address for notices is:

Hilton Worldwide Holdings, Inc.
Attention: General Counsel
7930 Jones Branch Drive, Suite 1100
McLean, Virginia 22102

See ARTICLE 3 below for definitions and related matters.

In the event of any conflict between the Basic Lease Information and terms of the Ground Lease,
the terms of the Ground Lease shall control.

LANDLORD'S INITIALS _____

TENANT'S INITIALS _____

GROUND LEASE

THIS GROUND LEASE ("**Ground Lease**") is made and entered into this ___ day of _____, 20___, to be effective on the "**Effective Date**" (as defined in the Basic Lease Information), by and between the Landlord and Tenant identified in the Basic Lease Information, who agree as follows:

BACKGROUND AND RECITALS

- A. Landlord is the owner of certain tidelands in trust for the promotion of commerce, navigation and fishery as evidenced by that certain statutory grant from the State of California to the City of Berkeley, as set forth in Statutes 1913, Chapter 347, as amended (copies of which include, without limitation, the statutes attached hereto as Exhibit C, the "**State Tidelands Grant**").
- B. The Premises (as that term is defined in the Basic Lease Information and more particularly described in Exhibit B1 attached hereto) comprise a portion of such tidelands, and must be used in a manner consistent with the State Tidelands Grant, public trust uses, and applicable law.
- C. Development and use of the Premises for the use or uses as hereinafter more particularly described is necessary for the convenience and promotion of commerce, navigation and fishery on said tidelands and is consistent with the development of a small craft harbor, pursuant to the provisions of Division 1, Chapter 2, Article 3 (Sections 70—72.4) of the Harbors and Navigation Code of the State of California.
- D. Tenant and its predecessors have leased the Premises, and developed, constructed, operated and maintained various hotel, restaurant and other facilities thereon since the Inception Date. Among other things:
 - 1. Landlord and William J. Boykin of Cleveland, Ohio ("**WJB**") entered into that certain lease dated August 7, 1969 ("**Original Ground Lease**"), as amended by that certain (i) Amendment to Lease by and between Landlord and WJB dated September 25, 1969 ("**First Amendment**"); (ii) Amendment to Lease by and between Landlord and WJB dated April 9, 1970 ("**Second Amendment**"); (iii) Amendment to Lease by and between Landlord and WJB dated December 12, 1970 ("**Third Amendment**"); and (iv) Amendment to Lease by and between Landlord and WJB dated December 31, 1970 ("**Fourth Amendment**") for the lease of certain property situated in the City of Berkeley, County of Alameda, State of California. The Premises leased per the Original Ground Lease (consisting of approximately 11.15 acres) are more particularly described in Exhibit B2 attached hereto. The Premises as expanded by the Second Amendment (consisting of approximately 13.780 acres), and which remain the Premises subject to this Ground Lease, are more particularly described in Exhibit B1 attached hereto.
 - 2. Pursuant to that certain Assignment of Lease dated December 15, 1970, by and between WJB and Boykin Berkeley, Inc., an Ohio corporation ("**Boykin Berkeley, Inc.**"), and that certain Consent of Landlord dated January 5, 1971, both of which were recorded on January 7, 1971 as instrument number 1786 at Reel 2764, Image 91 with the Alameda County Recorder's Office, WJB assigned to Boykin

Berkeley Inc., and Boykin Berkeley, Inc. assumed from WJB, the Original Ground Lease, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment (collectively, "**Assigned Lease**").

3. Pursuant to that certain Assignment of Lease dated January 27, 1972, by and between Boykin Berkeley, Inc. and Marina Associates, a limited partnership, George M. Steinbrenner, III, General Partner ("**Marina Associates**"), and that certain Consent of Landlord dated January 28, 1972, both of which were recorded on July 12, 1972 as instrument number 93665 at Reel 3178, Image 901 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Marina Associates, and Marina Associates assumed from Boykin Berkeley, Inc. the Assigned Lease. Concurrently, by that certain Grant Deed also recorded on July 12, 1972, as instrument number 93665 at Reel 3178, Image 905, Boykin Berkeley, Inc. assigned to Marina Associates all improvements constructed and being constructed on the Premises held pursuant to the Assigned Lease.
4. Pursuant to that certain unrecorded sublease dated January 27, 1972 ("**Sublease**"), by and between Marina Associates and Boykin Berkeley, Inc., a Short-Form Lease of which was recorded on July 12, 1972 as instrument number 72093667, at Reel 3178, Image 909, and that certain Consent of Landlord dated January 28, 1972, also recorded as instrument number 72093667, at Reel 3178, Image 909, Marina Associates sublet the Premises, with all easements pertinent thereto, all improvements thereon and appurtenances thereunder to Boykin Berkeley, Inc.
5. Pursuant to that certain Assignment of Lease dated January 27, 1981, by and between Marina Associates and U.S. Realty Investments, an unincorporated association in business trust form organized under the laws of the State of Ohio ("**U.S. Realty**"), and that certain Consent of Landlord dated January 28, 1981, both of which were recorded on February 2, 1981 as instrument number 81-016827 with the Alameda County Recorder's Office, Marina Associates assigned to U.S. Realty, and U.S. Realty assumed from Marina Associates, the Assigned Lease.
6. Pursuant to that certain Assignment of Lease dated March 31, 1982, by and between U.S. Realty and Boykin-Berkeley, Inc., an Ohio corporation ("**Boykin-Berkeley, Inc.**"), and that certain Consent of Landlord dated March 29, 1982, both of which were recorded on March 31, 1982 as instrument number 82-045415 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc., and Boykin-Berkeley, Inc. assumed from U.S. Realty, the Assigned Lease, subject to but not assuming certain deed of trust and indenture of lease encumbrances. Concurrently, by that certain Grant Deed dated and recorded on March 31, 1982 as instrument number 82-045416 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc. all improvements constructed and being constructed on the Premises.
7. Pursuant to that certain Assignment of Lease dated and recorded on March 31, 1982 as instrument number 82-045417 with the Alameda County Recorder's Office, U.S. Realty assigned to Boykin-Berkeley, Inc., and Boykin-Berkeley, Inc. assumed from U.S. Realty, all of U.S. Realty's right, title and interest in the Sublease.

8. Landlord and Boykin-Berkeley, Inc. entered into that certain Amendment to Lease dated August 28, 1983 ("**Fifth Amendment**") to construct additional facilities on the Premises ("**Expansion**"). The Fifth Amendment provided, among other things, for (i) the percentage rental to be adjusted beginning on August 7, 2004, and every ten (10) years thereafter, to the then fair market percentage rental, subject to certain limitations on the amount of the increase, and (ii) adjustment of the term of the leasing of the Premises by Landlord to Boykin-Berkeley, Inc.
9. Pursuant to that certain Assignment of Lease dated March 15, 1991, by and between Boykin Berkeley, Inc. and Boykin Berkeley One, an Ohio corporation, and that certain Landlord's Consent dated March 14, 1991, both of which were originally recorded on June 28, 1991 as instrument number 91167025 and subsequently corrected and recorded on August 9, 1991 as instrument number 91211149 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Boykin Berkeley One, and Boykin Berkeley One assumed from Boykin Berkeley, Inc., a four percent (4%) interest in the Assigned Lease, as further amended by the Fifth Amendment.
10. Pursuant to that certain Assignment of Lease dated March 15, 1991, by and between Boykin Berkeley, Inc. and Boykin Berkeley One, as assignors, and Berkeley Marina Associates Limited Partnership, a Delaware limited partnership ("**Berkeley Marina Associates**"), as assignee, and that certain Landlord's Consent dated March 14, 1991, both of which were recorded on June 28, 1991 as instrument number 91171301 and subsequently corrected and recorded on August 9, 1991 as instrument number 91211150 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. together with Boykin Berkeley One assigned to Berkeley Marina Associates, and Berkeley Marina Associates assumed from Boykin Berkeley, Inc. and Boykin Berkeley One, all of Boykin Berkeley, Inc. and Boykin Berkeley One's respective interests in the Assigned Lease, as further amended by the Fifth Amendment.
11. Pursuant to that certain Assignment of Lease dated June 1991, by and between Boykin Berkeley, Inc. and Berkeley Marina Associates, recorded on August 9, 1991 as instrument number 91211151 with the Alameda County Recorder's Office, Boykin Berkeley, Inc. assigned to Berkeley Marina Associates, and Berkeley Marina Associates assumed from Boykin Berkeley, Inc., all of Boykin Berkeley, Inc.'s right, title and interest in and to the assets and property related to the Assigned Lease, as amended by the Fifth Amendment. Berkeley Marina Associates subsequently assigned all of its right, title and interest in and to the Assigned Lease, as amended by the Fifth Amendment, to Boykin-Berkeley, Inc. pursuant to an unrecorded assignment of lease.
12. Landlord and Boykin-Berkeley, Inc. entered into that certain Amendment to Lease dated March 26, 1992 ("**Sixth Amendment**"), granting Boykin-Berkeley, Inc. authority to construct an auxiliary structure on the Premises. The Original Ground Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment are referred to collectively herein as the "**Base Lease.**"
13. Pursuant to that certain Assignment of Lease dated November 4, 1996, by and between Boykin Berkeley, Inc. and Boykin Hotel Properties, L.P. ("**Boykin Hotel**

Properties”), Boykin Berkeley, Inc. assigned to Boykin Hotel Properties, and Boykin Hotel Properties assumed from Boykin Berkeley, Inc., the Base Lease. Concurrently, by that certain Grant Deed dated November 4, 1996 and recorded on November 6, 1996 as instrument number 96282855 with the Alameda County Recorder’s Office, Boykin Berkeley, Inc. assigned to Boykin Hotel Properties all improvements constructed and being constructed on the Premises.

14. Pursuant to that certain Quitclaim Deed dated November 4, 1996 and recorded on November 6, 1996 as instrument number 96282854 with the Alameda County Recorder’s Office, Boykin Berkeley, Inc. and Berkeley Marina Associates remised, released and forever quitclaimed to Boykin Hotel Properties all their rights, title and interest in the Sublease in order to terminate the Sublease.
15. Pursuant to that certain Assignment of Lease dated July 11, 2000, by and between Boykin Hotel Properties and Tenant, recorded on July 18, 2000 as instrument number 2000211933 with the Alameda County Recorder’s Office, Boykin Hotel Properties assigned to Tenant, and Tenant assumed from Boykin Hotel Properties, all of Boykin Hotel Properties’ right, title and interest in the Base Lease.
16. On or about August 2004, Landlord and Boykin Berkeley, LLC reached an impasse regarding interpretation of the fair market percentage rental adjustment provisions set forth in the Fifth Amendment.
17. Landlord and Boykin Berkeley, LLC entered into a Settlement Agreement, dated January 18, 2008 (“**Settlement Agreement**”) which, among other things, resolved the then-dispute between Landlord and Boykin Berkeley, LLC regarding proper interpretation of the percentage rental adjustment clause set forth in the Fifth Amendment. Concurrently with and pursuant to the Settlement Agreement, Landlord and Boykin Berkeley, LLC entered into a new Ground Lease, dated January 18, 2008 (“**2008 Ground Lease**”) to replace the Base Lease, to effect the terms of the Settlement Agreement and to set forth the terms of the leasing of the Premises as then agreed upon by Landlord and Boykin Berkeley, LLC. Under the 2008 Ground Lease, the term was extended until December 31, 2058.
18. Concurrently with and pursuant to the 2008 Ground Lease, Landlord and Boykin Berkeley, LLC, as WJB’s successor-in-interest, replaced that certain Memorandum of Lease dated December 31, 1970 and recorded in the Official Records of Alameda County on January 7, 1971 as instrument number 1785, Reel 2764, Image 89 with that certain Memorandum of Lease dated January 10, 2008 and recorded on January 24, 2008 as instrument number 2008017660 with the Alameda County Recorder’s Office (“**2008 Memorandum**”).
19. Pursuant to the Hornblower Sublease (and subject to the City Hornblower Consent), Boykin Berkeley, LLC terminated a prior 1994 agreement which had permitted Hornblower to use a portion of the Hotel Facilities for docking, vessel maintenance, food preparation and office space, and entered into a new agreement to permit Hornblower to use and occupy four specific portions of the Existing Improvements referred to therein as the Berth Area, the Charter Yacht Facility, the Office Area (also known as the Tiburon Room) and the San Francisco Room, for a five-year term commencing **[May 30, 2008]** with one five-year option.

20. Pursuant to that certain Assignment and Assumption of Ground Lease effective April 18, 2011 and recorded on April 20, 2011 as instrument number 2011115637 with the Alameda County Recorder's Office, Boykin Berkeley, LLC assigned to Westpost Berkeley LLC ("**Westpost**"), and Westpost assumed from Boykin Berkeley, LLC, all of Boykin Berkeley, LLC's right, title and interest in the 2008 Ground Lease.
 21. Pursuant to that certain Assignment and Assumption of Ground Lease dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046461 with the Alameda County Recorder's Office, and that certain Consent and Estoppel Certificate of City, dated February 4, 2014 and recorded on February 10, 2014 as instrument number 2014046460 with the Alameda County Recorder's Office ("**2008 Consent**"), Westpost assigned to Tenant, and Tenant assumed from Westpost, all of Westpost's right, title and interest in the 2008 Ground Lease and Premises. Concurrently, by that certain Grant Deed dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046459 with the Alameda County Recorder's Office, Westpost transferred to Tenant all of Westpost's right, title and interest in the Improvements.
- E. Landlord and Tenant intend to enter into this Ground Lease to set forth the terms of the leasing of the Premises as currently agreed upon by Landlord and Tenant. Landlord and Tenant, as Boykin Berkeley, LLC's successor-in-interest, further desire to replace the 2008 Memorandum with that certain Memorandum of Lease dated concurrently herewith substantially in form attached hereto as Exhibit G.
- F. Landlord and Tenant specifically agree that a material consideration of this Ground Lease is Tenant's agreement to continually operate, maintain and improve the Premises and Improvements as first-class major Hotel Facilities, in full compliance with its then applicable Franchise Agreement, with an STR Chain Scale rating of Upscale or better, as provided below.

ARTICLE 1. PROPERTY, LEASE AND TERM

1.1 Overview. Tenant currently owns and operates on the Premises a first-class major DoubleTree by Hilton Hotel, rated Upscale on the STR Chain Scale, pursuant to the 2008 Ground Lease. Tenant and its predecessors have leased the Premises, and owned and operated various hotels and restaurants thereon (see above Recitals), since 1969. Although the stated expiration date under the 2008 Ground Lease is not until December 31, 2058, the parties wish to enter into a modified ground lease for the Premises and Improvements on the terms set forth herein. From and after the Commencement Date, neither party shall have any further rights or obligations under the 2008 Ground Lease other than those obligations which survive expiration or termination thereof and as expressly provide herein.

A. Premises. Landlord owns the Premises pursuant to the State Tideland Grant.

B. Improvements. Pursuant to the 2008 Ground Lease and other leases, Tenant or its predecessors constructed, and pursuant to the 2008 Lease Tenant owns, the Existing Improvements. Tenant will continue to own the Improvements and all other Improvements during the Ground Lease Term. The Existing Improvements include the following:

1. Hotel. A Hotel containing 378 hotel units ("**Hotel**").
 2. Restaurant. A main restaurant, including dining area, cocktail lounge, and banquet rooms (which include meeting rooms) (collectively, "**Restaurant**"). As of the Effective Date, the Restaurant and attendant lounge have a capacity of approximately 280 persons, and the Hotel itself contains eight state of the art conference rooms and one ballroom totaling at least 16,000 square feet.
 3. Combined Hotel - Restaurant. The Hotel and Restaurant constitute a consolidated Hotel Restaurant facility.
 4. Parking Areas. One paved parking area with suitable landscaping accommodating not less than 295 parking spaces which parking area shall be used for Hotel parking, together with one separate paved parking area containing not less than 190 parking spaces, which parking area shall be used for the Restaurant (collectively, the "**Parking Areas**").
 5. Floats and Berths. A marginal float not less than 622 feet in length along the waterfront to serve as a pedestrian way along the waterfront of the Premises. Tenant may use said marginal float for the purpose of berthing boats for water transient trade or may, in addition thereto, construct suitable floats and berths perpendicular to said marginal float for berthing boats for water transient trade.
 6. Auxiliary Structure/Charter Yacht Facility. Landlord acknowledges that Tenant has constructed the auxiliary structure pursuant to, and in full compliance with, the Sixth Amendment (the "**Charter Yacht Facility**").
- C. Occupancy. Tenant currently leases and, except for Hornblower and the Concessionaires (as defined in Subsection 2.4C below) identified on Exhibit E (if any), occupies the entire Premises and Existing Improvements under the 2008 Ground Lease (and, with respect to Hornblower, the Hornblower Sublease). Other than the Hornblower Sublease, there are no subtenancies.
- D. Existing Ground Leasehold Mortgagee and Existing Ground Leasehold Mortgagee. With Landlord's consent under the 2008 Ground Lease, Tenant is the borrower and Existing Ground Leasehold Mortgagee is the lender under the Existing Ground Leasehold Mortgage. (See Basic Lease Information clause 20 and Exhibit H)
- E. Hotel Facilities Quality and Brand/Chain/Scale Ratings. The current Premises Hotel Facilities are first-class, and the Hotel Facilities' current Brand/Flag/Chain, DoubleTree by Hilton Hotel, is rated Upscale on the STR Chain Scale. Tenant's continued operation and maintenance of first-class Hotel Facilities, with an STR Chain Scale rating of "Upscale" or better rating, are both crucial requirements of this Ground Lease. The current STR Chain Scales - North America and Caribbean is attached hereto as Exhibit F. See ARTICLE 3 below.
- F. Incorporation. The Basic Lease Information and Recitals (including defined terms) set forth above and the Exhibits attached hereto are incorporated into and made a part of this Ground Lease.

1.2 Ground Lease. For and in consideration of the payment of Rent (as defined in Section 2.1 below) and the performance of all the covenants and conditions of this Ground

Lease, Landlord hereby leases and demises to Tenant, and Tenant hereby leases and hires from Landlord, the Premises, for the Ground Lease Term and upon the covenants and conditions set forth herein.

1.3 Ground Lease Term. The “**Ground Lease Term**” of this Ground Lease is set forth in the Basic Lease Information.

ARTICLE 2. RENT AND SECURITY

2.1 Rent. Rent shall be paid as set forth in this ARTICLE 2. This Ground Lease is a net lease, and Minimum Ground Rent, Percentage Rent, Annual Rent, Additional Rent (as defined below) and other payments due and payable hereunder to or on behalf of Landlord (collectively, “**Rent**”) shall be paid without notice or demand, and, except as specifically provided for in this Ground Lease, without offset, deduction or credit. All Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate from time-to-time in writing.

2.2 Annual Rent. During the Ground Lease Term and commencing on the Commencement Date, Tenant shall pay to Landlord Annual Rent.

2.3 Payment of Annual Rent.

A. Tenant shall pay Minimum Ground Rent to Landlord in monthly installments in advance on or before the first day of each month during the Ground Lease Term. If the Commencement Date is not the first day of a month, Tenant shall pay the prorated portion of Minimum Ground Rent for the first partial month in advance on or before the Commencement Date. Minimum Ground Rent shall be prorated for any partial month.

B. Tenant shall pay Percentage Rent (if due) not later than the last day of the month following the end of each calendar quarter during the Ground Lease Term (i.e., not later than each April 30, July 31, October 31 and January 31) (or, if the Expiration Date is not the last day of a calendar quarter, not later than 30 days following the Expiration Date) on the basis of the Hotel Gross Receipts and Food and Beverage Gross Receipts for the preceding calendar quarter (or lesser period for the last partial quarter, if applicable). Tenant shall be entitled to a credit against the Percentage Rent in an amount equal to the total amount of Minimum Ground Rent paid during the corresponding quarter of the applicable Ground Lease Year.

C. Additionally, (i) if the Commencement Date is after January 1, 2020, Percentage Rent for each calendar quarter commencing on or after January 1, 2020 and ending before or including the Commencement Date, shall be determined as if the Commencement Date were January 1, 2020, and (ii) in addition to the credit (if any) described in the last sentence of Subsection 2.3B above, Tenant shall be entitled to a credit against the Percentage Rent for those quarter(s) in an amount equal to the total amount (if any) of Minimum Ground Rent (as defined in the 2008 Ground Lease) paid during the corresponding quarter of 2020.

2.4 Gross Receipts.

A. Definition of “Hotel Gross Receipts.” “**Hotel Gross Receipts**” means all gross revenue as defined in the Uniform System of Accounts for the Lodging Industry actually received by Tenant or any Tenant affiliate, except as otherwise provided in Subsections 2.4C and

2.4D below, from room and other rentals, including revenues from on-command premium movie rentals, internet service connection fees, telephone or facsimile transmission charges, health club fees (including non-guest membership fees), spa revenues, gift shop revenues, Concessionaires and subtenants sublease rent (other than those subtenants, including, as of the date hereof, Hornblower, whose sublease terms provide for City to receive a percentage of the gross sublease rent other than 5%); sale of goods, wares, merchandise, commodities, products and services, including without limitation electricity from Charging Stations (as defined in Subsection 5.7A below) if operated by Tenant (and not a Concessionaire); charges for attendance at any on-Premises event; and any and all other revenue of whatsoever kind or nature derived from or relating to the operation of the Hotel Facilities, valued in money, whether received in money or otherwise, without any deduction for the cost of the property sold, the cost of materials used, labor or service costs, interest paid, losses, cost of transportation, or any other expense, but excluding Food and Beverage Gross Receipts and excluding actual bad debt and credit card charge backs.

B. Definition of "Food and Beverage Gross Receipts." **"Food and Beverage Gross Receipts"** means all gross sales or revenue received by Tenant or any Tenant affiliate derived from food and beverage service as defined in the Uniform System of Accounts for the Lodging Industry relating to the operation of the Hotel Facilities, but excluding Hotel Gross Receipts.

C. Application to Hornblower, other City-Approved Subtenants, and Concessionaires. With respect to Hornblower and any other City-approved subtenant operating auxiliary facilities on the Premises that are unrelated to the hotel business being conducted on the Premises by Tenant whose sublease provides for City to receive a percentage of the gross sublease rent other than 5%, Tenant shall pay, and City shall receive, that portion of the sublease rent as provided for in the City-approved sublease and such payments shall not be included within the definition of Hotel Gross Receipts or Food and Beverage Gross Receipts. With respect to third-party concessionaires or service providers operating auxiliary facilities relating to the operation of the Hotel Facilities, or providing ancillary services relating to the operation of the Hotel Facilities, including without limitation (as applicable) barber and beauty shops, auto rentals, tour or entertainment event ticket sellers, and on-command or other television or movie rentals, audio visual rentals, health clubs, spas and gift shops, or parking lots, including the Charging Stations (but excluding operation of the Hotel Facility and Restaurant) (each, a **"Concessionaire"**), the terms Hotel Gross Receipts and Food and Beverage Gross Receipts shall mean the net amounts, whether received in money, in-kind consideration or otherwise, actually received by Tenant or its affiliates from such Concessionaire and not the gross revenues of such Concessionaire.

D. Exclusions. Each of the defined terms Hotel Gross Receipts and Food and Beverage Gross Receipts expressly excludes state, county and City sales taxes or City transient occupancy taxes; the value of meals furnished to employees of affiliates of Tenant in the course of their employment; employee tips or gratuities; any service charge turned over to employees in lieu of such employees receiving tips or gratuities; any proceeds of sales of worn out, obsolete or surplus trade equipment, furniture, and fixtures, and other personal property which is ordinarily used in the business but not held for sale, lease or use; any proceeds from financing or refinancing of the Tenant's property, including ground leasehold interest in the Premises; proceeds from any insurance policy other than business interruption insurance proceeds which shall be included in Hotel Gross Receipts to the extent such revenue is not excluded from Hotel Gross Receipts under this Section 2.4; proceeds from the sale, disposition financing or refinancing of any assets of Tenant; and any charges for valet services. No item, to the extent accounted for in Hotel Gross Receipts, shall be included in Food and Beverage Gross Receipts; and no item, to the extent accounted for in Food and Beverage Gross Receipts, shall be included in Hotel Gross Receipts.

2.5 Statement of Each Hotel Gross Receipts and Food and Beverage Gross Receipts; Records of Sales; Right to Audit; Financial Statements.

A. Hotel Gross Receipts and Food and Beverage Gross Receipts Statements.

1. For the purpose of determining Percentage Rent, Tenant shall furnish to Landlord, not later than the last day of the month after the end of each calendar quarter during the Ground Lease Term and each Ground Lease Year (i.e., not later than each April 30, July 31, October 31 and January 31), an unaudited itemized statement of each of Hotel Gross Receipts and Food and Beverage Gross Receipts for such calendar quarter and Ground Lease Year, as applicable, certified by an officer of Tenant and prepared in accordance with the latest edition of the Uniform System of Accounts for the Lodging Industry. In the event the Commencement Date is after January 1, 2020, the first itemized statements shall also include all Hotel Gross Receipts and Food and Beverage Gross Receipts [each as defined in this Ground Lease] for the period from January 1, 2020 to and including the day before the Commencement Date, and the itemized statements for Ground Lease Year 1 shall include all Hotel Gross Receipts and Food and Beverage Gross Receipts (each as defined in this Ground Lease) from January 1, 2020 through December 31, 2020.

2. Within 15 days after the end of each month, Tenant shall also furnish Landlord an unaudited and itemized monthly statement of business transacted during the preceding month showing each of Hotel Gross Receipts and Food and Beverage Gross Receipts. If the Commencement Date is not the first day of a month, the first monthly statement shall also include each of Hotel Gross Receipts and Food and Beverage Gross Receipts for the period from the first day of the month to and including the day before the Commencement Date. Such monthly statements shall not be used for the purpose of determining Percentage Rent.

3. Tenant covenants that it will include in each operating agreement or similar contract (each, a "**Concessionaire Agreement**") with any future Concessionaire, provisions imposing upon such Concessionaire the obligation to provide to Landlord, within 10 business days' following Landlord's request therefor, statements of the rents or other payments by each such Concessionaire to Tenant or its affiliates.

B. Records of Sales and Business Transactions. Tenant shall keep and maintain true and complete records and accounts for each calendar quarter during the Ground Lease Term and for each Ground Lease Year, and for a period of at least five years after the end of each Ground Lease Year, all sales slips, cash register tape readings or other electronic, digital, or hard copy recordation or documentation of cash register sales, sales books, rental books, bank books and statements, deposit slips, paper and electronic books of account, and any and all other documents, records, returns, papers and files of Tenant relating to each of the Hotel Gross Receipts and Food and Beverage Gross Receipts and sales, lease, rental or other business transacted during each calendar quarter during the Ground Lease Term and each Ground Lease Year (collectively, "**Records and Accounts**") and shall make the same available to Landlord or its authorized agent during such period at the Premises or at some other place reasonably acceptable and readily available to Landlord, for examination and auditing purposes, without causing unreasonable disturbance to the operations of the Hotel and its guests.

C. Right to Audit. Tenant shall give Landlord, including the City Auditor, or its or their authorized agents access at the Premises or at some other place reasonably acceptable and readily available to Landlord, including the City Auditor, upon reasonable (but no more than 30 days) prior written notice and during business hours, to such Records and Accounts, including

reasonable access to Tenant's employees, and any subtenant or Concessionaire's employees, for auditing purposes, and Landlord, including City Auditor, shall have the right to audit such Records and Accounts. Such audit right shall include the right to audit such Records and Accounts for calendar year 2019 in accordance with the terms of the 2008 Ground Lease. If Landlord acting through the City Auditor or otherwise should have an audit made for any period and either Hotel Gross Receipts, Food and Beverage Gross Receipts, or business transacted shown by Tenant's statement for such period is found to be understated in an amount greater than or equal to two percent of the amount reported by Tenant ("**Understatement**"), Tenant shall be provided an opportunity to discuss and respond to any findings before an audit report is formally filed. In the event that Landlord acting through the City Auditor or otherwise performs an audit and it is found that there is an Understatement, Tenant shall, within five business days, pay to Landlord the cost of such audit as well as the additional Percentage Rent or other sums payable by Tenant to Landlord, in addition to any delinquency and late charges provided for in this Ground Lease. If Landlord's audit shows no Understatement, the cost of the audit shall be borne by Landlord. Tenant has included in subleases with Hornblower, and covenants it will include in subleases with all future subtenants, provisions imposing upon such subtenant obligations to Landlord, substantially similar to those obligations of Tenant to Landlord as set forth in this Subsection 2.5C.

D. Other Financial Information. Tenant shall also provide to Landlord or City Auditor, as applicable, within 30 days after written request, such other financial information as may be reasonably required by Landlord or City Auditor.

2.6 Minimum Ground Rent Increases.

A. CPI Adjustments. Minimum Ground Rent shall be increased commencing on each January 1 occurring after the Commencement Date during the Ground Lease Term, with the exception of any Minimum Ground Rent Adjustment Dates (each a "**CPI Adjustment Date**") by an amount equal to the product of (i) the Minimum Ground Rent in effect for the 12 month period immediately preceding the applicable CPI Adjustment Date multiplied by (ii) the percentage increase in the Consumer Price Index measured from the measuring month 15 months preceding the CPI Adjustment Date to the measuring month three months preceding the CPI Adjustment Date and every 12 months thereafter (each a "**CPI Adjustment**").

B. Periodic Adjustments. In addition to annual CPI Adjustments, Minimum Ground Rent shall be reset on each Minimum Ground Rent Adjustment Date, to an amount equal to 60% of the average Annual Rent payable by Tenant for the three Ground Lease Years immediately preceding the Minimum Ground Rent Adjustment Date. However, in no event shall Minimum Ground Rent be reduced below the Minimum Ground Rent in effect immediately prior to the Minimum Ground Rent Adjustment Date.

2.7 Percentage Rent Adjustments.

A. General. On each Percentage Rent Adjustment Date during the Ground Lease Term, each specific percentage amount (each, a "**Percentage Rent Multiplier**") which is applied to Hotel Gross Receipts and Food and Beverage Gross Receipts (initially 5% and 2.5%, respectively) as part of the Percentage Rent determination shall be adjusted to the then-applicable "**Fair Market Percentage Rent Multiplier**," determined as provided in this Section 2.7; provided, however, in no event shall either Percentage Rent Multiplier be increased or reduced more than 10% above or below the Percentage Rent Multiplier in effect immediately prior to the applicable Percentage Rent Adjustment Date. By way of example, the Percentage Rent Multipliers in effect for the ten-year period beginning January 1, 2040 shall in no event be lower than 4.5% for Hotel

Gross Receipts or 2.25% for Food and Beverage Gross Receipts, nor higher than 5.5% for Hotel Gross Receipts or 2.75% for Food and Beverage Gross Receipts. The foregoing shall not prevent cumulative increases or decreases of either Percentage Rent Multiplier by more than 10% over multiple Percentage Rent Adjustment Dates.

B. Determination of Fair Market Percentage Rent Multipliers. The Fair Market Percentage Rent Multiplier for each of Hotel Gross Receipts and Food and Beverage Gross Receipts means the Percentage Rent Multiplier that would be applied to Hotel Gross Receipts and Food and Beverage Gross Receipts, respectively, which the land comprising the Premises would bring as of the date of Landlord's Rent Adjustment Notice (defined below), taking into account the permitted uses of the Premises and all other terms, conditions and covenants contained in this Ground Lease, if the Premises were offered for a long-term ground lease on an open and competitive market to a tenant in an arms-length transaction with neither party under abnormal pressure to consummate the transaction.

1. At least nine months prior to each Percentage Rent Adjustment Date, Landlord shall provide Tenant with written notice ("**Landlord's Rent Adjustment Notice**") of Landlord's determination of the Percentage Rent Multipliers for the upcoming 10-year period, which shall be based upon a recent market rent analysis of the Premises (determined in accordance with the standards set forth in Subsection 2.7B above) performed not more than ninety (90) days prior to the date of such Landlord's Rent Adjustment Notice. If Landlord fails to timely provide Tenant with Landlord's Rent Adjustment Notice, Tenant may provide Landlord with written notice specifying that Landlord's failure to provide Landlord's Rent Adjustment Notice within ninety (90) days from Tenant's notice shall be deemed Landlord's determination that the Percentage Rent Multipliers then in effect are equal to the Fair Market Percentage Rent Multipliers. If Landlord provides a Landlord's Rent Adjustment Notice and Tenant disagrees with Landlord's determination, Tenant, within 90-days after receipt of Landlord's Rent Adjustment Notice, may deliver to Landlord written notice of such disagreement, together with Tenant's determination of the Fair Market Percentage Rent Multipliers based upon a recent market rent analysis of the Premises (determined in accordance with the same standards set forth above), and complete copies of any market rent analysis which Tenant has utilized in its determination, together with such other information regarding such comparable properties as Tenant deems relevant or as may be reasonably requested by Landlord, to the extent available to Tenant ("**Disagreement Notice**"). If Tenant fails to deliver to Landlord its Disagreement Notice within such 90-day period, Landlord's determination of the Fair Market Percentage Rent Multipliers shall be conclusive. If Tenant timely delivers to Landlord a written Disagreement Notice together with Tenant's determination of the Fair Market Percentage Rent Multipliers, then Tenant and Landlord shall have 30 days from the date of Tenant's Disagreement Notice in which to agree upon the Fair Market Percentage Rent Multipliers ("**Negotiation Period**"). Landlord and Tenant shall negotiate in good faith during the Negotiation Period. If the parties agree on the Fair Market Percentage Rent Multipliers during the Negotiation Period, they shall promptly execute an amendment to this Ground Lease setting forth the Fair Market Percentage Rent Multipliers so jointly determined, to be effective upon the applicable Percentage Rent Adjustment Date.

2. If the parties do not agree on the Fair Market Percentage Rent Multipliers, the parties shall have ten (10) business days from the end of the Negotiation Period to apply to and receive from the American Arbitration Association a panel of three potential MAI certified real estate appraisers with at least 10 years' full-time hotel and restaurant appraisal experience in the San Francisco Bay Area and who have not previously been retained by either party or their respective affiliates, parents, or subsidiaries. If such a panel is unobtainable within the 10 business day time frame, either party can apply to the presiding judge of the superior court

of Alameda County, California, for a panel of appraisers who meet the qualifications stated in this Subsection 2.7B.2. Upon receipt of the panel of appraisers, the parties shall determine a single appraiser within five business days in the manner provided herein. Each party shall be entitled to object to any individual on the panel. Tenant shall have the right to make objection first and the parties shall take turns making objections until agreement is reached or only one appraiser remains who shall be appointed to determine the Fair Market Percentage Rent Multipliers hereunder.

3. The appraiser so appointed shall be required to determine, in accordance with the standards set forth in Subsection 2.7B above and within 30 days of the appraiser's appointment, which of the Landlord's or Tenant's written determination of Fair Market Percentage Rent Multipliers most closely approximates the then current Fair Market Percentage Rent Multipliers for the Premises. The determination of Fair Market Percentage Rent Multipliers chosen by the appraiser shall become the Fair Market Percentage Rent Multipliers in effect until the next Percentage Rent Adjustment Date. The decision rendered by the appraiser shall be final, and binding on both parties. Each of the parties shall bear one-half of the cost of appointing the appraiser and of paying the appraiser's fee. If the Fair Market Percentage Rent Multipliers have not been determined prior to the applicable Percentage Rent Adjustment Date, Tenant shall pay adjusted Percentage Rent based upon Landlord's determination of the Fair Market Percentage Rent Multipliers, subject to retroactive adjustment between the parties if the determination by the appraiser is different from Landlord's determination.

4. Nothing in this Subsection 2.7B shall prevent the parties from resolving any dispute regarding Fair Market Percentage Rent Multipliers by any other means they may mutually approve.

2.8 Additional Rent. In addition to and not by way of limitation of Landlord's rights under specific provisions of this Ground Lease, Landlord shall at all times have the right (at its sole election and without any obligation to do so) to advance on behalf of Tenant any amount that Tenant has failed to pay as required under this Ground Lease following notice and expiration of applicable cure periods, provided that (except in case of emergency calling for immediate payment) Landlord shall first have given Tenant no less than thirty (30) days' advance written notice of Landlord's intent to advance such amounts on behalf of Tenant. No advance by Landlord shall operate as a waiver of any Landlord right under this Ground Lease and Tenant shall remain fully responsible for the performance of its obligations under this Ground Lease. All amounts advanced by Landlord as provided in this Section 2.8 shall constitute "**Additional Rent**" under this Ground Lease, shall be due and payable by Tenant to Landlord within ten (10) business days of Tenant's receipt of an invoice from Landlord therefor.

2.9 Late Charge. The late payment of any Minimum Ground Rent or Percentage Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service ("**Delinquency Costs**"). For the second and any subsequent time in any 12 month period that Landlord has not received an installment of Minimum Ground Rent or Percentage Rent within five days after its due date, Tenant shall pay a late charge of five percent of the delinquent amount immediately. The parties agree that this five percent late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord in the event of a late Minimum Ground Rent or Percentage Rent payment. Landlord's acceptance of late or partial Minimum Ground Rent, late or partial Percentage Rent, and late charges, does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Ground Lease and/or by operation of Law.

2.10 Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this Section 2.10 or have any force or effect.

2.11 Security. In view of the long-term nature of this Ground Lease, no lease security deposit is required.

**ARTICLE 3.
MAINTAINING UPSCALE STR CHAIN SCALE RATING; FRANCHISE MATTERS**

3.1 General. As otherwise provided in this Ground Lease, Tenant's continued operation and maintenance of Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, and in full compliance with Tenant's then-Franchise Agreement, are material obligations of this Ground Lease. Certain specific matters relating to such obligations are set forth in this ARTICLE 3. Tenant's failure to comply with those obligations at all times may be a default justifying termination of this Ground Lease as further set forth in this ARTICLE 3 if such default is not cured within the applicable notice and cure periods provided for under this Ground Lease, subject to rights of Leasehold Mortgagees under ARTICLE 14 below.

3.2 STR Chain Scale Ratings. As indicated in the STR Chain Scales for North America and Caribbean attached as Exhibit F, Upscale is the third highest STR rating level. The higher ratings levels are "Luxury" and "Upper Upscale;" the lower ratings levels are "Upper Midscale," "Midscale" and "Economy."

A. As of the Commencement Date, examples of STR Upscale rated hotel chains include AC Hotels by Marriott, Crowne Plaza, Hyatt House and Wyndham; examples of STR Upper Upscale rated chains (which would be also acceptable under this Ground Lease as of the Commencement Date) include Embassy Suites, Hilton and Hyatt Regency; examples of lower STR rated hotel chains (which would not be acceptable under this Ground Lease as of the Commencement Date) include Doubletree Club, Holiday Inn and Red Lion Hotel (all Upper Midscale), Best Western, La Quinta Inns & Suites and Quality Inn (all Midscale), and America's Best Inn, Days Inn and Motel 6 (all Economy).

B. The parties specifically acknowledge and agree that as of the Commencement Date and based on the current STR Chain Scales, Tenant is authorized to operate on the Premises Hotel Facilities under its current Brand/Flag/Chain, "DoubleTree by Hilton Hotels." Without limiting the specific circumstances which would otherwise violate this ARTICLE 3, the parties specifically acknowledge and agree that (based on the current STR Chain Scales) Tenant is not authorized to operate on the Premises an Upper Midscale, Midscale or Economy hotel, or any hotel which does not have an STR Chain Scale rating.

C. As requirements related to the Upscale rating may change over the Ground Lease Term, Brands/Flags/Chains (including Doubletree by Hilton) may be created, disappear, merge, or move up or down the STR Chain Scale over time, and there are no assurances that the STR Chain Scale will exist (in any form) throughout the entire Ground Lease Term, the parties acknowledge the need to interpret the STR Chain Scale requirements of this Ground Lease in light of their intended purposes, which are to assist in assuring that the Premises and Improvements are used only for first-class major Hotel Facilities and otherwise in full compliance with the then-applicable Franchise Agreement and this Ground Lease.

3.3 Brand/Flag/Chain-Related Defaults and Covenants.

A. Brand/Flag/Chain Related Defaults. In addition to the other items described herein, the following Brand/Flag/Chain-related events or conditions are defaults under this Ground Lease:

1. In the event (1) the STR Chain Scale rating of Tenant's then-Brand/Flag/Chain is reduced to a level or segment below Upscale (e.g., to Upper Midscale, Midscale or Economy), or (2) Tenant's then-Brand/Flag/Chain becomes unrated on the STR Chain Scale (any such event, a "**Brand/Flag/Chain Event**"), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the regularly scheduled expiration date of Tenant's then-Franchise Agreement (without taking into account any options or other rights to extend).

2. In the event any Franchisor terminates Tenant's right to continue operating and maintaining the Hotel Facilities under Tenant's then-Brand/Flag/Chain due to any breach or default under the Franchise Agreement (whether or not any Brand/Flag/Chain Event has occurred or is continuing), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the termination effective date.

3. In the event Tenant's right to continue operating and maintaining the Hotel Facilities under Tenant's then-Brand/Flag/Chain terminates or expires for any reason *other than* breach or default under the Franchise Agreement (including without limitation by expiration of the Franchise Agreement term without a renewal), and Tenant fails to be operating and maintaining the Hotel Facilities under a Brand/Flag/Chain with an STR Chain Scale rating of Upscale or better, in full compliance with a new Franchisor's Franchise Agreement, within 60 days after the termination or expiration effective date; *provided* that such time period may, in Landlord's sole discretion, be extended until up to one hundred fifty (150) days after the termination or expiration effective date, upon Tenant's demonstration to Landlord's reasonable satisfaction that (a) no Brand/Flag/Chain Event has occurred or is continuing, or (b) Tenant is (i) otherwise operating and maintaining the Hotel Facilities on the Premises in full compliance with this Ground Lease and to standards customarily followed by major first-class Hotel Facilities whose Brand/Flag/Chain has an Upscale or better STR Chain Scale Rating, and (ii) actively negotiating a Franchise Agreement with a Brand/Flag/Chain with an Upscale or better STR Chain Scale Rating.

B. Brand/Flag/Chain Related Covenants. If a Brand/Flag/Chain Event occurs as described in Section 3.3A.1 above, then beginning on the date that the Brand/Flag/Chain Event occurs and continuing until the date on which Tenant enters into a new Franchise Agreement with a compliant Brand/Flag/Chain having an STR Chain Scale rating of Upscale or better ("**Brand/Flag Non-Compliance Period**"), Tenant covenants and agrees as follows:

1. In addition to complying with the Maintenance Standards (see Exhibit I), Tenant covenants and agrees during the Brand/Flag Non-Compliance Period to (i) periodically upgrade, modify, modernize and refresh the Improvements as well as the personal property and fixtures used in operating the Improvements; and (ii) periodically review and, as applicable, add, modify or supplement the amenities and services provided to guests on a frequency, and to a standard, not less than the custom and practice generally followed by

comparable major first-class hotels located within the Oakland/Berkeley/Hayward Area with an Upscale STR Chain Scale rating.

2. Tenant further covenants and agrees to terminate its then-existing Franchise Agreement with the non-compliant Brand/Flag/Chain as soon as permissible pursuant to the terms of such existing Franchise Agreement without incurring a termination penalty so that Tenant may enter into a new Franchise Agreement with a compliant Brand/Flag/Chain having an STR Chain Scale rating of Upscale or better at the earliest commercially feasible time. Without limiting the generality of the foregoing, Tenant agrees to exercise any and all available termination rights that Tenant may have under its then-existing Franchise Agreement, including by timely sending notice of default and demand to cure to the non-compliant Brand/Flag/Chain franchisor at any time such Brand/Flag/Chain is failing to meet one or more of its contractual obligations, agreements or covenants under the then existing Franchise Agreement. Tenant further agrees to refrain from exercising any option or right to extend the term of such then existing Franchise Agreement.

3.4 Identification of Brand/Flag/Chain and Franchisor; Franchisor Notices and Information.

A. Information Regarding Brand/Flag/Chain and Franchisor. Tenant's (i) current Brand/Flag/Chain for the Premises and Improvements and (ii) current Franchisor and current Franchisor's notice address, are as set forth in the Basic Lease Information clause 21. Tenant shall promptly notify Landlord in writing of any changes to such matters following Tenant's becoming aware of such changes.

B. Franchisor Notices and Information. Tenant shall use diligent good faith efforts to obtain from Franchisors in connection with all Franchise Agreements executed on or after the Commencement Date comfort letters on the Franchisor's standard form containing the Franchisor's agreement to provide Landlord, at the address(es) set forth in the Basic Lease Information (or other address(es) as Landlord may notify Franchisor in writing from time to time), concurrently with their being provided to Tenant and (if applicable) any Ground Leasehold Mortgagee, copies of (i) all notices of default, and (ii) all other notices (if any) which the Franchisor agrees to send to the then-Ground Leasehold Mortgagee from time to time (if any) (together, "**Franchisor Notices**"). Tenant shall, within 30 days after the Effective Date, use commercially reasonable efforts to cause the Current Franchisor to include those provisions in a comfort letter issued to Landlord.

3.5 Definitions. As used in this ARTICLE 3:

A. "**Brand/Flag/Chain**" means the brand, flag or chain name and system under which Tenant operates the Hotel Facilities.

B. "**Franchisor**" means a company which licenses or otherwise provides rights to operate a hotel under a Brand/Flag/Chain, and any successor.

C. "**Franchise Agreement**" includes all license and/or brand agreements between Tenant and any Franchisor (including Franchisor's affiliates if applicable), from time to time.

3.6 Changes in or Discontinuance of STR Chain Scale Ratings. If the STR Chain Scale ratings are discontinued, or if the ratings segments in the STR Chain Scale (or successor)

change or become substantially different than the current six levels identified in Section 3.2 above and Exhibit E, Landlord and Tenant shall mutually select a successor in each party's reasonable discretion. If the parties cannot agree on such successor within thirty (30) days following commencement of negotiations, then the matter shall be resolved by arbitration before a neutral third party expert. Within five (5) business days following expiration of such thirty (30) day period, the parties shall confer in person or by telephone to agree upon such mutually-acceptable neutral third party to resolve the dispute ("Expert"). If the parties are unable to agree upon an Expert, either party may submit the matter to the Chairman of the International Society of Hospitality Consultants or similar organization if such organization no longer exists, who shall designate as the Expert a person who (a) has at least ten (10) years experience in the hospitality industry, (b) is in good standing with the International Society of Hospitality Consultants, (c) has not had any direct relationship with either party in the preceding five (5) year period, (d) has demonstrated knowledge of the hotel market where the Hotel is located, and (e) has demonstrated knowledge of the operation and marketing of upscale full service hotels. During the pendency of the arbitration pursuant to this Section 3.6, the parties shall share equally the fees and expenses of the Expert. In rendering its decision, the Expert shall designate the party whose position is substantially upheld, which prevailing party shall recover from the other party its share of the fees and expenses paid to the Expert by such prevailing party.

Notwithstanding the foregoing, Landlord and Tenant hereby acknowledge and agree that Smith Travel Research (STR) is, as of the date hereof, under contract to be acquired by CoStar Group and that, if such acquisition is consummated, CoStar Group shall automatically be an approved successor to STR in determining chain scale ratings for the hotel industry.

ARTICLE 4. TAXES AND ASSESSMENTS

4.1 Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees and other charges ("**Taxes**") levied and assessed against Tenant's personal property installed or located in or on the Improvements or the Premises (including without limiting the Charging Stations), which become payable during the Ground Lease Term or relate to periods which include the Ground Lease Term. On demand by Landlord to be made no more than twice in any calendar year, Tenant shall within ten (10) days following receipt of such demand, furnish Landlord with satisfactory evidence of these payments. Notwithstanding the foregoing, Tenant shall have the right to contest the imposition or collection of any such Taxes which Tenant reasonably believes was improperly assessed or calculated.

4.2 Statement Regarding Possessory Interest Tax. The Original Ground Lease created a possessory property interest in Tenant as of the Inception Date. Tenant acknowledges and agrees that Tenant's leasehold and/or other real property interests may be subject to property taxation, and Tenant or the party in whom the possessory property interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes are referred to herein as "**Possessory Interest Taxes,**" and shall be paid by Tenant as part of Real Property Taxes as provided in Section 4.3 below.

4.3 Real Property Taxes. Tenant shall pay all real property taxes and general and special taxes including Possessory Interest Taxes (collectively, "**Real Property Taxes**"), levied and assessed against the Premises or Improvements or any portion thereof. Tenant shall, semiannually, pay the Real Property Taxes not later than the Taxing Authority's (as defined below) delinquency date. If, at any time during the Ground Lease Term, any authority having the power to tax, including any federal, state or county government or any political subdivision

thereof (collectively, “**Taxing Authority**”), shall alter the methods and/or standards of taxation and assessment against the legal or equitable interests of Landlord in the Premises or Improvements or any other improvements located or constructed thereon, in whole or in part, so as to impose a monetary obligation on Landlord in lieu of or in addition to the taxes and assessments in existence as of the Effective Date, such taxes or assessments based thereon, including: (i) any tax, assessment, excise, surcharge, fee, levy, penalty, bond or similar imposition (collectively, “**Impositions**”), on Landlord’s right to rental or other income from the Premises or Improvements or as against Landlord’s leasing of the Premises, (ii) any Impositions in substitution or in lieu, partially or totally, of any Impositions assessed upon real property prior to any such alteration, (iii) any Impositions allocable to or measured by the area of the Improvements and/or Premises or the rental payable hereunder, including any Impositions levied by any Taxing Authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant or any Concessionaire or subtenant of the Premises or Improvements or any portion thereof, (iv) any Impositions upon this lease transaction or any document to which Tenant is a party which creates or transfers any interest or estate in or to the Improvements and/or Premises or any portion thereof, or (v) any special, unforeseen or extraordinary Impositions which, although not specifically described above, can fairly be characterized as a real property tax or a substitute for real property tax, shall be considered as Real Property Taxes for the purposes of this Ground Lease. Real Property Taxes shall exclude, however, all general income taxes, gift taxes, inheritance taxes and estate taxes, capital levy taxes, capital stock taxes, excess profits taxes or franchise taxes, if any, owed by Landlord.

4.4 Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Premises or Improvements by Landlord. Tenant acknowledges that Landlord has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. Landlord shall provide, or cause the applicable Taxing Authority (including without limitation the Alameda County Assessor) to provide, Tenant with written notice of each such assessment not later than 60 days before such assessment is due and payable.

4.5 Tenant’s Real Property Taxes Liability Prorated. Tenant’s liability to pay Real Property Taxes and assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Ground Lease Term at its inception and expiration or earlier termination in accordance with this Ground Lease.

ARTICLE 5.
USE, CHARACTER, OPERATION AND MAINTENANCE COVENANTS

5.1 General. Tenant covenants and agrees on behalf of itself and its successors and assigns that Tenant shall continuously use and operate the Premises and Improvements for the Permitted Use and for no other purpose.

5.2 Continuous Use Obligations. Tenant shall, during such hours and on all such days as comparable Hotel Restaurant facilities are customarily open for business, continuously use and operate the Improvements and Premises solely as major first-class Hotel Facilities, with an Upscale or better STR Chain Scale rating. Tenant shall at all times carry a full and complete stock of merchandise, food and beverages offered for sale with a quality and at competitive prices consistent with those of similar major first-class Hotel Facilities with an Upscale or better STR Chain Scale ratings in compliance with all Ground Lease requirements, and for no other

purpose. In connection with Tenant's use and operation of the Improvements, Tenant shall comply with all of the following:

A. Tenant shall maintain adequate personnel for the efficient service of customers.

B. Tenant shall employ its commercially reasonable judgment, efforts and abilities to operate the business in a manner calculated to produce the maximum profitable volume of sales, rents and transactions obtainable and to enhance the reputation and attractiveness of the Berkeley Marina.

C. Except for (i) emergencies or holidays on which most comparable hotels or restaurants the City of Berkeley are also closed, (ii) closures due to condemnation or (iii) closures for Alterations that are completed within one hundred twenty (120) days or such longer period as Landlord may agree in its sole discretion, Tenant shall cause both the Hotel and the Restaurant to be open for full business seven days per week, 365 days of the year.

D. The foregoing requirements are also subject to reasonable closures following a casualty; *provided*, however, that (i) repair or reconstruction work is begun no more than 210 days after the casualty or such longer period as Landlord may agree in its sole discretion, and (ii) once the work of repair or reconstruction is commenced, Tenant uses its commercially reasonable efforts to diligently and continuously pursue and complete such repair or reconstruction work. All Alterations or construction shall be performed only as set forth in ARTICLE 7 below, shall be commenced and diligently pursued to completion in a timeframe and manner that minimizes to the maximum extent reasonably possible any negative impact on Landlord's receipt of Percentage Rent.

E. The time periods identified in Subsection 5.2D above shall be subject to extension by reason of: (i) governmental preemption in connection with a national emergency; (ii) any rule, order or regulation of any government agency or any department or subdivision thereof, whether in connection with a drought, energy shortage or other like event or otherwise; (iii) casualty, war, public emergency, or other acts of God; (iv) any other matter included within the definition of "force majeure" set forth in Section 16.4 below; or (v) except as otherwise provided below, any other cause whatsoever beyond Tenant's reasonable control (collectively for purposes of this Subsection 5.2E only, "**force majeure**"). An extension of time for any such cause shall be for the period of the force majeure delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause. Tenant expressly agrees that (w) adverse changes in economic conditions, either of Tenant specifically or the economy generally, (x) changes in hotel or restaurant market conditions or demand, or (y) Tenant's inability to obtain financing or other lack of funding for repairs or Alterations, shall not constitute grounds of force majeure delay pursuant to this Subsection 5.2E.

F. With the exception of using the Premises for the Permitted Use or uses incidental thereto, Tenant shall not do or permit to be done anything which in any way unreasonably interferes with the normal operation and use of any portion of the Berkeley Waterfront (as defined in Section 5.12 below) or the means of ingress and egress thereto ("**Substantial Interference**"). Tenant shall use every reasonable effort to eliminate Substantial Interference, including taking prompt legal action if appropriate. If Tenant fails to bring a halt to any Substantial Interference, Landlord shall have the right (i) to designate the required action for Tenant to take, or (ii) to commence itself any legal action to eliminate the Substantial Interference,

in either case at Tenant's sole cost and expense. Any agreement entered into by Tenant with regard to use of the Premises or Improvements shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this subsection and authorizing Landlord to enforce it if Tenant fails to do so.

5.3 General Use Prohibitions. Tenant covenants and agrees that in connection with the use and operation of the Premises and Improvements, and any portion thereof (including without limitation parking areas and pedestrian and bicycle paths), Tenant will not:

A. Use or permit the use of any reasonably objectionable advertising medium including any loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Improvements in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Improvements (provided, however, that nothing herein shall be deemed to prohibit the installation and use of a public address system for security purposes, or for the use of a reasonable level of music for outdoor dining areas, events or plaza areas), and will keep all mechanical apparatus free of unreasonable vibration and noise which may be transmitted beyond the interior of the Improvements;

B. Permit undue accumulations of garbage, trash, rubbish or any other refuse outside of the Hotel Facilities;

C. Create, cause, maintain or permit any nuisance (as the same may be defined by applicable Law) in, on or about the Premises or Improvements;

D. Commit or suffer to be committed any waste in, on or about the Premises or Improvements;

E. Use or allow the Premises or Improvements to be used for any unlawful purpose, or for any purpose which violates in any material respect the terms of any recorded instrument affecting the Premises;

F. Cause or permit the Premises or Improvements to become uninsured or cause the Premises or Improvements to become uninsurable or otherwise make it impossible to obtain any insurance required by this Ground Lease at commercially reasonable rates;

G. Intentionally cause or knowingly permit any material structural damage to or deterioration of the Premises or Improvements or intentionally cause or knowingly permit any material damage to any adjacent public or private property or improvements;

H. Permit any auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale to be conducted thereon, or the posting of any sign or advertisement regarding any such activity; or

I. Fail to comply with any Law, ordinance or regulation applicable to the Premises or Improvements in accordance with the terms of this Ground Lease.

5.4 Reserved.

5.5 Maintenance Activities; Annual Reports.

A. In addition to compliance with ARTICLE 3 above, Tenant covenants and agrees that it shall maintain, or cause to be maintained, the Premises, the Improvements, and all improvements and landscaping within the Premises (including all buildings, sidewalks, pedestrian lighting, signage, landscaping, parking lots, bicycle and walking paths, architectural elements identifying the Improvements or Premises, and any and all other improvements on the Premises and associated open space and common areas) in first-class condition and repair, subject only to normal wear and tear, in full compliance with the Franchise Agreement, the Maintenance Standards (see Exhibit I), and as otherwise specified in this ARTICLE 5. Tenant's compliance with these maintenance obligations shall be judged by a comparative standard with the custom and practice generally followed by comparable major first-class/STR Chain Scale rated Upscale Hotel Restaurant facilities located within the Oakland/Berkeley/Hayward Area. To accomplish such activities, Tenant shall either staff or contract with and hire licensed and qualified personnel to perform such work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Section 5.5. All maintenance and other work shall conform to all applicable Federal and State Occupation Safety and Health Act standards and regulations.

B. Within 30 days following Landlord's request from time to time, but not more frequently than once in any Ground Lease Year and only upon Landlord's reasonable determination that Tenant is not properly maintaining the Premises and Improvements in accordance with the terms of this Section 5.5, Tenant shall provide Landlord with a reasonably detailed report describing the previous year's maintenance and other activities under this Section 5.5, including such details as Landlord may reasonably request.

5.6 Maintenance Standards. Throughout the Term of this Ground Lease, Tenant shall comply with the Maintenance Standards set forth in Exhibit I attached hereto and incorporated herein.

5.7 Specific Energy Matters.

A. EV Charging Stations. Within two years of the Commencement Date, Tenant shall install (or cause to be installed) at least 10 EV (electric vehicle) Level 2 (or better in Tenant's sole discretion) charging station-ports on the existing Premises parking lot (together with all related equipment, hardware, software, signage and supporting equipment and structures, the "**Charging Stations**"). All Charging Station design, construction and installation activities shall be subject to all applicable provisions of this Ground Lease, including without limitation ARTICLE 7 below. Thereafter, Tenant shall operate and maintain the Charging Stations in a clean, safe, and orderly condition, in good working order and repair, and in compliance with all provisions of this Ground Lease, applicable Laws and good industry practices, to at least the same standards as are generally observed by reputable EV charging station operators in the Oakland/Berkeley/Hayward Area (but not less than reasonable standards, the "**Operations Standard**").

1. Tenant shall, from time to time, consider adding additional Charging Stations if and to the extent justified by demand trends.

2. Tenant shall make reasonable efforts under the circumstances to keep all parking spaces with Charging Stations available at all times for the charging of electric vehicles, including enforcement and removal of vehicles if necessary. Tenant shall make charging stations available to the public.

3. If the parking areas serving the Charging Stations experience damage or excessive wear and tear (compared to the remainder of the Premises parking areas), Tenant shall keep such parking areas in good order and repair, including repaving, reslurrying and restriping as necessary (which may be more frequently than required for other parking areas).

4. Tenant may charge EV customers reasonable prices for all electricity provided, and shall replace or upgrade the Charging Stations with higher quality Charging Stations at least as frequently as is consistent with the Operations Standard.

5. Tenant may have some or all of its obligations under this Subsection 5.7A performed by a Concessionaire, provided that Tenant shall require any such Concessionaire to comply with the terms of this Section 5.7 and all other Concessionaire obligations under this Ground Lease.

B. Renewable and Carbon-Free Electricity for the Premises. For all electric loads occurring at the Berkeley Marina, Tenant shall only purchase renewable energy from load serving entities which offer 100% renewable energy, so long as it is available for purchase from regular electricity delivery providers serving other Berkeley Marina commercial customers (such as PG&E and East Bay Community Energy (“**EBCE**”) as of the Effective Date). As of the Effective Date, the EBCE “Renewable 100” service level satisfies this requirement. Further information is available at <https://ebce.org/>. Notwithstanding the foregoing, Tenant (and others operating on or at the Premises) shall not be required to use or purchase electricity which costs more than 110% of the least expensive electricity which, from time to time, is available for purchase from regular electricity delivery providers serving other Berkeley Marina commercial customers.

5.8 Governmental Requirements. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws (as defined in Section 6.2 below), statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force, and with all requirements of any board or fire insurance underwriters or other similar bodies, now or hereafter adopted, enacted or made applicable, (individually “**Law**” and collectively “**Laws**”), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises or Improvements or any portion thereof, including those requiring alterations or additions to be made to, or safety appliances or devices to be maintained or installed in, on or about the Premises or Improvements or any portion thereof, and payment of any fees, charges or assessments arising out of or in any way related to the Premises or Improvements or any portion thereof as a source of adverse environmental impacts or effects; provided, however, that Tenant shall not be required to make any Alterations, additions or other improvements to bring the Premises or Improvements into compliance with such Laws if the Improvements were constructed in compliance with all applicable Laws at the time such Improvements were constructed and then current Laws do not require such Improvements to be brought into compliance with any Laws or modifications to existing Laws enacted after construction of such Improvements.

5.9 Reserved.

5.10 Landlord Access Rights. Landlord reserves to itself and the right (but not the obligation) to grant to others in the future nonexclusive utility easements under, through and across the Premises, in locations that will not unreasonably interfere with Tenant’s access to or use or further development of the Premises or Improvements, for the purposes of constructing, installing, maintaining, replacing or adding to (all such activities “**work**”) underground utility

facilities, including but not limited to water mains, sanitary sewer mains, storm drain mains, gas mains, telephone, cable and electrical distribution facilities, and fire alarm circuits. Landlord may (or permit others to) construct, install, maintain, replace or add to any utility system serving the Improvements or Premises as Landlord determines to be reasonably necessary or desirable in the course of any such work performed by or under the authorization of Landlord, provided that such actions will not unreasonably interfere with Tenant's access to or use of the Premises or Improvements. Any interference to Tenant's use of the Improvements or Premises shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. No such work performed in compliance with the terms of this Section 5.10 shall invalidate or affect this Ground Lease or give Tenant any claim against Landlord for abatement of Rent or loss of business as a result thereof. In the event work pursuant to this Subsection causes any damage to the Premises, or any portion thereof, or to the Improvements, or other facilities located upon the Premises, including without limitation pavement, curbs and sidewalks, the same shall be promptly repaired by Landlord at its expense, if not so repaired by the party performing the work. Landlord shall hold harmless and indemnify Tenant from all claims, causes of action, liabilities, losses, damages, suits, fines, costs or expenses (including reasonable attorneys' fees and expenses and consultant fees and expenses) arising out of the grant or use of such utility easements, except to the extent arising from or relating to Tenant's negligence or willful misconduct. In addition to the above utility related reserved rights, Landlord reserves to itself and the general public the right of vehicular and pedestrian ingress and egress to and from and access over and across the driveway and drive aisle area depicted in Exhibit D attached hereto and incorporated herein for the purposes of ensuring access between Marina Boulevard and the City owned parking area located directly adjacent to the Hotel parking lot.

5.11 Conference Facilities. Landlord shall have the right to use the "Conference Facilities" (as defined below) for purposes of hosting Landlord's in-house training programs, and/or accommodating other community events, as follows and in a manner consistent with the State Tidelands Grant, public trust uses, and applicable Laws:

A. Event Days. Tenant shall accommodate up to nine event days per Ground Lease Year, upon reasonable prior written notice by Landlord as set forth below.

B. Location. No more than four event days may be in the Hotel's approximately 4,700 square foot main ballroom ("**Main Ballroom**"). Tenant shall accommodate programs and events for up to a maximum of 60 people which are not held in the Main Ballroom in one or more of the Hotel's nine executive meeting rooms ("**Executive Meeting Room(s)**"). The Main Ballroom and the Executive Meeting Rooms are collectively referred to herein as the "**Conference Facilities.**"

C. Facility Reservation. Landlord shall provide Tenant with written request(s) to use Conference Facilities, which requests shall identify the component(s) of the Conference Facilities (e.g., the Main Ballroom and/or number of Executive Meeting Room(s)) needed and dates desired ("**Reservation Request(s)**"). Landlord shall provide all Reservation Requests not more than 45-days in advance of the requested date(s). Subject to availability, Tenant shall make the Conference Facilities available to Landlord as specified in the applicable Reservation Request. If the specified Conference Facilities are not available on the requested date(s), Tenant shall so notify Landlord in writing within five business days of the Reservation Request as well as propose and reserve for Landlord at least two alternative dates as close as possible to the requested date(s) ("**Response**"). Tenant may determine whether to honor any Reservation Request received more than 45-days in advance in its reasonable discretion.

D. No Cost to Landlord. Landlord shall accept or reject the proposed alternative date(s) within five (5) business days of Tenant's Response. Landlord's failure to respond within such 5-business day period shall be deemed rejection of Tenant's Response. Landlord's use of the Conference Facilities shall be at no cost or expense (including set up fees) to Landlord; provided, however, that Landlord will pay for any food and beverage service requested by Landlord. Tenant shall not be entitled to any abatement or reduction of Rent related to Landlord's use of the Conference Facilities.

5.12 Use of Berkeley Waterfront Property; Public Trust.

A. For purposes of this Ground Lease, "**Berkeley Waterfront**" means the Premises and all other lands subject to the State Tidelands Grant (also referred to as "**State Grant Lands**").

B. Tenant agrees that except as otherwise provided in this Ground Lease or in that certain Capital Contribution Agreement of even date herewith between Landlord and Tenant, it is not a covenant or condition of this Ground Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Premises or the Berkeley Waterfront, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to the Berkeley Waterfront (other than the Premises) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, landscaping, toilets, utilities and all other facilities; provided, however, that the foregoing does not entitle Landlord to effect changes that would materially and adversely affect access to, use of, or lines of sight to the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning the Berkeley Waterfront, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same so long as Landlord provides written notice to Tenant of any such new rules and regulations and such rules and regulations are uniformly applied to users and/or owners of similar commercial properties in the Berkeley Marina.

D. Landlord at all times shall have the sole and exclusive management and control of the Berkeley Waterfront other than the Premises, including, without limitation, the right to lease, license or permit the use of space within the Berkeley Waterfront to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant or Tenant's principals, officers, employees or representatives (together, "**Tenant Parties**"), any invitee or licensee on or about the Premises (including without limitation Hotel or Restaurant guests), or others, except to the extent caused by the active negligence or willful misconduct of Landlord, its agents, servants, contractors or employees. Tenant is solely responsible for the security of the Premises and Improvements, and for the safety of those using the Premises and Improvements pursuant to this Ground Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for the Berkeley

Waterfront or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. Landlord shall not be obligated to provide any public liability or property damage insurance for the benefit of Tenant or any other person or entity, each such party being responsible for its own insurance.

5.13 Public Trust Tidelands Requirements.

A. Tenant acknowledges that the Premises are located on State tidelands held by the City of Berkeley in trust for the promotion of commerce, navigation, and fishery pursuant to the State Tidelands Grant, subject to the conditions, restrictions, limitations, rights, powers, duties, reversionary rights and other rights created or reserved in the State Tidelands Grant. Tenant agrees that, notwithstanding anything in this Ground Lease to the contrary, Tenant shall use the Improvements and Premises consistently with and in a manner that shall not result in a violation of the State Tidelands Grant or of provisions of the Berkeley City Charter, the California Constitution or other applicable Laws. Landlord will administer this Ground Lease in compliance with the State Tidelands Grant.

B. Tenant acknowledges that the State of California reserved from Landlord's rights in and to State Grant Lands all deposits of minerals, including oil and gas, and the right to prospect for, mine and remove said deposits from the State Grant Lands. In no event shall Landlord be liable to Tenant for any claims arising from any such prospecting, mining or removal, nor shall any such activities constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Ground Lease.

5.14 Landlord's Status as a Landowner. Tenant understands and agrees that Landlord is entering into this Ground Lease in its capacity as a landowner with a proprietary interest in the Premises and Improvements and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards or commissions that have jurisdiction over the Premises or Improvements. By Landlord's entering into this Ground Lease, neither Landlord nor any of Landlord's Council, boards, commissions, agencies, departments, or affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action or other governmental approval relating to development or operation of the Premises, Improvements or Berkeley Waterfront. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises, Improvements or Berkeley Waterfront. By entering into this Ground Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises and Improvements to be used and occupied in accordance with all Laws.

5.15 Regulatory Approvals Generally. Tenant acknowledges and agrees that this Ground Lease does not guarantee that Landlord, in its regulatory capacity, will grant any particular request for a license, permit or other regulatory approval. Tenant understands that Landlord may grant or deny such request in its sole discretion, and may impose such terms and conditions as it deems consistent with that discretion.

5.16 Covenants Regarding Improvements. Tenant acknowledges and agrees that the Improvements will be maintained as follows:Hotel. Tenant has and shall continue to provide

and install at the Hotel all furniture, fixtures and accessories necessary for the operation of a major first-class Hotel with an Upscale or better STR Chain Scale rating.

B. Restaurant. Tenant has and shall continue to provide and install in the Restaurant all furniture, fixtures, and accessories necessary for the operation of a first-class restaurant and cocktail lounge appropriate for a major first-class hotel and sufficient for the Hotel to maintain an Upscale or better STR Chain Scale rating.

C. Height Limitation Exception. The height of the Hotel shall not exceed four stories or 43-1/2 feet, whichever is lower. The height of the Restaurant shall not exceed three stories or 35 feet, whichever is lower. Notwithstanding the foregoing, a portion of the Restaurant may be constructed to a height not exceeding 60 feet, subject to the approval of Landlord. As of the Effective Date, the heights of the Hotel and the Restaurant are in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

D. Parking Areas. As of the Effective Date, the Parking Areas are in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease. See Subsection 5.7A above regarding certain required Parking Area improvements, including electric vehicle charging stations.

E. Floats and Berths. The marginal float and other suitable floats and berths have been constructed in the same manner as the public floats in the Berkeley Marina, and shall be maintained, updated and upgraded from time to time as reasonably appropriate or necessary. As of the Effective Date, a shoreline walkway and three berths at the Hotel for boat tie-ups are in place and the marginal float is in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

F. Landscaping. Such landscaping as may be reasonably required to provide an attractive development consistent with major first-class Hotel Facilities with an Upscale or better STR Chain Scale rating and the standards for the Berkeley Marina. As of the Effective Date, Tenant has landscaped the Premises and will continue to maintain, update and upgrade such landscaping from time to time as reasonably appropriate or necessary. As of the Effective Date, the landscaping is in compliance with the terms and conditions of the 2008 Ground Lease and the foregoing provisions of this Ground Lease.

G. Auxiliary Structure/Charter Yacht Facility. Landlord acknowledges that the Charter Yacht Facility is being used exclusively for food preparation, administrative and minor vessel maintenance activities by Tenant's charter yacht subtenant, Hornblower, and Tenant acknowledges that such use cannot be changed without Landlord's prior written consent, in its sole discretion. The Hornblower Sublease provides, and any further Tenant sublease of the Charter Yacht Facility to Hornblower or any successor charter yacht operator shall also provide, that Hornblower or its successor must use the Charter Yacht Facility exclusively for food preparation, administrative and minor vessel maintenance activities performed aboard the charter yacht vessels as of the Effective Date.

ARTICLE 6. CONDITION OF PROPERTY

6.1 Landlord's Disclaimers and Tenant's Acknowledgements. The Premises are being leased to Tenant in their current, existing, "AS-IS" condition. Except as expressly set forth in this Ground Lease, Landlord makes no representations or warranties as to any matters

concerning the Premises or Improvements, including without limitation: (i) matters relating to soils, subsoils, geology, the presence or absence of fill, groundwater, drainage, and flood zone designation; (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises or Improvements; (iii) the development potential of the Premises or Improvements, or their uses, habitability, merchantability, or fitness, suitability, value or adequacy for any particular purpose, (iv) the zoning or other legal status of the Premises or Improvements or any other public or private restrictions on their use; (v) any easements, covenants, conditions, rights, or restrictions, whether of record or otherwise, binding on the Premises or Improvements (including, without limitation, the State Tidelands Grant and the conditions, restrictions, limitations, rights, powers and other matters referenced in Section 5.13A above), (vi) the adequacy, condition, repair status, or remaining useful life of the Improvements' electrical, plumbing, HVAC, utility, mechanical or safety systems ("**Improvements Systems**"), (vii) the adequacy, condition, repair status, or remaining useful life of the Improvements' roof, walls, foundation or other structural components, any other structures within the Premises, or the Premises parking lot, (viii) the compliance of the Premises or Improvements with Hazardous Materials Laws, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity, (ix) the presence or removal of Hazardous Materials (as defined in Section 6.2 below) or wastes on, under or about the Premises or Improvements; or (x) the compliance of the Premises or Improvements under any other Laws, including without limitation the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) ("**ADA**"), any amendment thereto or regulations promulgated thereunder, or any other federal, state or local disability or access laws (together, "**Disability Laws**"). It is specifically understood and agreed that, Landlord has no obligation and has made no promises to alter, remodel, improve, decorate or paint the Premises or Improvements, repave or perform any improvements on any parking lot within the Premises, construct or install any improvements or Alterations (as defined in Section 7.1 below), repair or replace any Improvements Systems, or otherwise alter or improve the Premises, Improvements, or any portion thereof. By entering onto the Premises or Improvements, Tenant represents and confirms that it is familiar with the existing legal and physical condition of the Premises and Improvements, fully approves the same, and acknowledges that except as expressly provided in this Ground Lease Landlord has made no representation or warranty regarding the condition thereof. Tenant acknowledges and agrees that Tenant is leasing the Premises and accepting the Premises and Improvements on the basis of investigation and prior occupancy by Tenant and its predecessors, including without limitations the entities identified in the Recitals above and will act only upon information obtained by it directly from such investigation and occupancy and from materials or records from independent third parties. Tenant assumes the risk that adverse legal, physical and environmental conditions may not have been revealed by its own investigation or occupancy, that below-ground improvements or facilities may still be located under the Premises, and that Hazardous Materials may subsequently be discovered upon, under or about the Premises. Tenant further acknowledges that neither Landlord, nor its officers, elected officials, employees, or representatives ("**Landlord Parties**") have made any representation or warranty of any kind in connection with any matter relating to the condition, value, fitness, or suitability of the Premises, Improvements or other improvements thereon, upon which Tenant has relied directly or indirectly for any purpose.

6.2 Hazardous Materials.General Compliance.

1. Tenant shall, at its sole cost and expense, comply with all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force (collectively, "**Hazardous Materials Laws**") concerning the management,

use, generation, storage, transportation, presence, discharge or disposal of any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act. “**Hazardous Materials**” include asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“**PCB**”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil, any fraction, product or by-product thereof, and “hazardous materials” as defined in California Health & Safety Code section 25260(d). Neither Tenant nor Tenant Parties shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises or the Improvements, except for such hazardous materials as may be customarily used in hotel properties such as the Premises, provided they are properly stored in compliance with Laws. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Premises or the Improvements to be removed from the Premises and Improvements and transported for disposal in accordance with applicable Hazardous Materials Laws.

2. Upon reasonable advance notice and without unreasonably interfering with the operations or unreasonably disturbing the guests of the Hotel, Landlord shall have the right to enter the Premises from time to time to conduct tests (including minimally invasive tests if Landlord has a reasonable basis for determining that the Premises have been contaminated by Hazardous Materials), inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall promptly notify Landlord in writing of: (i) any release or discharge of any Hazardous Material; (ii) any voluntary clean-up or removal action instituted or proposed by Tenant in connection with any such release or discharge of Hazardous Material, (iii) the initiation of any enforcement, clean-up, removal or other governmental or regulatory action, or (iv) any claim made by any person against Landlord, Tenant, the Premises, or the Improvements or any portion thereof relating to Hazardous Materials or Hazardous Materials Laws. If a Hazardous Materials release that cannot be controlled occurs on the Premises, Tenant shall immediately notify the City of Berkeley Police Department and the City of Berkeley's Emergency and Toxics Management Office. Tenant shall also supply to Landlord as promptly as possible, and in any event within five business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations from all federal, state, county, municipal or governmental authorities having jurisdiction relating in any way to the Premises or Improvements or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide to Landlord in a timely manner copies of all workplans and subsequent reports submitted to the governmental agency with jurisdiction over such action.

B. Tenant's Indemnification. Except to the extent caused by Landlord or a Landlord Party's active negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including reasonable attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in, on, under, about, or emanating from the Premises or the Hotel Improvements, including, without limitation, any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises or the Improvements, caused or alleged to have been caused by Tenant or Tenant Parties' use, storage, handling, treatment, generation,

presence, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Ground Lease, the Base Lease, or the 2008 Ground Lease, whether such claims, causes of action or liabilities are first asserted during the Ground Lease Term or thereafter, and including without limitation, claims made against Landlord with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

ARTICLE 7. CONSTRUCTION AND LIENS

7.1 Alterations on Premises. Any construction, reconstruction, alterations, additions, or improvements or remodeling, in, on, or about the Improvements or the Premises undertaken by or on behalf of Tenant from and after the Commencement Date (including without limitation the Charging Stations, "**Alterations**") shall be governed by this Ground Lease. All Alterations, including exterior elevations and color thereof, and all such other improvements, shall be architecturally and aesthetically compatible and harmonious with the Improvements, Premises, Berkeley Marina and any other buildings and improvements thereon to create a uniform general plan for the entire Berkeley Marina, as revised from time to time. Any Alterations shall be in compliance with applicable Laws and permits, shall at all times be of first-class construction and architectural design, and shall be in accordance with all plans and specifications therefor submitted to and approved by Landlord as set forth below. No material changes to such approved plans and specifications shall be made without Landlord's prior written approval. All Alterations shall be diligently prosecuted, completed, and accomplished without cost or expense to Landlord, by licensed designers and contractors, and in a first-class and workmanlike manner.

A. Alterations, Other than Minor Alterations. Except with Landlord's prior written consent, which may be granted or denied in Landlord's reasonable discretion, Tenant shall not make or cause to be made any Alterations except for Minor Alterations as set forth below. If Tenant at any time following the Commencement Date desires to undertake any Alterations (other than Minor Alterations), Tenant shall, prior to the commencement of such work, prepare or cause to be prepared, at its sole expense, and shall submit to Landlord for its review, cost estimates, plans and specifications for such work, showing, without limitation, scaled elevations, scaled floor plans, design concepts, dimensions, material selection, colors, signing (if any) and such additional information as is reasonably requested by Landlord to make an informed decision on such submission. The plans and specifications shall comply with this Ground Lease and shall be in compliance with applicable Laws. Landlord shall approve or disapprove such submitted plans within 30 days of receipt of complete plans and specifications meeting the requirements of this subsection. If Landlord fails to approve or disapprove such plans and specifications within such 30-day period, Tenant may send a second notice clearly indicating that Landlord's failure to approve or disapprove such plans and specifications within 10 business days following Landlord's receipt of the second notice shall be deemed Landlord's approval of the plans and specifications.

B. Minor Alterations. Tenant shall have the right without Landlord's consent (but subject to all other provisions of this Ground Lease and upon 30 days prior written notice to Landlord), to undertake alterations or remodeling of the Improvements that do not materially and substantially affect the exterior appearance of the Improvements, do not materially and substantially affect the exterior structure of the Improvements and do not alter the preexisting location of the Improvements on the Premises ("**Minor Alterations**"). Notwithstanding the foregoing, and regardless of the cost thereof, Landlord's prior consent is required for any Alteration involving exterior utility work.

7.2 Construction Standards. Unless expressly provided otherwise in this ARTICLE 7, the following standards shall apply to the design and construction of all Alterations under this Ground Lease.

A. Insurance. Tenant's designers, contractors and subcontractors shall maintain in force worker's compensation and such other employee, liability and property insurance as is customary for similar construction projects, and Tenant's designers and other consultants shall also maintain in force professional liability insurance as is customary for similar construction projects. Other than worker's compensation and professional liability insurance, Landlord and Landlord Parties shall be named as additional insureds on all such insurance and Tenant shall provide certificates of insurance confirming such additional insured status prior to commencement of any Alterations work other than Minor Alterations.

B. Utility Work. Any work performed by or on behalf of Tenant or any occupant or subtenant to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, cable line, telephone conduit or any other public utility service shall be performed so as to minimize interference with the provision of such services to other occupants and users of the Berkeley Marina.

C. Contracts, Plans and Specifications. With the exception of Minor Alterations and other Alterations costing \$1,000,000 or less, all contracts with any architect, other design professional or any general contractor for Alterations work shall provide for the assignment thereof to Landlord if this Ground Lease is terminated due to Tenant's default, and Landlord shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Ground Lease is terminated due to Tenant's default, Landlord may use any plans and specifications to which Tenant is then entitled pursuant to any such contract without payment of any further sums to any party thereto.

D. Permits. To the extent that any Alterations require a building permit or other permits from the City of Berkeley, Bay Conservation and Development Commission ("**BCDC**") and/or any other governmental agency, Tenant shall not perform any Alterations until Tenant has obtained all requisite permits.

E. Construction Safeguards. Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by Tenant, all necessary safeguards for the protection of workers and the public.

F. Prevailing Wage Laws. Tenant shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq. to the extent such requirements are applicable to Alterations. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the general prevailing rate of per diem wages and the general per diem prevailing rate for holiday and overtime work as defined by applicable Laws (including without limitation Labor Code Section 1773.1) in effect from time to time. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate if applicable to the Alterations shall be paid to each worker by Tenant. In the event Tenant fails to meet its obligations under this Section 7.2F, Landlord's remedy shall be to enforce its indemnification rights under Section 10.2 below and/or seek specific performance.

G. Landlord's Rights. Nothing herein shall limit any Landlord right under this Ground Lease, including without limitation those under Sections 5.10 and 5.13 above.

H. Completion. Upon completion of any Alterations for which as-built plans are prepared, Tenant shall deliver to Landlord two sets of such final as-built plans and specifications, and copies of all permits, for the applicable work.

I. Tenant Costs. Except as otherwise expressly provided in this Ground lease, all Alterations shall be without cost or expense to Landlord.

7.3 Protection of Landlord. Nothing in this Ground Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials in connection with any Alterations by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of, or to contract for or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against Landlord's interests in the Premises or Improvements. While as a public entity Landlord's interest in the Premises or Improvements is not subject to lien, Landlord shall have the right at all reasonable times to post, and keep posted, on the Improvements and Landlord's interests in the Premises any notices which Landlord may reasonably deem necessary for the protection of Landlord and of the Premises and Improvements from mechanics' liens or other claims. Tenant shall give Landlord 10 days' prior written notice of the commencement of any Alterations (other than Minor Alterations) to be done on or about the Improvements or Premises to enable Landlord to post such notices. In addition, for any Alterations costing in excess of \$3,000,000, Landlord may in its discretion require Tenant to furnish to Landlord at Tenant's expense reasonable improvement security, including performance and labor and materials bonds, each in the amount of not less than 100% of the construction costs of the Alterations, before commencing such Alterations. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any Alterations or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

7.4 Liens and Stop Notices. Tenant shall keep Landlord's interest in the Premises and Improvements free and clear of all stop notices, mechanics' liens and other liens on account of any Alterations done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for Alterations performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting Landlord's interest in the Premises or Improvements, Tenant shall within 30 days of notice of such recording or service:

- A. Pay and discharge the same;
- B. Effect the release thereof by recording and delivering to Landlord a lien release bond in customary form and amount which results in the removal of such lien from the Improvements and the Premises; or
- C. Otherwise obtain or effect the release thereof.

7.5 Notice. Should any claims of lien be filed against Landlord's interest in the Premises or Improvements thereon, or any action be commenced affecting the title to such

property, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

**ARTICLE 8.
OWNERSHIP OF IMPROVEMENTS AND
PERSONAL PROPERTY**

8.1 Ownership of Improvements During Ground Lease Term. During the Ground Lease Term, the Improvements and Alterations shall be and remain the property of Tenant; provided that Tenant's rights and powers with respect to the Improvements and any Alterations shall be and shall remain subject to the terms and limitations of this Ground Lease. Tenant covenants for itself and all persons claiming under or through it that the Improvements constitute real property.

8.2 Ownership of Improvements at Expiration or Termination. Upon the expiration or other termination of this Ground Lease, all improvements on the Premises, including the Improvements and any Alterations shall, without compensation to Tenant, become Landlord's property free and clear of all claims to or against them by Tenant or any third person, and Tenant shall defend, indemnify and hold Landlord harmless against any and all claims, liability and losses arising from such claims or from Landlord's exercise of the right conferred by this Section 8.2.

8.3 Removal and Ownership of Personal Property at Termination or Expiration. At the expiration or sooner termination of the Ground Lease Term, Landlord may, at Landlord's election, require Tenant to remove from the Premises, at Tenant's sole cost and expense, all personal property (including fixtures). Tenant shall be liable to Landlord for costs incurred by Landlord in effecting the removal of such personal property (including fixtures) which Tenant has failed to remove after demand pursuant to this Section 8.3.

A. Tenant may, from time to time during the Ground Lease Term, remove any personal property (other than fixtures) that may be removed without damage to the structural integrity of the Premises or Improvements. Tenant shall repair all damage caused by any such removal.

B. Any personal property owned by Tenant and not removed by Tenant prior to the expiration or earlier termination of the Ground Lease Term shall be deemed to be abandoned by Tenant and shall, without compensation to Tenant, become the Landlord's property, free and clear of all claims to or against them by Tenant or any other person, but subject to the rights of third party lenders and equipment lessors as to which Landlord has notice.

**ARTICLE 9.
UTILITIES**

9.1 General. Tenant shall be solely responsible for contracting for, and shall promptly pay all charges for telephone, computers and cable lines, wiring, materials, security, heat, air conditioning, water, gas, sewer, electricity, refuse, sewage, garbage, pest control services, and any other utility service supplied to the Improvements, the Premises or any portion thereof, or any other improvements located thereon ("**Utilities**"). Tenant shall indemnify, defend and hold Landlord harmless from and against any and all demands, liabilities, claims, actions, damages, costs and expenses, including reasonable attorneys and consultants' fees and costs, arising out of or connected with the provision and payment of the Utilities.

9.2 Site. Water, power, gas, telephone and sanitary sewer facilities are located on and near the Premises in the areas shown on that certain drawing entitled "Map of Berkeley Marina, Plan No. 4047" on file in the office of the City Manager of Landlord. Tenant shall arrange for and make all necessary connections thereto at Tenant's sole cost and expense and in the manner approved by said City Manager. Tenant shall not construct any building or other structure upon such areas and said areas shall be used only for vehicular traffic, parking or such other uses as may be authorized by said City Manager in writing. Landlord acknowledges that no buildings or other structures have been built in such areas.

9.3 Tenant Waivers. Except as expressly set forth in this Ground Lease, Landlord shall not be liable for, and Tenant shall not be entitled to, any abatement or reduction of Rent, by reason of any interruption in or lack of availability of any Utility service. To the extent Landlord is a provider of any Utility, Tenant hereby waives the provisions of California Civil Code section 1932(1) or any other applicable existing or future Law permitting the termination of this Ground Lease due to the interruption or failure of any services to be provided under this Ground Lease.

**ARTICLE 10.
INSURANCE AND INDEMNITY**

10.1 General Insurance Requirements.

A. During the entire Ground Lease Term, Tenant shall provide the following forms and amounts of insurance with respect to the Improvements and the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance, or joint self-insurance maintained by the Landlord, shall name the Landlord as an additional insured, and shall include, but not be limited to:

1. Fire and Extended Coverage Insurance in All-Risk form, with vandalism and malicious mischief endorsements, covering the Improvements and the Premises against loss or damage in an amount equal to not less than 100% of the replacement cost of the Improvements, including all Alterations and fixtures, with such commercially reasonable deductible as may be approved by Landlord in its reasonable discretion. Such insurance shall include coverage for cost of demolition and increased cost of construction by reason of changes in applicable ordinances and laws and shall not contain a co-insurance clause.

2. Business Interruption Insurance on an "all risk" basis which will provide recovery for a minimum of 18 months of Tenant's continuing Rent obligations (including without limitation Percentage Rent which likely would have been payable in the absence of the interruption).

3. Broad Form Commercial General Liability Insurance protecting Tenant against claims for bodily injury, personal injury and property damage based upon, or arising out of, the ownership, use, occupancy or maintenance, directly or indirectly, of the Premises or Improvements and all areas appurtenant thereto. Such insurance shall be written on an "occurrence" policy form providing single limit coverage in an initial amount of not less than \$2,000,000 per occurrence and umbrella/excess liability insurance in not less than an initial amount of \$5,000,000. Tenant shall add Landlord and the Landlord Parties as additional insureds by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Landlords of Premises" endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Ground Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Ground Lease. The limits of this insurance shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. Tenant shall provide a "per location" endorsement on its liability policy or policies that provides that the general aggregate and other limits apply separately and specifically to the Premises and Improvements.

4. Auto Liability Insurance endorsed for all owned and non-owned vehicles in the initial amount of \$2,000,000, combined single limit.

5. Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California.

B. Review. The liability insurance requirements may be reviewed by Landlord every five years, for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards, but in no event will Tenant be required to increase the amount of cumulative or single occurrence coverage by more than 50% for any five-year period.

C. General. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The commercial general liability and automobile liability policies hereunder shall name Landlord and Landlord Parties as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement evidencing such additional insured status. The certificate shall contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation or termination of the coverage at least 30 days in advance of the effective date of any such material change, cancellation or termination. Upon Landlord's request, Tenant shall provide certified copies of all insurance policies, including declarations pages. Coverage provided hereunder by Tenant shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord or City, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Landlord and other additional insureds. The required certificate and endorsement shall be furnished by Tenant to Landlord prior to the Commencement Date, and prior to each anniversary thereof. If Tenant fails to purchase, renew or maintain any insurance policies required herein, Landlord shall have the right to so purchase any such insurance and the amount of any such advance by Landlord shall constitute Additional Rent under this Ground Lease.

10.2 Indemnity. To the greatest extent permitted by Law (including without limitation Civil Code Section 2782 if and to the extent applicable), Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless from and against any and all demands, liability, claims, actions and damages to any person or property, costs and expenses, including reasonable attorneys' fees, arising out of or connected with: (i) the performance or nonperformance by Tenant of its obligations under this Ground Lease; (ii) the use or occupancy of the Improvements, the Premises, any further improvements thereon including any Alterations, or any portion thereof, by Tenant, Tenant Parties, any invitee or licensee on or about the Premises (including without limitation any Hotel or Restaurant guests), or otherwise, other than those attributable to the active negligence or willful misconduct of Landlord or Landlord Parties; and (iii) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Premises, which occurs at any time from and after the Inception Date. The indemnity obligation in clause (iii) above includes without limitation any demands, liability, claims or actions for tangible or intangible property damage; compensation for lost wages, business income, profits or other economic loss; penalties, fines, remediation costs, investigation costs, and any amount assessed by any other governmental agency; damage to the natural resource or the environment; nuisance; trespass; and/or contamination, leak, spill, release or other adverse effect on the environment. Tenant's indemnity obligations under this Section shall survive the expiration or termination of this Ground Lease; provided, however, Tenant shall have no further indemnity obligations to Landlord under this Section 10.2 with respect to any claim(s) which have not been tendered to Tenant within two (2) years following the date of such expiration or termination.

ARTICLE 11. DAMAGE OR DESTRUCTION

11.1 Restoration.

A. Insured Damage. No loss or damage by fire or any other cause resulting in either partial or total destruction of the Improvements or any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Improvements, shall (except as otherwise provided in Subsections 11.1B or 11.2 below) operate to terminate this Ground Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Improvements and any other improvements now or hereafter located on the Premises, including any fixtures, personal property, equipment or machinery used or intended to be used in connection with the Premises or Improvements, so damaged or destroyed. Subject to the rights of any Ground Leasehold Mortgagee, Tenant also covenants that all insurance proceeds will be deposited with a builder's control company, title company, or bank selected by the mutual agreement of the parties ("**Insurance Trustee**") and applied to the repair, reconstruction and/or replacement described herein. Tenant's failure to make such full repair, restoration and replacement under any conditions in which it was elected or required so to do shall constitute a default by Tenant under this Ground Lease.

B. Improvements Uninsured Damage. Notwithstanding the provisions of Subsection 11.1A above, if, during the Ground Lease Term, (i) (a) the Improvements are totally destroyed or rendered unusable or if the remaining portion of the Improvements are rendered

unsuitable (as defined herein) for Tenant's continued use, from a risk not covered 90% by the insurance required to be carried by Tenant under this Ground Lease or actually carried under this Ground Lease, and (b) the cost of restoration exceeds 50% of the then replacement value of the Improvements as reasonably determined by Tenant and approved by Landlord, or (ii) (a) the Improvements are totally destroyed or rendered unusable or if the remaining portion of the Improvements are rendered unsuitable (as defined herein) for Tenant's continued use and (b) if, following restoration of the Premises, Tenant's business in the Improvements could not be operated at an economically feasible level because of changes to Laws governing the restoration, construction and/or operation of the Hotel, Tenant may elect to terminate this Ground Lease by giving notice to Landlord within 30 days after Tenant's determination of the restoration cost, replacement value and/or changes to Laws governing the restoration, construction and/or operation of the Hotel. The Improvements shall be deemed unsuitable for Tenant's continued use if, following a reasonable amount of reconstruction, Tenant's business in the Improvements could not be operated at an economically feasible level. If Tenant elects to terminate this Ground Lease pursuant to clause (i) above, Landlord in Landlord's sole and absolute discretion may, within 90 days after receiving Tenant's notice to terminate, elect to pay the difference between the budgeted cost of the restoration as reflected in estimates prepared by licensed general contractors reasonably acceptable to Landlord (with such amount to be adjusted based on the actual costs of construction as restoration progresses) and all available proceeds, including replacement cost and code upgrade coverage, under the insurance policies required to be carried by Tenant under this Ground Lease or actually carried under this Ground Lease, in which case Tenant shall restore the Improvements. Promptly following Landlord's election to contribute, Landlord shall deposit the amount of its contribution with the Insurance Trustee. If Tenant elects to terminate this Ground Lease and Landlord in its sole and absolute discretion does not elect to contribute toward the cost of restoration as provided in this Subsection 11.1B, this Ground Lease shall terminate as of the 91st day following Tenant's notice.

C. Establishment of Insurance Trust and Disbursement Procedures. Except as may otherwise be required by any Ground Leasehold Mortgagee, Tenant shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to the Insurance Trustee. To the extent Landlord in its sole and absolute discretion elects to contribute to the restoration costs as provided in Subsection 11.1B above, Landlord shall deposit with the Insurance Trustee its contribution toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

1. The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant as construction progresses, for payment of the cost of restoration. Any final retention provided for in the contract with such contractor will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the restored Improvements and the Premises are free of all mechanics' liens and lienable claims.

2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

3. If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration, Tenant shall deposit the amount of the deficiency with the Insurance Trustee within ten business days after request by the Insurance Trustee indicating the amount of the deficiency.

4. Any undisbursed funds after compliance with the provisions of this Subsection 11.1C shall be delivered to Landlord to the extent of Landlord's contribution to the fund, and the balance, if any, shall be paid to Tenant.

5. All actual costs and charges of the Insurance Trustee shall be paid by Tenant.

6. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, the parties shall substitute a new trustee in the place of the designated Insurance Trustee.

7. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this Subsection 11.1C.

11.2 Right to Terminate Upon Destruction Near the End of the Ground Lease Term. If, during the last six (6) years of the Ground Lease Term, the Improvements are totally or partially destroyed, and if the cost of restoration exceeds 20% of the replacement cost of the Improvements immediately before the damage or destruction, Tenant may elect to terminate this Ground Lease, provided that Tenant complies with all of the following conditions:

A. Tenant gives Landlord written notice of the damage or destruction within 30-days after the event causing such damage or destruction;

B. Tenant is not in default under the Improvements Documents (as defined in Section 16.23 below) beyond all applicable notice and cure periods and has cured any prior default(s) in connection with its termination of the Ground Lease;

C. Tenant transfers to Landlord all insurance proceeds resulting from the casualty, net of any cost incurred by Tenant in collecting such insurance proceeds and/or in complying with the provisions of Subsection 11.2E below and net of the portion of such proceeds that are payable to any Ground Leasehold Mortgagee pursuant to the Ground Leasehold Mortgage; and

D. Tenant delivers possession of the Premises, the Improvements and all other improvements located on the Premises to Landlord and quitclaims to Landlord all of Tenant's right, title and interest therein.

E. If Tenant so elects to terminate this Ground Lease under this Section, then Tenant shall, at its expense, promptly remove all debris and put the Improvements, the Premises and all improvements thereon in a safe condition. Following Tenant's satisfactory performance of the foregoing requirements, this Ground Lease shall terminate and the parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied and those obligations which by their terms survive expiration or termination of this Ground Lease.

11.3 Waiver. The provisions of this ARTICLE 11 shall govern the rights of the parties in the event of any full or partial destruction of the Improvements and any improvements thereon. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or Law with respect to any destruction of the Improvements.

11.4 Determination of Extent of Destruction, Interference with Use. For purposes of this ARTICLE 11, the extent of destruction of the Improvements shall be determined by dividing the estimated cost of replacement or restoration as evidenced by estimates prepared by licensed general contractors reasonably acceptable to Landlord by the full replacement cost of the Improvements as reasonably determined by the parties.

11.5 Procedures for Repair and Restoration. In the event of any material damage or destruction, Tenant shall promptly give Landlord written notice of such damage or destruction and the date on which such damage or destruction occurred. If applicable, Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Improvements which have been destroyed or damaged. Tenant shall commence and complete or cause to be commenced and completed, in a good and workmanlike manner and in accordance with ARTICLE 7 above, the reconstruction or repair of any part of the Improvements damaged or destroyed, after Landlord has approved Tenant's plans, drawings, specifications, construction schedule and permits for such reconstruction or repair. Landlord's approval of such plans, drawings, specifications, schedule and issuance of such permits shall not be unreasonably withheld, conditioned or delayed. Landlord shall approve or disapprove all plans and specifications within 30 days of receipt of complete plans and specifications. If Landlord fails to approve or disapprove such plans and specifications within such 30-day period, Tenant may send a second notice clearly indicating that Landlord's failure to approve or disapprove such plans and specifications within 10 business days following Landlord's receipt of the second notice shall be deemed Landlord's approval of the plans and specifications. Nothing herein shall be deemed to impose any time requirements on the City in connection with City's performance of its regulatory functions, for example City Building Department plan check and review of Tenant's construction drawings and issuance of building permits.

ARTICLE 12. CONDEMNATION

12.1 Definitions.

A. **"Condemnation"** means: (1) the exercise of any governmental power in eminent domain, whether by legal proceedings or otherwise, by a Condemnor, and (2) a voluntary sale or transfer to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

B. **"Date of Taking"** means the date the Condemnor has the right to possession of the property being condemned.

C. **"Award"** means all compensation, sums or anything of value awarded, paid or received on a total or partial condemnation.

D. **“Condemnor”** means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

12.2 Parties’ Rights and Obligations to be Governed by Ground Lease. If during the Ground Lease Term there is any Condemnation of all or any part of the Premises, the Improvements or any other improvements on the Premises or any interest in this Ground Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this ARTICLE 12.

12.3 Total Taking. If the Premises or Improvements is totally taken by Condemnation, this Ground Lease shall terminate on the Date of Taking.

12.4 Effect of Partial Condemnation. If a portion of the Improvements or Premises or any other improvements thereon are taken by Condemnation, this Ground Lease shall remain in effect, except that Tenant may elect to terminate this Ground Lease if the remaining portion of the Premises or Improvements is rendered unsuitable (as defined herein) for Tenant’s continued use. The remaining portion of the Improvements or the Premises shall be deemed unsuitable for Tenant’s continued use if, following a reasonable amount of reconstruction, Tenant’s business in the Improvements could not be operated at an economically feasible level. Tenant must exercise its right to terminate by giving Landlord written notice of its election within 90 days after the nature and extent of the taking have been finally determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 12.4 will result in this Ground Lease continuing in full force and effect.

12.5 Restoration of Improvements. If in Tenant’s judgment it is reasonably possible and economically feasible to do so, Tenant shall be entitled to use that portion of the Condemnation award allocable to the Improvements (but not any portion allocable to the Premises) as is necessary to restore or to add on to the Improvements so that the area and approximate layout of the Improvements will be substantially the same after the Date of Taking as it was before the Date of Taking. If it is not reasonably possible and economically feasible to so restore the area and layout of the Improvements, the remaining provisions of this ARTICLE 12 shall govern the rights of the parties. If Tenant fails to promptly commence any reasonably required repair, restoration or reconstruction of the Improvements and diligently prosecute such repair, restoration or reconstruction to completion, and such failure is not remedied within 60 days of written notice from the Landlord to Tenant, subject to potential further extension for force majeure delays, this Ground Lease may be terminated by the Landlord.

12.6 Waiver of CCP Section 1265.130. Each party waives the provisions of the Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court of the County of Alameda, State of California to terminate this Ground Lease in the event of a partial taking of the Premises.

12.7 Award. If all or any portion of the Premises is taken in connection with a condemnation, the entire portion of the award allocable to the Premises (but excluding the Improvements) shall belong to Landlord. Subject to the provisions of Section 12.5 above, and subject to the rights of any Ground Lease Mortgagee, if all or any portion of the Improvements on the Premises is taken in connection with a condemnation, the award for the Improvements shall be allocated as follows: (i) Landlord shall be entitled to receive the present value of its residual interest in the Improvements as of the expiration of the Term and (ii) Tenant, or any subtenant, as applicable, shall be entitled to receive only: (a) the value of any leasehold

improvements, merchandise, personal property, and furniture, fixtures and equipment owned by Tenant or its subtenant that are taken in connection with such condemnation; (b) the value of Tenant's interest in the Improvements for the remainder of the Term of this Ground Lease; and (c) loss of Tenant's or its subtenant's business goodwill, if agreed to be paid by the condemning authority or awarded by a court. Neither Tenant nor any subtenant shall have any right to receive any amount on account of any loss of any other interest in this Ground Lease, including without limitation any so-called "leasehold bonus value" or other amount due to differences between the Rent payable hereunder and the then current fair market rental value of Tenant's interest in this Ground Lease. Nothing in this Section 12.7 shall be deemed a waiver or surrender by Tenant or any subtenant of any right to receive relocation assistance under Government Code Section 7260, et seq., or compensation for moving of personal property under Code of Civil Procedure Section 1263.260.

**ARTICLE 13.
ASSIGNMENT AND SUBLETTING**

13.1 Assignment; Release from Liability.

A. Except as otherwise expressly provided in this Article 13, Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Ground Lease, the Improvements or any part thereof (collectively an "**assignment**") without Landlord's written consent, which shall not unreasonably be withheld, conditioned or delayed. The sale or transfer of substantially all of the business assets and business of Tenant or the merger, consolidation or other business combination of Tenant with any other entity or the assignment or transfer of any controlling or managing ownership or beneficial interest in Tenant shall constitute an "assignment" hereunder; provided, however, that any transfer of direct or indirect ownership interests in Tenant shall not constitute an "assignment" hereunder so long as such transfer does not result in a change of control of Tenant. Tenant agrees that it shall not be unreasonable for Landlord to condition its approval upon, among other things, (i) the proposed assignee having a financial net worth, according to a current financial statement prepared by a certified public accountant, which is sufficient to meet the obligations of Tenant under this Ground Lease; (ii) the proposed assignee having a reputation for and experience and qualifications in operating and maintaining major first-class Hotel Facilities comparable to the Improvements and with STR Chain Scale Ratings of Upscale or better; and (iii) the proposed assignee having a good business reputation. In evaluating the acceptability of the net worth of a proposed assignee, Landlord may require that the assignee's net worth be sufficient to carry out the performance of Tenant's obligation under this Ground Lease. Subject to the foregoing, Landlord agrees that it will not withhold its consent to Tenant's assignment of its interest in this Ground Lease if Tenant demonstrates to Landlord's reasonable satisfaction that such assignee has a net worth equal to or exceeding that of Tenant as of the Effective Date or the assignment date (whichever is greater), has a reputation for and at least five years' experience and qualifications in operating and maintaining at least three similar Hotel Restaurant facilities with an STR Chain Scale rating of Upscale or better, and has a good business reputation in the Hotel Restaurant industry. Tenant shall promptly provide Landlord with any information reasonably requested by Landlord relating to the identity of any proposed assignee, the nature of such assignee's business and the proposed assignee's financial responsibility.

B. Notwithstanding Subsection 13.1A above, Landlord's consent is not required for any assignment to an Affiliate of Tenant (as defined below) or any Mortgagee, as long as the following conditions are met: (i) Landlord receives written notice of the assignment (as well as any documents or information reasonably requested by Landlord regarding the

assignment or assignee); (ii) the assignee assumes in writing all of Tenant's obligations under this Ground Lease; and (iii) the assignee's net worth, as of the assignment date, is not less than that of the then-tenant as of the assignment date. For purposes of this Section 13.1, "**Affiliate**" means an entity which controls, is controlled by or under common control with Tenant as of either (i) the Effective Date or (ii) the date of the most recent assignment permitted under this Ground Lease. For purposes of this definition, "control" means the direct or indirect ownership of more than 50% of the voting securities of an entity or possession of the right to direct the entity's day-to-day affairs.

C. No partial assignments of this Ground Lease shall be permitted. Assignments of this Ground Lease shall only be made pursuant to a written assignment and assumption agreement in a form reasonably acceptable to Landlord. Landlord's consent to any one assignment shall not constitute consent to any other assignment, and shall not constitute a waiver of the right to give or withhold consent in accordance with this Section 13.1.

D. Following an assignment that is permitted under this Ground Lease, the assignor Tenant shall be released from, and the assignee Tenant shall be responsible for, all obligations and other liabilities of Tenant under this Ground Lease accruing from and after the effective date of such assignment.

E. In the event Tenant shall assign this Ground Lease or request the consent of Landlord to any assignment, or if Tenant shall request the consent of Landlord for any other act Tenant proposes to do, then Tenant shall pay Landlord's reasonable attorneys' fees and third-party costs incurred in connection with each such request in an amount not to exceed \$5,000, which amount shall be increased by annual CPI Adjustments.

13.2 Subleases. Tenant shall have the right to sublease up to ten percent (10%) of the of the square footage of the Improvements and up to ten percent (10%) of the square footage of the Premises that is outside the footprint of the Hotel and Restaurant building envelope without Landlord's prior written consent, but subject to the following conditions:

A. Such sublease shall not be valid and such sublessee shall not take possession until an executed counterpart of the sublease has been delivered to Landlord.

B. Any subtenant shall have agreed in writing to comply with all applicable terms and conditions of this Ground Lease with respect to the space or area that is the subject of the sublease.

C. No subletting shall release Tenant of Tenant's obligations under this Ground Lease or alter the liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. In the event of default by subtenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such subtenant.

Any sublease which together with all other then-existing subleases would exceed the percentage thresholds set forth above shall be subject to Landlord's prior written approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, (i) any sublease of the Charter Yacht Facility, including any renewal or extension of the HornBlower Sublease, shall be subject to Landlord's prior written approval not to be unreasonably withheld, conditioned or delayed, and (ii) Tenant shall not be permitted to sublease any Hotel rooms; provided that, the foregoing restriction shall not apply to the ordinary course operation of the Hotel.

13.3 Concessionaires. Notwithstanding Subsections 13.1A and 13.1B above, Tenant may enter into agreements with Concessionaires to perform functions included within the definition of "Concessionaire" in Subsection 2.4C above without Landlord's consent, subject to the following conditions:

A. Tenant shall require all Concessionaires to comply with applicable obligations under this Ground Lease, including without limitation those contained in Sections 2.4 and 2.5 above, and ARTICLE 16 below;

B. Tenant shall be fully liable and responsible for performance of all Concessionaire obligations under this Ground Lease; and

C. Within 10 business days of Landlord's written request, Tenant shall provide Landlord with a list of all current Concessionaires.

ARTICLE 14. TENANT DEFAULTS AND LANDLORD REMEDIES

14.1 Defaults by Tenant. Tenant shall be in default under this Ground Lease upon occurrence of any of the following:

A. Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Ground Lease for more than ten (10) days following written notice from Landlord to Tenant; or

B. Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained, and should such other default continue for thirty (30) days after written notice thereof from Landlord to Tenant specifying the particulars of such default, or if such other default is of a nature that curing such default will take more than thirty (30) days Tenant has failed to commence such cure within such 30-day period and to thereafter diligently and continuously pursue completion of such cure; or

C. Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Improvements, the Premises, or any other improvement constructed thereon in violation of the Improvements Documents; or

D. Tenant is in default under any of the other Improvements Documents beyond expiration of any applicable cure period.

14.2 Remedies. Subject to the rights of any Ground Leasehold Mortgagees permitted under ARTICLE 15 below, upon the occurrence of any such default, in addition to any and all other rights or remedies of Landlord hereunder, or by Law or in equity provided, Landlord shall have the sole option to exercise the following rights and remedies:

A. Terminate this Ground Lease by giving Tenant notice of termination. On the giving of such notice, all of Tenant's rights in the Premises, Improvements and any other improvements located thereon, shall terminate. Immediately following notice of termination, Tenant shall surrender and vacate the Premises, including the Improvements and any other improvements located thereon, leaving them in broom-clean condition; and, Landlord may reenter and take possession of the Premises and Improvements and eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Tenant

from the payment of any sum then due to Landlord or from any claim for damages previously accrued or then accruing against Tenant.

B. Without terminating this Ground Lease, Landlord may at any time and from time to time relet the Premises, including the Improvements, or any part or parts thereof for the account and in the name of Tenant or otherwise. Landlord may at Landlord's election eject all persons or eject some and not others, or eject none. Any reletting may be for the remainder of the Ground Lease Term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name, and shall be entitled to all rents from the use, operation, and occupancy of the Premises, Improvements and any other improvements thereon. Tenant hereby appoints Landlord its attorney-in-fact for purpose of such leasing. Tenant shall nevertheless pay to Landlord on the due dates specified in this Ground Lease the equivalent of all sums required of Tenant under this Ground Lease, less the revenue received by Landlord from any reletting or attornment, plus Landlord's expenses, including (by way of example), but not limited to, remodeling expenses, Landlord's brokerage and advertising costs and reasonable attorneys' fees and costs. No act by or on behalf of Landlord under this subsection shall constitute a termination of this Ground Lease unless Landlord gives Tenant written notice of termination.

C. Even though Landlord may have relet all or any portion of the Premises, including the Improvements and any other improvements thereon, Landlord may thereafter elect to terminate this Ground Lease and all of Tenant's rights in or to the foregoing.

14.3 Damages. Should Landlord elect to terminate this Ground Lease, Landlord shall be entitled to recover from Tenant, as damages:

A. The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Ground Lease;

B. The worth at the time of the award of the amount by which the unpaid Rent that would have been earned after the date of termination of this Ground Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

C. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Ground Lease Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

D. Any other amount (and court costs) necessary to compensate Landlord for all detriment proximately caused by Tenant's default, including costs of alterations and improvements in connection with reletting.

E. Computing Worth at the Time of Award. The "worth at the time of the award," as used in Subsections 14.3A and 14.3B above, is to be computed by allowing interest at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate permitted by Section 1(2) of Article XV of the California Constitution. The "worth at the time of the award," as referred to in Subsection 14.3C above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent.

14.4 Landlord's Right to Cure Tenant's Default. Landlord, at any time after Tenant commits a default which Tenant has failed to cure within the time established therefor, may cure

the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the lesser of (i) ten percent (10%) per annum or (ii) the maximum rate permitted under Section 1(2) of Article XV of the California Constitution from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be Additional Rent.

**ARTICLE 15.
MORTGAGEE PROTECTION PROVISIONS**

15.1 Ground Leasehold Mortgage Authorized. In addition to the mortgagee under the Existing Ground Leasehold Mortgage, as provided and defined in this ARTICLE 15, Tenant may mortgage or otherwise encumber Tenant's interest in this Ground Lease to an "Institutional Investor" (as defined below) under one or more Ground Leasehold Mortgage(s) and assign this Ground Lease as security for such mortgage(s). The Ground Leasehold Mortgage(s) shall affect only Tenant's interest in this Ground Lease and shall be subject to all of the terms and provisions of this Ground Lease. Landlord's fee interest in the Premises and residual interest in the Improvements shall not be encumbered or subordinated by Landlord or Tenant.

15.2 Notice to Landlord. If Tenant shall mortgage Tenant's interest in this Ground Lease to an Institutional Investor, and if Tenant or the holder of such Ground Leasehold Mortgage shall provide Landlord with notice of such Ground Leasehold Mortgage, together with a true copy of such Ground Leasehold Mortgage and the name and address of the holder, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this ARTICLE 15 shall apply with respect to such Ground Leasehold Mortgage. In the event of any assignment of a Ground Leasehold Mortgage, or in the event of a change of address of the holder thereunder or of an assignee of such holder, notice of the new name and address shall be provided to Landlord. Tenant shall thereafter also provide Landlord from time to time with a copy of each amendment or other modification or supplement to the Ground Leasehold Mortgage. All recorded documents shall be certified as true and correct copies of official records by the Alameda County Recorder and all nonrecorded documents shall be accompanied by a certification by Tenant or the holder that such documents are true, complete, and correct copies of the originals.

15.3 Definitions. As used in this ARTICLE 15:

A. **"Institutional Investor"** means any lender which has assets in excess of \$100 Million at the time the Ground Leasehold Mortgage or similar loan is made and is regularly engaged in the business of making secured real estate loans.

B. **"Ground Leasehold Mortgage"** includes a mortgage, deed of trust or other security instrument authorized in favor of (except as provided in this Section 15.3) either (i) an Institutional Investor by which Tenant's interest in this Ground Lease is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation, or (ii) the Existing Ground Leasehold Mortgagee.

C. **"Ground Leasehold Mortgagee"** or **"Mortgagee"** shall refer to a holder of a Ground Leasehold Mortgage either (i) under with respect to which the notice provided for by Section 15.2 above has been given and received and as to which the provisions of this ARTICLE 15 are applicable or (ii) under the Existing Ground Leasehold Mortgage.

15.4 Consent of Ground Leasehold Mortgagee Required. Except for expiration of this Ground Lease following the running of the entire Ground Lease Term indicated in Basic Lease provisions clause 8, no amendment, modification, cancellation or termination of this Ground Lease shall be effective as to any Ground Leasehold Mortgagee unless consented to in writing by such Ground Leasehold Mortgagee. Tenant, by execution of this Ground Lease, warrants to Landlord that all required Existing Ground Lease Mortgagee consents have been obtained with respect to this Ground Lease.

15.5 Notice to Ground Leasehold Mortgagee. With respect to any Ground Leasehold Mortgagee, whenever Landlord shall deliver any notice to Tenant with respect to any default by Tenant hereunder, Landlord shall at the same time deliver a copy of such notice to each Ground Leasehold Mortgagee authorized by this Ground Lease. No notice of default shall be effective as to the Ground Leasehold Mortgagee unless such notice is given. Each Ground Leasehold Mortgagee shall (insofar as the rights of Landlord are concerned) have the right, at its option, within 60 days after the receipt of the copy of the notice, to cure or remedy or commence to cure or remedy any such default. In the event possession of the Improvements or the Premises, or any portion thereof, is required to effectuate such cure or remedy, the Ground Leasehold Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within 60 days after receipt of the copy of the notice, diligently and continuously pursues such proceedings to completion, and, after obtaining possession, diligently and continuously completes such cure or remedy. The provisions of Section 15.7 below shall apply if, during such 60-day termination notice period, the Ground Leasehold Mortgagee shall:

A. Notify Landlord of such Ground Leasehold Mortgagee's desire to nullify such notice, and

B. Pay or cause to be paid all Rent, Additional Rent and other payments then due and in arrears as specified in the termination notice to such Ground Leasehold Mortgagee and which may become due during such 60-day period, and

C. Comply, or in good faith, with diligence and continuity, commence to comply, with all nonmonetary requirements of this Ground Lease then in default and reasonably susceptible of being complied with by such Ground Leasehold Mortgagee; provided, however, that in the event such Ground Leasehold Mortgagee shall commence foreclosure proceedings within such 60-day period, such Ground Leasehold Mortgagee shall not be required during such 60-day period to cure or commence to cure any such non-monetary default.

D. Any notice to be given by Landlord to the Existing Ground Leasehold Mortgagee pursuant to any provision of this ARTICLE 15 shall be deemed properly addressed if sent to the Existing Ground Leasehold Mortgagee at the address(es) set forth in Basic Lease Information clause 20. Any notice to be given by Landlord to a Ground Leasehold Mortgagee pursuant to any provision of this ARTICLE 15 shall be deemed properly addressed if sent to the Ground Leasehold Mortgagee who served the notice referred to in Section 15.2 above at the address stated in such notice unless notice of a change of mortgage ownership has been given to Landlord pursuant to Section 15.2 above.

15.6 Ground Leasehold Mortgagee Foreclosure. If Landlord shall elect to terminate this Ground Lease by reason of any default of Tenant and the Ground Leasehold Mortgagee shall have proceeded in the manner provided for by Section 15.5 above, the specified date for termination of this Ground Lease as fixed by Landlord in its termination notice shall be extended

for a period of six months, provided that such Ground Leasehold Mortgagee shall, during such six-month period:

A. Pay, or cause to be paid, Rent (including the Minimum Ground Rent, Percentage Rent, Additional Rent and any other monetary obligations of Tenant under this Ground Lease) as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Ground Lease; and

B. If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Ground Lease by foreclosure of the Ground Leasehold Mortgage or other appropriate means and prosecute the same to completion with diligence.

If, at the end of such six-month period, such Ground Leasehold Mortgagee is diligently complying with this Section 15.6, this Ground Lease shall not then terminate, and the time for completion by such Ground Leasehold Mortgagee of its proceedings shall continue so long as such Ground Leasehold Mortgagee is enjoined or stayed and thereafter provided such Ground Leasehold Mortgagee continues to meet its obligations under Subsection 15.6A above, and proceeds to complete steps to acquire or sell Tenant's interest in this Ground Lease by foreclosure of the Ground Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 15.6, however, shall be construed to extend this Ground Lease beyond the Ground Lease Term, or to require a Ground Leasehold Mortgagee to continue such foreclosure proceedings after the default has been timely cured. If the default shall be timely cured and the Ground Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Ground Lease shall continue in full force and effect as if Tenant had not defaulted under this Ground Lease.

15.7 Purchaser at Foreclosure. If the Ground Leasehold Mortgagee is complying with Section 15.6 above, upon the acquisition of the entirety of Tenant's interest in this Ground Lease by such Ground Leasehold Mortgagee or its designee (such designee subject to Landlord's approval per the standards set forth in Section 13.1 above) or any other Institutional Investor purchaser at a foreclosure sale or otherwise (and the discharge or extinguishment of any lien, charge or encumbrance against Tenant's interest in this Ground Lease which is junior in priority to the lien of the Ground Leasehold Mortgage held by such Ground Leasehold Mortgagee and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Ground Lease), this Ground Lease shall continue in full force and effect as if Tenant had not defaulted under this Ground Lease. Any such purchaser, including the Ground Leasehold Mortgagee or the transferee under any instrument of assignment or transfer in lieu of the foreclosure of the Ground Leasehold Mortgage, shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment.

15.8 New Lease. In the event of the termination of this Ground Lease (including without limitation due to the rejection of this Ground Lease in a bankruptcy proceeding in which Tenant is the debtor) before the expiration of the Ground Lease Term, except (i) as the result of damage or destruction as provided in ARTICLE 11 above or (ii) by a taking as provided in ARTICLE 12 above, Landlord shall deliver to Ground Leasehold Mortgagee written notice that this Ground Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Ground Lease but for such termination, and of all other defaults, if any, under this Ground Lease then known to Landlord. The Ground Leasehold Mortgagee shall thereupon have the option to obtain a new lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

A. Upon the written request of the Leasehold Mortgagee, within 60 days after Landlord's notice that this Ground Lease has been terminated, Landlord shall enter into a New Lease of the Premises with the most senior Ground Leasehold Mortgagee giving notice within such period or its designee (such designee subject to Landlord's approval per the standards set forth in Section 13.1 above) (as applicable, "**New Tenant**"); and

B. The New Lease shall be entered into at the reasonable cost of the New Tenant, shall be effective as of the date of termination of this Ground Lease, and shall be for the remainder of the Ground Lease Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, and in substantially the same form as this Ground Lease. Any New Lease shall require the New Tenant to cure or remedy any unfulfilled obligation of Tenant under this Ground Lease which is reasonably susceptible of being cured. Upon the execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Ground Lease but for such termination, and shall pay all expenses, including reasonable attorneys and consultants' fees and costs incurred by Landlord in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

15.9 Ground Leasehold Mortgagee's Right to Sell. If Ground Leasehold Mortgagee or New Tenant (as applicable, "**Successor Tenant**") acquires title to Tenant's interest in this Ground Lease (or New Lease) pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings described in this ARTICLE 15, , such Successor Tenant, upon acquiring Tenant's interest in this Ground Lease (or New Lease), may sell and assign the combined entirety of Tenant's interest in this Ground Lease (or New Lease), only to such persons and organizations as are approved by Landlord per the standards set forth in Section 13.1 above. If Successor Tenant's proposed transferee is approved by Landlord, and such transferee delivers to Landlord its written agreement to be bound by all of the provisions of this Ground Lease (or New lease), then Successor Tenant shall be relieved of all obligations under this Ground Lease (or New Lease) arising or accruing from and after the date of such sale and assignment.

15.10 Holder Not Obligated to Construct Improvements. The holder of any Ground Leasehold Mortgage authorized by this Ground Lease shall not be obligated by the provisions of this Ground Lease to construct or complete any Improvements or to guarantee such construction or completion; provided that any Ground Leasehold Mortgagee (or designee or any other person) which acquires Tenant's interest in this Ground Lease (or any New Lease) shall have the same obligations relating thereto as the prior Tenant. Nothing in this Ground Lease shall be deemed to or be construed to permit or authorize any such Ground Leasehold Mortgagee to devote the Improvements or the Premises to any uses or to construct any improvements thereon or therein other than those uses and improvements expressly provided for and authorized by this Ground Lease.

15.11 Right of Landlord to Cure Ground Leasehold Mortgage Default. If a Ground Leasehold Mortgage default or breach by Tenant occurs and the Ground Leasehold Mortgagee has not exercised its option to cure the default, Landlord, at its sole option and without any obligation to do so, may cure the default following prior notice thereof to Tenant. In such event, Tenant shall be liable for, and Landlord shall be entitled to reimbursement from Tenant of, all costs and expenses incurred by Landlord associated with and attributable to the curing of the Ground Leasehold Mortgage default or breach. Landlord shall also be entitled to record a lien against Tenant's interest in this Ground Lease to the extent of such incurred costs and disbursements. Any such lien shall be subject and subordinate to all prior Ground Leasehold Mortgages and encumbrances.

**ARTICLE 16.
MISCELLANEOUS**

16.1 Holding Over. If Tenant shall hold over in the Improvements or on the Premises after the expiration of the Ground Lease Term with the consent of Landlord, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Ground Lease. Tenant hereby agrees to pay to Landlord as monthly rental 1/12th of the amount which is 125% of the highest amount of total Annual Rent paid by Tenant to Landlord during the Ground Lease Term.

16.2 Attorneys' Fees. In the event that any action is brought by either party hereto against the other for the enforcement or declaration of any right or remedy in or under this Ground Lease or for the breach of any covenant or condition of this Ground Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

16.3 Quiet Possession. Landlord agrees that so long as Tenant is not in default under this Ground Lease and is paying the Rent and performing in all material respects all of the covenants and conditions of this Ground Lease, Tenant shall quietly have, hold and enjoy the Premises throughout the Ground Lease Term without interruption or disturbance from Landlord or any other persons claiming by, through or under Landlord.

16.4 Force Majeure. Except as to Tenant's payment of Rent, subject to the limitations set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Ground Lease shall be extended, where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; or acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Landlord which shall not excuse performance by Landlord). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within 30 days of the commencement of the cause. Times of performance under this Ground Lease may also be extended in writing by the mutual agreement of Landlord and Tenant. Tenant expressly agrees that adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding, or to complete any Improvements or Alterations, shall not constitute grounds of force majeure delay pursuant to this Section 16.4. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date.

16.5 City Manager Authority Limitations; Waiver of Terms and Conditions.

A. Any amendment to this Ground Lease which affects or relates to (i) the Ground Lease Term; (ii) the Permitted Use; (iii) minimum Hotel Facilities quality standards; (iv) Rent amounts, Percentage Rent percentages or other monetary payments by Tenant, including Tenant payments pursuant to the Capital Contribution Agreement; (v) Tenant's commitments regarding provision of EV Charging Stations and purchase of renewable energy as provided in Section 5.7, (vi) Landlord's rights to use Conference Facilities as provided in Section 5.11, or (vii) any other material provision of this Ground Lease shall require approval by the Landlord's City

Council. Subject to the foregoing, the City Manager may issue without Council approval any consent or approval which Landlord is entitled to provide under this Ground Lease, including without limitation to Alterations under ARTICLE 7 above, assignments under ARTICLE 13 above, and Ground Lease Mortgagee designees under ARTICLE 15 above.

B. No waiver of any Tenant breach of any of the terms, covenants, agreements, restrictions or conditions of this Ground Lease or the other Improvements Documents shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof or thereof. Landlord's consent or approval to or of any act by Tenant requiring further consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act. Landlord's exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Ground Lease or the other Improvements Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice Landlord in the exercise of any right, power, or remedy hereunder or under the other Improvements Documents, unless in the exercise of any such right, power, or remedy all Tenant obligations to Landlord are paid and discharged in full.

16.6 Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, as indicated in the Basic Lease Information. Any party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

16.7 Surrender. Upon the expiration or sooner termination of the Ground Lease Term, and notwithstanding anything herein contained to the contrary (other than Section 8.3 above regarding personal property, if and to the extent Landlord exercises its rights thereunder), Tenant shall surrender to Landlord the Improvements, the Premises and any improvements thereon, broom clean and in good condition and repair, reasonable wear and tear excepted.

16.8 Binding. Subject to the restrictions set forth herein regarding assignment of , Tenant's interest in this Ground Lease, each of the terms, covenants and conditions of this Ground Lease shall extend to and be binding on and shall inure to the benefit of not only Landlord and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Ground Lease reference is made to either Landlord or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

16.9 Landlord's Right to Enter Premises and Improvements. During the last two years of the Ground Lease Term or at any time during the Ground Lease Term when Tenant is in default, Landlord and its authorized representatives shall have the right to enter the Premises and Improvements to show the Improvements and the Premises to prospective brokers, agents, buyers, tenants or persons interested in a purchase or lease of the Improvements and Premises; provided that, (i) Landlord gives Tenant written notice of such entering at least 48 hours in advance, (ii) Landlord shall not, and shall not permit any prospective brokers, agents, buyers, tenants or other persons to, interfere with Tenant's operation or use of the Premises, and (iii) Landlord shall indemnify Tenant for any bodily injury, death or property damage arising from or in connection with Landlord's entry on the Premises and Improvements.

16.10 Disclaimer of Partnership. The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant or a joint venturer with Tenant in any Improvements or in the conduct of Tenant's business or otherwise.

16.11 Memorandum. Landlord and Tenant shall execute a Memorandum of this Ground Lease or any amendment or modification thereof for recordation in the official records of the County of Alameda, California, in substantially the form attached hereto as Exhibit G.

16.12 Quitclaim. At the expiration or earlier termination of the Ground Lease Term, Tenant shall execute, acknowledge and deliver to Landlord within 15 days after Landlord's written demand to Tenant, a quitclaim deed or other document reasonably required by Landlord or any reputable title company to remove the cloud of this Ground Lease from title to the Premises and confirm Landlord's title to the Improvements.

16.13 Interpretation. The titles to the sections of this Ground Lease are not a part of this Ground Lease and shall have no effect upon the construction or interpretation of any part of this Ground Lease. As used in this Ground Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Ground Lease shall be interpreted as though prepared jointly by both parties.

16.14 Severability. If any term, provision, condition or covenant of this Ground Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Ground Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

16.15 Computation of Time. The time in which any act is to be done under this Ground Lease is computed by excluding the first day, and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" means all holidays as specified in Sections 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

16.16 Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Ground Lease, and in signing this Ground Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Ground Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Ground Lease; and, they have freely signed this Ground Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Ground Lease, and without duress or coercion, whether economic or otherwise.

16.17 Time of Essence. Time is expressly made of the essence with respect to the performance by Landlord and Tenant of each and every obligation and condition of this Ground Lease.

16.18 Nonliability of Landlord and Tenant Officials and Employees. No officer, elected official, employee or representative of Landlord shall be personally liable to Tenant, or

any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of Landlord with respect to any default or breach by Landlord or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Ground Lease. No individual partners, members, directors, officers, shareholders, employees or representatives of Tenant shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease. Landlord hereby waives and releases any claim it may have against the individual partners, members, directors, officers, shareholders, employees or representatives of Tenant with respect to any default or breach by Tenant or for any amount which may become due to Landlord or its successors, or on any obligations under the terms of this Ground Lease.

16.19 Assignment by Landlord. Subject to compliance with applicable Law (including without limitation the State Tidelands Grant) and following written notice to Tenant of at least thirty (30) days, Landlord may assign or transfer any of its interests hereunder at any time without Tenant's consent; provided that Landlord's assignee expressly assumes this Ground Lease and Landlord's obligations hereunder.

16.20 Applicable Law. The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles shall govern the interpretation and enforcement of this Ground Lease.

16.21 Agent for Service of Process. Tenant expressly agrees and understands that if it is not a resident of this State, or is an association or partnership without a member or partner resident of this State, or is a foreign corporation or company, then Tenant shall file with Landlord a designation of a natural person residing in the County of Alameda, State of California, giving his or her name, residence, and business address as Tenant's agent for the purpose of service of process in any court action between Tenant and Landlord arising out of or based upon this Ground Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such Tenant. Tenant further expressly agrees, covenants and stipulates that if for any reason service of such process upon such agent is not possible, or Tenant fails to maintain such an agent, then in such event Tenant may be personally served with such process out of the State of California, and that such service shall constitute valid service upon such Tenant; and it is further expressly agreed that Tenant is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

16.22 Covenants and Conditions. Each obligation of the parties hereunder, including, without limitation, Tenant's obligation for the payment of Rent, shall be construed to be both a covenant and a condition of this Ground Lease.

16.23 Integration. This Ground Lease, together with all exhibits and attachments hereto, the recorded Memorandum referenced in Section 16.11 above, the Consent Agreement and Estoppel, the City Hornblower Consent and that certain Capital Contribution Agreement of even date herewith between Landlord and Tenant (collectively, "**Improvements Documents**"), constitute the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Ground Lease which are not expressed herein or in the Improvements Documents.

16.24 Estoppel Certificates. From time to time, but in no event more than two (2) times in any twelve (12) month period, each party shall execute and deliver to the other party promptly upon request a certificate certifying (i) that this Ground Lease is unmodified and in full force and effect or, if there has been any modification, that this Ground Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which Rent and other sums payable hereunder have been paid; (iii) that no notice has been received by the certifying party of any default which has not been cured, except as to defaults specified in such certificate; (iv) that to the certifying party's actual knowledge, the requesting party is not in default under this Lease and the certifying party has no claims, charges, offsets or defenses against the requesting party, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by any prospective purchaser, vendee or other party. If Tenant or Landlord fails to execute and deliver any such certificate within thirty (30) days after the requesting party's written request, and fails to cure such default within an additional five (5) business days after further notice from the requesting party indicating that failure to respond with such 5-business day period shall be conclusive as to such matters, such failure, at the requesting party's election, shall be conclusive against the other party that this Lease is in full force and effect, without modification (except as may be represented by the requesting party), that there are no uncured defaults in the requesting party's performance, and that not more than one month's rent has been paid in advance. In the event Tenant requests Landlord to execute a certificate pursuant to this Section 16.24, then Tenant shall pay Landlord's reasonable attorneys' fees and consultant costs incurred in connection with each such request in an amount not to exceed \$1,500, which amount shall be increased by annual CPI Adjustments.

16.25 Amendments to this Ground Lease. Landlord and Tenant agree to mutually consider reasonable requests for amendments to this Ground Lease that may be made by either of them, lending institutions or bond counsel or financial consultants to Landlord or Tenant, provided such requests are consistent with this Ground Lease and would not materially alter the basic business terms included herein. Tenant shall pay Landlord's reasonable attorneys' fees and third-party costs incurred in connection with any amendment requested by or on behalf of Tenant. No amendment shall be effective unless in writing and signed by the parties hereto.

16.26 Brokerage Commissions. Landlord and Tenant each represents that it has not been represented by any broker in connection with this Ground Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Brokerage Commission**") is due or payable. Landlord and Tenant each agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Brokerage Commission based upon any statement, representation or agreement of the other party.

16.27 City Non-Discrimination Ordinance. Tenant hereby agrees to comply with the provisions of Berkeley Municipal Code ("**B.M.C.**") Chapter 13.26, as amended from time to time. In the performance of its obligations under this Ground Lease, Tenant agrees as follows:

A. Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance

with this non-discrimination provision. In addition, Tenant shall fill-out, in a timely fashion, forms supplied by Landlord as reasonably required to monitor this non-discrimination provision.

16.28 Non-Discrimination against Persons with Disabilities.

A. If Tenant provides any aid, service or benefit to others on the Landlord's behalf, Tenant shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Tenant shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the Landlord, if applicable.

B. If Tenant is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Tenant shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Tenant. All of Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations, and Tenant shall be solely responsible for complying therewith.

16.29 Conflict of Interest Prohibited.

A. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Tenant nor any employee, officer, director, partner or member of Tenant, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of Landlord, who has directly or indirectly influenced the making of this Ground Lease

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

C. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

16.30 Nuclear Free Berkeley. Tenant agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

16.31 Required Accessibility Disclosure.

A. Landlord hereby advises Tenant that the Premises and Improvements have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Ground Lease, Landlord shall have no liability or responsibility to make any repairs

or modifications to the Premises or the Project in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

B. “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 landlord 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.” [Cal. Civ. Code Section 1938(e)]. Any CAsp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord’s prior written consent.

16.32 Oppressive States.

A. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the Ground Lease Term to forego contractual relations to provide personal services to, the following entities:

1. The governing regime in any Oppressive State.
2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Ground Lease) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

B. For purposes of this Ground Lease, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant’s failure to comply with this Section shall constitute a default of this Ground Lease and Landlord may terminate this Ground Lease pursuant to ARTICLE 14 above. In the event that Landlord terminates this Ground Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five years from the date this Ground Lease is terminated.

16.33 Berkeley Living Wage Ordinance (LWO).

A. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (“**LWO**”) unless otherwise agreed to in a collective bargaining agreement. If Tenant employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the Ground Lease Term, as defined in the LWO, and well as comply with the terms enumerated herein.

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's LWO. If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Landlord's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in ARTICLE 14 above.

C. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Subtenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

D. If Tenant fails to comply with the requirements of the LWO and this Ground Lease, the Landlord shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

E. Tenant's failure to comply with this Section following notice and expiration of applicable cure periods shall constitute a default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 14 above.

F. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of a confirmed underpayment to an employee under the LWO. The foregoing shall not apply to alleged underpayments based on the Tenant's reasonable and good faith application of an expired or in effect collective bargaining agreement. It is mutually understood and agreed that Tenant's failure to pay any of its eligible employees at least the applicable living wage rate (subject to an applicable collective bargaining agreement) will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

16.34 Berkeley Equal Benefits Ordinance (EBO).

A. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the Ground Lease Term, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of ARTICLE 14 above.

C. If Tenant fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies

provided by law or equity. Tenant's failure to comply with this Section shall constitute default of the Ground Lease, upon which City may terminate this Ground Lease pursuant to ARTICLE 14 above.

D. In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Tenant's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Tenant's breach.

16.35 Berkeley Marina Zone Worker Retention Ordinance. As a "Marina Zone Business" (as defined in the Berkeley Marina Zone Worker Retention Ordinance, B.M.C. Chapter 13.25 "Marina Zone Ordinance"), Tenant shall comply with such Ordinance. Without limiting the foregoing, during the Ground Lease Term, Tenant shall cause any "New Operator" (as defined in the Marina Zone Ordinance) to comply with such Ordinance

16.36 City Auditor Rights. In addition to Landlord's and City Auditor's financial audit rights set forth in Section 2.5C above, the City Auditor's Office, or its designee, may conduct an audit of Tenant's compliance records maintained in connection with the operations and services performed under this Ground Lease, including compliance with Sections 16.27 through 16.35 above. In the event of such audit, Tenant agrees to cooperate with the City Auditor's Office and make such compliance records available to the City Auditor's Office, or to its designee, as reasonably required by the City Auditor's Office. Landlord shall provide Tenant an opportunity to discuss, respond to and contest, as applicable, any findings before a final audit report is filed.

16.38 Pests and Pesticide Management. All use of pesticides on or about the Premises shall be in compliance with the City of Berkeley's Pest/Pesticide Management Policy as it exists at the time of such use.

16.39 City Business License, Payment of Taxes, Tax I.D. Number. Tenant has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Tenant is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Tenant shall pay all state and federal income taxes and any other taxes due. Tenant certifies under penalty of perjury that the taxpayer identification number written below is correct.

16.40 Survival. The provisions of Sections 4.3 (Real Property Taxes), 4.4 Assessments, 5.5 (General Maintenance Standards), 5.8 (Governmental Requirements), 6.2 (Hazardous Materials), 7.1 (Alterations on Premises), 7.4 (Liens and Stop Notices), 10.2 (Indemnity), 16.7 (Surrender) and any other obligation of Tenant that, by its terms or nature, is to be performed after or is to survive expiration or termination of this Ground Lease, shall survive such expiration or termination.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Ground Lease to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

[Signature Page Follows]

TENANT:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

Date: _____

LANDLORD:

CITY OF BERKELEY, a public body corporate
and politic

By: _____
Dee Williams-Ridley
City Manager

Date: _____

Approved as to form:

Farimah Brown, City Attorney

Registered by:

_____, City Auditor

Attest:

_____, City Clerk

TENANT INFORMATION

Tax Identification No. _____

Incorporated: Yes ____ No ____

Certified Woman Business Enterprise: Yes ____ No ____

Certified Minority Business Enterprise: Yes ____ No ____

Certified Disadvantaged Business Enterprise: Yes ____ No ____

City Business License No. _____, or
Exempt pursuant to B.M.C. Section ____

EXHIBIT A
SITE MAP

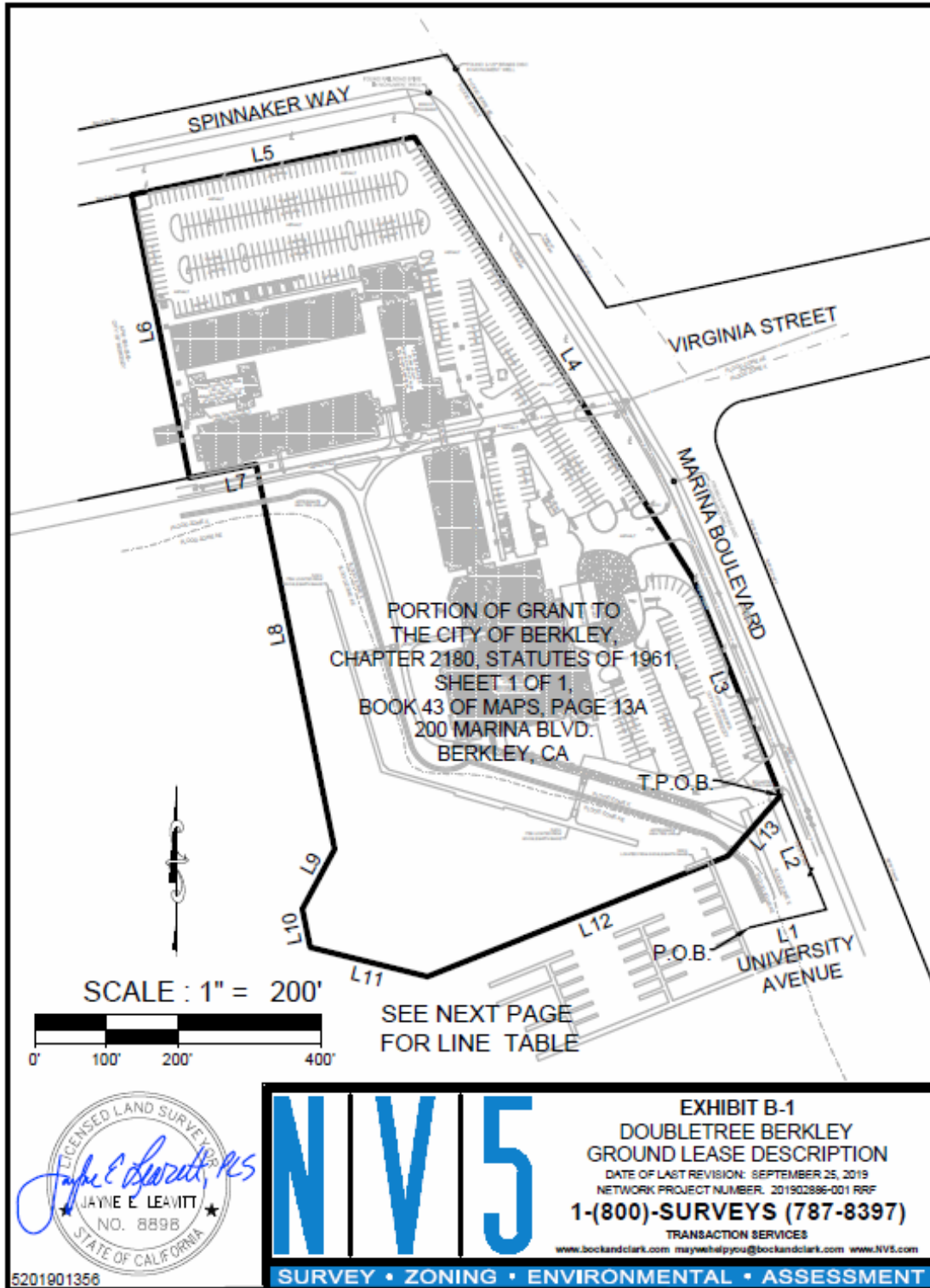


EXHIBIT B1

LEGAL DESCRIPTION OF PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A PORTION OF THE GRANT TO THE CITY OF BERKELEY AS SAID GRANT IS SHOWN ON "MAP OF THE GRANT TO THE CITY OF BERKELEY, CHAPTER 2180, STATUTES OF 1961, VICINITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA", SHEET 1 OF 1, APRIL 1962, AND RECORDED JULY 24, 1963, IN BOOK 43 OF MAPS, PAGE 13A, ALAMEDA COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF UNIVERSITY AVENUE, AS DESCRIBED IN THE DEED TO THE TOWN OF BERKELEY DATED SEPTEMBER 25, 1907, AND RECORDED SEPTEMBER 28, 1907, IN BOOK 1405 OF DEEDS, PAGE 165, ALAMEDA COUNTY RECORDS, WITH THE WESTERLY LINE OF LOT 5 IN SECTION 9 TOWNSHIP 1 SOUTH, RANGE 4 WEST M.D.B. & M. AS SAID LOT IS SHOWN ON "MAP NO. 4 OF SALT MARSH AND TIDE LANDS SITUATED IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA", CERTIFIED

COPIES OF WHICH ARE ON FILE WITH THE STATE LANDS DEPARTMENT OF THE STATE OF CALIFORNIA; THENCE NORTH 76° 47' 36" EAST, 110.00 FEET; THENCE NORTH 21° 53' 29" WEST, 1014.349 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 21° 53' 29" WEST, 327.13 FEET; THENCE NORTH 32° 12' 53" WEST, 731.938 FEET; THENCE SOUTH 78° 28' 12" WEST, 403.731 FEET; THENCE SOUTH 11° 31' 48" EAST, 405.00 FEET; THENCE NORTH 78° 28' 12" EAST, 95.007 FEET; THENCE SOUTH 11° 31' 48" EAST, 550.364 FEET; THENCE SOUTH 28° 22' 11" WEST, 95.301 FEET; THENCE SOUTH 11° 31' 48" EAST, 55.00 FEET; THENCE SOUTH 76° 01' 15" EAST, 169.303 FEET; THENCE NORTH 68° 06' 31" EAST, 452.668 FEET; THENCE NORTH 40° 58' 15" EAST, 112.37 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING ALL DEPOSITS OF MINERALS, INCLUDING OIL AND GAS, IN SAID LANDS AND TO THE STATE OF CALIFORNIA, OR PERSONS, AUTHORIZED BY THE STATE OF CALIFORNIA, THE RIGHT TO PROSPECT FOR, MINE, AND REMOVE SUCH DEPOSITS FROM SAID LANDS AS EXCEPTED AND RESERVED IN GRANTS OF SAID LANDS TO THE CITY OF BERKELEY BY STATUTES 1961, CHAPTER 2180 AND BY STATUTES 1962, FIRST EXTRA SESSION, CHAPTER 55.

EXCEPTING ALL BUILDINGS AND IMPROVEMENTS SITUATED THEREON.

CONTAINING AN AREA OF 600,263 SQUARE FEET (13.780 ACRES), MORE OR LESS.

EXHIBIT B2

LEGAL DESCRIPTION OF INITIAL PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A portion of the Grant to the City of Berkeley as said Grant is shown on "Map of the Grant to the City of Berkeley," Chapter 2180, Statutes of 1961, Vicinity of Berkeley, Alameda County, California, Sheet 1 of 1, April 1962, and recorded July 24, 1963, in Book 43 of Maps, page 13A, Alameda County Records, being more particularly described as follows:

Beginning at the point of intersection of the northerly line of University Avenue, as described in the deed to the Town of Berkeley dated September 25, 1907 and recorded September 28, 1907, in Book 1405 of Deeds, page 165, Alameda County Records, with the westerly line of Lot 5 in Section 9 Township 1 South, Range 4 West M.D.B.&M. as said lot is shown on "Map No. 4 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California," certified copies of which are on file with the State Lands Department of the State of California; thence N 76°47'36" E 110.000 feet; thence N 21°53'29" W 1341.479 feet to the true point of beginning; thence N 32°12'53" W 731.938 feet; thence S 78°28'12" W 403.731 feet; thence S 11°31'48" E 405.000 feet; thence N 78°28'12" E 120.007 feet; thence S 11°31'48" E 497.972 feet; thence S 76°01'15" E 399.390 feet; thence N 78°28'12" E 151.498 feet; thence N 21°53'29" W 396.672 feet; thence N 78°28'12" E 101.657 feet to the true point of beginning, containing 11.15 acres more or less.

[Tenant to confirm]

EXHIBIT C

STATE TIDELANDS GRANT

FORTIETH SESSION.

705

showing the whole number of votes cast and the number cast in favor of exclusion and the number cast against exclusion; and if it shall appear from such canvass that a majority of votes cast is in favor of exclusion, the clerk or other officer performing the duties of the clerk of such legislative body shall make and certify, under the seal of such municipal corporation, and transmit to the secretary of state and to the board of supervisors of the county in which said city or town is located, a copy of said report so entered upon its minutes, together with a statement showing the date of said election and the time and result of said canvass, which document shall be filed by the secretary of state and the clerk of said board of supervisors. From and after the date of filing of said document in the office of the secretary of state, the exclusion of such territory so proposed to be excluded shall be deemed and shall be complete and thenceforth such excluded territory shall cease to be a part of such municipal corporation, for all intents and purposes; *provided*, that nothing contained in this act shall be held to relieve in any manner whatsoever any part of said territory from any liability for any debt contracted by such municipal corporation prior to such exclusion; and *provided, further*, that such municipal corporation is hereby authorized to levy and collect from any territory so excluded from time to time such sums of money as shall be found due from it on account of its just proportion of liability for any payment on the principal or interest of such debts.

Exclusion deemed complete.

SEC. 2. Nothing in this act shall alter or affect the boundaries of any senatorial or assembly district.

Legislative districts not affected.

SEC. 3. All proper expenses of proceedings for exclusion of uninhabited territory under this act, whether such exclusion shall be made and completed or not, shall be paid by the municipal corporation so excluding or attempting to exclude such territory.

Expenses.

CHAPTER 347.

An act granting to the city of Berkeley the salt marsh, tide and submerged lands of the State of California, including the right to wharf out therefrom to the city of Berkeley, and regulating the management, use and control thereof.

[Approved June 11, 1913. In effect August 10, 1913.]

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

SECTION 1. There is hereby granted to the city of Berkeley, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific

Tide lands granted to Berkeley.

ocean, or of any harbor, estuary, bay or inlet within said boundaries, to be forever held by said city, and by its successors, in trust for the uses and purposes, and upon the express conditions following, to wit: That said lands shall be used by said city and its successors, solely for the establishment, improvement and conduct of a harbor, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation, and said city, or its successors, shall not, at any time, grant, convey, give or alien said lands, or any part thereof, to any individual firm or corporation for any purpose whatever; *provided*, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor, for a term not exceeding twenty-five years, and on such other terms and conditions as said city may determine, including a right to renew such lease or leases for a further term not exceeding twenty-five years or to terminate the same on such terms, reservations and conditions as may be stipulated in such lease or leases, and said lease or leases may be for any and all purposes which shall not interfere with navigation or commerce, with the reversion to the said city on the termination of such lease or leases of any and all improvements thereon, and on such other terms and conditions as the said city may determine, but for no purpose which will interfere with navigation or commerce; subject also to a reservation in all such leases or such wharfing out privileges of a street, or of such other reservation as the said city may determine for sewer outlets, and for gas and oil mains, and for hydrants, and for electric cables and wires, and for such other conduits for municipal purposes, and for such public and municipal purposes and uses as may be deemed necessary by the said city; *provided*, however, that each person, firm or corporation or their heirs, successors or assigns now in possession of land or lands abutting on said lands, within the boundaries of the city of Berkeley, shall have a right to obtain a lease for a term of twenty-five years from said city of said land and wharfing out privileges therefrom with a right of renewal for a further term of twenty-five years pursuant to the provisions of this act and on such terms and conditions as said city may determine and specify, subject to the right of said city to terminate said lease at the end of the first twenty-five years or refuse to renew the same, or to terminate the lease so renewed during the term of such renewed lease on such just and reasonable terms for compensation for improvements at the then value of said improvements as said city may determine and specify. Upon obtaining such lease and wharfing out privileges such

Conditions
of grant.

Franchises
for
wharves,
etc.

Persons in
possession
to have
first right.

person, firm or corporation, their heirs or assigns, shall quit-claim to said city any right they or any of them may claim or have to the said lands hereby granted. This grant shall carry the right to such city of the rents, issues and profits in any manner hereafter arising from the lands or wharfing out privileges hereby granted. The State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays and other improvements constructed on said lands or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California. No discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors in the management, conduct or operation of any of the utilities, structures or appliances mentioned in this section. There is hereby reserved in the people of the State of California the right to fish in the waters on which said lands may front with the right of convenient access to said waters over said lands for said purpose.

Right to use wharves reserved to state.

No discrimination in rates.

Right to fish reserved.

Sec. 2. The foregoing conveyance is made upon the condition that the city of Berkeley shall, within five years from the approval of this act, exclusive of such time as said city may be restrained from so doing by injunction issued out of any court of this state or of the United States, and exclusive of such further delay as may be caused by unavoidable misfortune or great public or municipal calamity, issue its bonds for harbor improvement purposes in an amount of money of not less than five hundred thousand dollars, and shall, within five years after the approval of this act, exclusive of the time in this section hereinbefore mentioned, commence the work of such harbor improvement, and the said work and improvement shall be prosecuted with such diligence that not less than five hundred thousand dollars shall be expended thereon within five years from the approval of this act exclusive of the time in this section hereinbefore mentioned. If said bonds be not issued or said work be not prosecuted and completed as and in the manner herein provided, then the lands by this act conveyed to the city of Berkeley shall revert to the State of California.

Must expend five hundred thousand dollars within five years.

Lands may revert to state.

CHAPTER 348.

An act granting to the city of Alameda the salt marsh, tide and submerged lands of the State of California, including the right to wharf out therefrom to the city of Alameda, and regulating the management, use and control thereof.

[Approved June 11, 1913. In effect August 10, 1913.]

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

SECTION 1. There is hereby granted to the city of Alameda, a municipal corporation of the State of California, and

Tide lands granted to Alameda.

CHAPTER 55

An act to amend Section 1 of Chapter 347 of the Statutes of 1913, relating to a conveyance of tide and submerged lands to the City of Berkeley.

[Approved by Governor April 23, 1962. Filed with Secretary of State April 24, 1962.]

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

SECTION 1. Section 1 of Chapter 347 of the Statutes of 1913 is amended to read:

Section 1. There is hereby granted to the City of Berkeley a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all salt marsh, tide and submerged lands, whether filled or unfilled, which are included within the present boundaries of the City of Berkeley, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and its successors for purposes in which there is a general statewide interest as follows:

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

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair and maintenance of commercial and industrial buildings, plants and facilities, as may be specified by the city council, after public hearing.

(3) For the establishment, improvement and conduct of an airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this Section 1.

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

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

(b) Said city, or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and privileges may be for any and all purposes which shall not interfere with commerce and navigation. Nothing contained in this paragraph

(b) shall be deemed to affect the validity or term of any franchise granted by said city under the Franchise Act of 1937 or said city's charter, and any such franchise shall be effective with respect to said lands.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this act shall preclude expenditures for the development of said lands for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the city, nor by the city of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination

in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the city, survey and monument the granted lands and record a description and plat thereof in the office of the County Recorder of Alameda County.

(j) If the lands, or any part thereof, granted to the city by this act are not used for the additional purposes authorized by the amendments of this section made at the 1961 Regular Session and 1962 First Extraordinary Session of the Legislature within 10 years from the effective date of the respective amendments, or if such use is discontinued thereafter, the authorization to use said lands for such additional purposes shall automatically terminate and lapse.

CHAPTER 2180

An act to amend Section 1 of Chapter 347 of the Statutes of 1913, relating to a conveyance of tide and submerged lands to the City of Berkeley.

In effect
September
15 1961

[Approved by Governor July 20, 1961. Filed with
Secretary of State July 21, 1961.]

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

SECTION 1. Section 1 of Chapter 347 of the Statutes of 1913 is amended to read:

Section 1. There is hereby granted to the City of Berkeley, a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all salt marsh, tide and submerged lands, whether filled or unfilled, which are included within the present boundaries of the City of Berkeley, to be forever held by said city and by its successors in trust for the use and purposes, and upon the express conditions following, to wit:

(a) That said lands shall be used by said city and its successors for purposes in which there is a general statewide interest as follows:

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

(2) For the establishment, improvement and conduct of an airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(3) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this Section 1.

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

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

(b) Said city, or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said city, or its successors, may grant franchises thereon for limited periods, not exceeding 50 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 50 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and privileges may be for any and all purposes which shall not interfere with commerce and navigation. Nothing contained in this paragraph (b) shall be deemed to affect the validity or term of any franchise granted by said city under the Franchise Act of 1937 or said city's charter, and any such franchise shall be effective with respect to said lands.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this act shall preclude expenditures for the development of said lands

for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the city, nor by the city of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands are granted subject to the express reservation and condition that the State may at any time in the future use said lands or any portion thereof for highway purposes without compensation to the city, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the city, survey and monument the granted lands and record a description and plat thereof in the office of the County Recorder of Alameda County.

(j) If the lands, or any part thereof, granted to the city by this act are not used for the additional purposes authorized by the amendment of this section made at the 1961 Regular Session of the Legislature within 10 years from the effective date of said amendment, or if such use is discontinued thereafter, the authorization to use said lands for such additional purposes shall automatically terminate and lapse.

EXHIBIT D

CITY RESERVED RIGHTS – DRIVEWAY DRIVE AISLE AREA

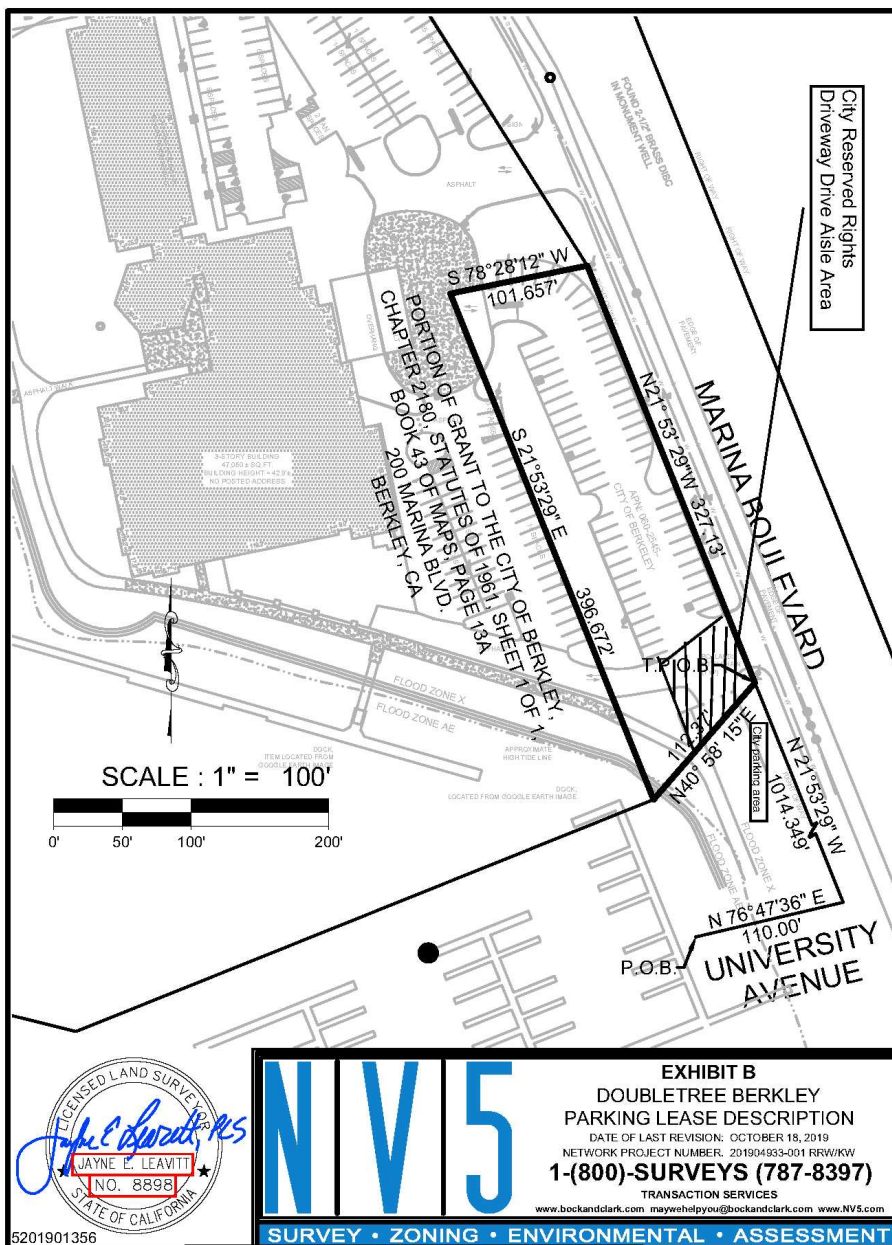


EXHIBIT E
CURRENT CONCESSIONAIRES
[Tenant to provide, if any]

EXHIBIT F

STR CHAIN SCALE -- NORTH AMERICA AND CARIBBEAN



STR Chain Scales - North America and Caribbean

Luxury	Park Hyatt	Hard Rock	Wyndham Grand	Hyatt Place
21c Museum Hotel	Prestige Hotels & Resorts	Hilton		Iberostar Hotels & Resorts
AKA	Regent	Hilton Grand Vacations	Upscale	Innside by Melia
Aman	Ritz-Carlton	Hotel Indigo	AC Hotels by Marriott	Jolly
Andaz	RockResorts	Hotel Nikko	Allegro	Larkspur Landing
Banyan Tree	Rosewood	Hyatt	aloft Hotel	Legacy Vacation Club
Belmond Hotels	Royalton	Hyatt Centric	Alt Hotel	Mantra
Capella	Secrets Resorts & Spas	Hyatt Regency	Apa Hotel	Melia
COMO	Shangri-La	Instinct Hotels	Ascend Collection	Miyako
Conrad	Sixty Hotels	Joie De Vivre	Aston Hotel	NH
Destination Hotels	Sofitel	Kimpton	Atton	Nova Hotels
Dorchester Collection	St Regis	Le Meridien	Be Live	Novotel
Doyle Collection	Taj	Live Aqua	Best Western Premier	NYLO Hotel
Dreams Resorts & Spas	The Peninsula	Magnolia	BW Premier Collection	Occidental
Edition	The Unbound Collection	Marriott	Cambria hotel & suites	Palladium Hotel
Elegant	Thompson Hotels	Marriott Conference Center	Canad Inn	Prince Hotel
Fairmont	Trump Hotel Collection	Memories	Citadines	Radisson
Firmdale	Valencia Group	Millennium	citizenM	Residence Inn
Four Seasons	Viceroy	New Otani	Club Med	RIU Hotel
Grand Bahia Principe	W Hotel	NH Collection	Coast Hotels Canada	Room Mate
Grand Hyatt	Waldorf Astoria	Omni	Coast Hotels USA	Sandals
Hyatt Zilara	Zoetry Wellness & Spa Resorts	Outrigger Resorts	Courtyard	Sandman Signature
Hyatt Ziva		Pan Pacific	Crowne Plaza	Sawridge
Iberostar Grand Collection	Upper Upscale	Pestana	Dazzler	Shell Vacations Club
InterContinental	Ace Hotel	Pullman	Decameron	Sonesta Hotel
JW Marriott	Affinia Hotel	Quinta Real	Disney Hotels	Springhill Suites
Kempinski	Alila	Radisson Blu	DoubleTree	Staybridge Suites
Langham	Autograph Collection	Radisson RED	DoubleTree	Stoney Creek
Loews	Bridgestreet	Red Carnation	duSTD2	SuperClubs
Lotte Hotel	Accommodations	Renaissance	Eaton	Tapestry Collection
Luxury Bahia Principe	Carnino Real	Royal Hideaway	element	Travel Inn
Luxury Collection	Canopy by Hilton	Sheraton Hotel	Eurostars Hotel	Vacation Condos by
Mandarin Oriental	Club Quarters	Silver Cloud	EVEN Hotels	Outrigger
ME	Curio Collection	St. Giles Hotel	Fiesta Americana	Westmark
Mokara	Delta Hotel	Starhotels	Four Points by Sheraton	Wyndham
Montage	Dolce Hotels & Resorts	Sunscape Resorts & Spas	Graduate Hotel	Wyndham Vacation Resort
Nobu Hotels	Dream Hotels	Swissotel	Grand America	
NOW Resorts & Spas	Embassy Suites	Time Hotels	Great Wolf Lodge	
One & Only	Fireside Inn & Suites	Tribute Portfolio	H10	Upper Midscale
Palace Resort	Gaylord	Warwick Hotel	Hampshire	Aqua Hotels & Resorts
Paradisus		Westin	Hilton Garden Inn	Ayres
			Homewood Suites	Barcelo
			Hotel RL	
			Hyatt House	

Brands/Chains are slotted by Chain Scale based on the previous year's annual system wide (global) Average Daily Rate and other factors. Rate ranges defining each Chain Scale are determined by STR. If you have questions about the Chain Scales, please email support@str.com (North America) or hotelinfo@str.com (Outside North America). Copyright 2018. STR, Inc. and STR Global, Ltd. trading as STR. Publishing or reproducing this information is strictly prohibited. Last updated 10 February 2018.



STR Chain Scales - North America and Caribbean

Upper Midscale cont.	Quality	Loyalty Inn	Great Western
Best Western Plus	Real Inn	Maeva	GreenTree Inn
Boarders Inn & Suites	Red Lion Hotel	MainStay Suites	Home Inn
Boulders Inn & Suites	Rodd Hotel	Oak Tree Inn	Home-Towne Suites
Canalta Hotels	Shilo Inn	Palace Inn	Hoteles Serena
Centerstone Hotels	Sonesta ES Suites	Quality Inn	Howard Johnson
Chase Suites	TownePlace Suites	Ramada	InTown Suites
City Express	Trademark Hotel	Real de Minas	Jameson Inn
City Express Plus	Collection	Red Lion Inn & Suites	Key West Inn
Clarion	Tryp by Wyndham	Rode Inn	Knights Inn
Cobblestone	Van der Valk	Sandman	Lite Hotels
Comfort Inn	Wyndham Garden Hotel	Settle Inn	Master Hosts Inns
Comfort Suites	Yotel	Sleep Inn	Masters Inn
Country Inn & Suites		Sol	Microtel Inn & Suites by Wyndham
DoubleTree Club	Midscale	SureStay Plus	Motel 6
Drury Inn	3 Palms	SureStay Signature	National 9
Drury Inn & Suites	A Victory	Collection	One Hoteles
Drury Plaza Hotel	AmericInn	Tru by Hilton	Passport Inn
Drury Suites	Aristos Hotel	Uptown Suites	Pear Tree Inn
Exe Hotel	Baymont	Vagabond Inn	Red Carpet Inn
Fairfield Inn	Best Western	Vista	Red Roof Inn
GrandStay Hotels	BlueBay	Wingate by Wyndham	Rodeway Inn
Hampton	Cabot Lodge		Savannah Suites
Hampton	Canadas Best Value Inn	Economy	Scottish Inn
Holiday Inn	Candlewood Suites	Affordable Suites of America	Select Inn
Holiday Inn Express	Catalonia	America's Best Inn	Studio 6
Holiday Inn Select	City Express Suites	Americas Best Value Inn	Suburban Extended Stay
Home2 Suites	ClubHouse	AmeriVu Inn & Suites	Sundowner
Hotel Des Gouverneurs	Crystal Inn	Budget Host	Toyoko Inn
IFA	Delfin Hotel	Budget Suites of	Tune Hotel
Inns North	FairBridge Inn	Budgetel	Vienna 3hao
Isle of Capri	Fiesta	City Express Junior	Z
Lexington	Fiesta Inn	Country Hearth Inn	Zest Hotel
Marna Shelter	Gamma by Fiesta inn	Crossland Economy	Zleep
Mercure	GuestHouse Inn	Studios	
Monte Carlo Inn	Hawthorn Suites by Wyndham	Days Inn	
MOXY	Wyndham	Downtowner Inn	
My Place	Hoteles Vista	Econo Lodge	
OHANA	ibis	Extended Stay America	
Oxford Suites	ibis Styles	E-Z 8	
Park Inn	InnSuites Hotel	Family Inn	
Phoenix Inn	La Quinta Inns & Suites	Good Nite Inn	
Princess	Lakeview		

Brands/Chains are slotted by Chain Scale based on the previous year's annual system wide (global) Average Daily Rate and other factors. Rate ranges defining each Chain Scale are determined by STR. If you have questions about the Chain Scales, please email support@str.com (North America) or hotelinfo@str.com (Outside North America). Copyright 2018. STR, Inc. and STR Global, Ltd. trading as STR. Publishing or reproducing this information is strictly prohibited. Last updated 10 February 2018.

EXHIBIT G
MEMORANDUM OF GROUND LEASE
[Form attached]

Recording Requested By
And When Recorded Mail To:

City of Berkeley
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

Attn: City Clerk

(Space Above This Line for Recorder's Use Only)
[Exempt from recording fee per Gov. Code § 27383]

MEMORANDUM OF GROUND LEASE

CITY OF BERKELEY, a public body corporate and politic, as Landlord, has leased to 200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company, as Tenant, the real property described in Exhibit A attached hereto and incorporated herein by this reference (the “Premises”).

1. Landlord previously leased to Tenant the Premises upon the terms, covenants, conditions, limitations and restrictions contained in that certain unrecorded as of January 18, 2008 (the “**2008 Ground Lease**”) between Landlord, as lessor and Boykin Berkeley, LLC, a Delaware limited liability company, as lessee (“**Boykin Berkeley**”). Notice of the 2008 Ground Lease is provided by that certain Memorandum of Lease dated January 10, 2008 and recorded on January 24, 2008 as instrument number 2008017660 with the Alameda County Recorder’s Office (“**2008 Ground Lease Memorandum**”). The 2008 Ground Lease granted to Boykin Berkeley the right to use and occupy the Premises until December 31, 2058.

2. Pursuant to that certain Assignment and Assumption of Ground Lease effective April 18, 2011 and recorded on April 20, 2011 as instrument number 2011115637 with the Alameda County Recorder’s Office, Boykin Berkeley assigned to Westpost Berkeley LLC (“**Westpost**”), and Westpost assumed from Boykin Berkeley, LLC, all of Boykin Berkeley, LLC’s right, title and interest in the 2008 Ground Lease.

3. Pursuant to that certain Assignment and Assumption of Ground Lease dated February 6, 2014 and recorded on February 10, 2014 as instrument number 2014046461 with the Alameda County Recorder’s Office, **[and that certain Consent of City, dated January 30, 2014 and recorded on February 10, 2014 as instrument number 2014046460 with the Alameda County Recorder’s Office (“2008 Consent”)]**, Westpost assigned to Tenant, and Tenant assumed from Westpost, all of Westpost Berkeley’s right, title and interest in the 2008 Ground Lease and the Premises.

4. Landlord and Tenant have now entered into that certain unrecorded Ground Lease dated as of _____, 2019 (the “**Ground Lease**”), pursuant to which Landlord continues to lease the Premises to Tenant. The Ground Lease constitutes a renewal of the 2008 Ground Lease and an extension of the term of the 2008 Ground Lease and grants to Tenant the right to continue to use and occupy the Premises until December 31, 2080. There is no option to extend the term of the Ground Lease.

5. This Memorandum of Ground Lease supersedes and replaces the 2008 Ground Lease Memorandum, as assigned; and this Memorandum of Ground Lease shall provide record

notice of the existence of the Ground Lease with respect to the Premises and of Tenant's rights with respect thereto.

TENANT:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

Date: _____

LANDLORD:

CITY OF BERKELEY, a public body corporate
and politic

By: _____

Dee Williams-Ridley
City Manager

Date: _____

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

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

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

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

That parcel of land in the City of Berkeley, County of Alameda, State of California, described as follows:

A portion of the Grant to the City of Berkeley as said Grant is shown of "Map of the Grant to the City of Berkeley," Chapter 2180, Statutes of 1961, Vicinity of Berkeley, Alameda County, California, Sheet 1 of 1, April 1962, and recorded July 24, 1963, in Book 43 of Maps, page 13A, Alameda County Records, being more particularly described as follows:

Beginning at the point of intersection of the northerly line of University Avenue, as described in the deed to the Town of Berkeley dated September 25, 1907 and recorded September 28, 1907, in the Book 1405 of Deeds, page 165, Alameda County Records, with the westerly line of Lot 5 in Section 9 Township 1 South, Range 4 West M.D.B.&M. as said lot is shown on "Map No. 4 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California," certified copies of which are on file with the State Lands Department of the State of California; thence N 76°47'36" E 110.000 feet; thence N 21°53'29" W 1341.479 feet to the true point of beginning; thence N 32°12'53" W 731.938 feet; thence S 78°28'12" W 403.731 Feet; thence S 11°31'48" E 405.000 feet; thence N 78°28'12" E 95.007 feet; thence S 11°31'48" E 550.364 feet; thence S 28°22'11" W 95.301 feet; thence S 11°31'48" E 55.000 feet; thence S 76°01'15" E 169.303 feet; thence N 68°06'31" E 452.668 feet; thence N 21°53'29" W 396.672 feet; thence N 78°28'12" E 101.657 feet to the true point of beginning, containing 12.949 acres more or less.

EXHIBIT H

EXISTING GROUND LEASEHOLD MORTGAGE

[Tenant to confirm and complete, including (as applicable):]

- That certain _____ Note in the original principal amount of \$ _____ from 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company, to Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership, dated _____, 2017.
- That certain **[Deed of Trust, Assignment of Leases and UCC Financing Statement]**, executed by 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as trustor in favor of _____ as trustee and Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as beneficiary, dated _____, 2017 and recorded on August 10, 2017 as instrument number 2017174794 with the Alameda County Recorder's Office, as assigned to UBS AG, a _____ pursuant to that certain **[Assignment of Deed of Trust]**, dated _____, 2017 and recorded on October 31, 2017 as instrument number 2017240211 with the Alameda County Recorder's Office, as further assigned to **[Wilmington Trust as trustee]**, a _____ pursuant to that certain **[Assignment of Deed of Trust]**, dated _____, 2017 and recorded on November 27, 2017 as instrument number 2017259912 with the Alameda County Recorder's Office.
- That certain **[Assignment of Leases]**, executed by 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as **[grantor]** in favor of Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as **[grantee]**, dated _____, 2017 and recorded on August 10, 2017 as instrument number 2017174795 with the Alameda County Recorder's Office.
- That certain **[UCC-1 Financing Statement]** identifying 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company as **[debtor]** and Cantor Commercial Real Estate Lending, L.P., Delaware limited partnership as **[secured party]**, recorded on August 10, 2017 as instrument number 2017174796 with the Alameda County Recorder's Office, as assigned to UBS AG, a _____ pursuant to that certain **[UCC Amendment]**, dated _____, 2017 and recorded on October 31, 2017 as instrument number 2017240213 with the Alameda County Recorder's Office.

EXHIBIT I

MAINTENANCE STANDARDS

Maintenance Standards include, at a minimum, the following:

A. Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing material originally installed thereon or such substitute therefor as shall be in all respects substantially comparable thereto or better in quality, appearance and durability;

B. Remove all papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required;

C. Maintain such appropriate entrance, exit and directional signs, markers and lights as reasonably required, but at least to the extent customarily maintained by comparable major first-class Hotel Facilities;

D. Clean lighting fixtures and relamp and/or reballast as needed;

E. Repaint exterior of the Improvements as frequently and to at least the condition customarily maintained by comparable major first-class Hotel Facilities;

F. Maintain signs, including relamping and/or reballasting and/or repairing as required;

G. Maintain and keep in a first-class condition and repair all benches, shelters, planters, banners, furniture, trash containers, sculptures and other such exterior fixtures to at least the condition customarily maintained by comparable major first-class Hotel Facilities;

H. Maintain and keep in a sanitary condition public restrooms and other common use facilities;

I. Clean, repair and maintain all common utility systems;

J. Maintain all fountains, water courses and associated structures, drinking fountains, pumps and associated plumbing;

K. Provide adequate security lighting in all areas during periods of unrestricted public access, and maintain all security and decorative light fixtures and associated wiring systems;

L. Maintain all surface and storm lateral drainage systems;

M. Maintain all sanitary sewer lateral connections;

N. Promptly remove any graffiti on or about the Premises or Improvements;

O. Perform landscape maintenance including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other

plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris, all to at least the condition customarily performed by major first-class Hotel Facilities; and

- P. Perform other maintenance as required by Law or the Ground Lease.

CAPITAL CONTRIBUTION AGREEMENT

(Marina Streets Work)

[Parties to discuss recording this Agreement]

THIS CAPITAL CONTRIBUTION AGREEMENT (this “**Agreement**”) is dated _____, 20____, but effective on the “**Effective Date**” (as defined below), by and between the CITY OF BERKELEY, a public body corporate and politic (“**City**”), and 200 MARINA BOULEVARD, BERKELEY, LLC, a Delaware limited liability company (“**200 Marina**”).

RECITALS

A. Prior to the Effective Date, City, as Landlord, and 200 Marina, as Tenant (and successor to Boykin Berkeley, LLC), were parties to a Ground Lease, dated January 18, 2008 (“**2008 Ground Lease**”), for an approximately 12.949 acre parcel of land commonly known and referred to as 200 Marina Boulevard on the Berkeley Marina, Berkeley, California (“**Premises**”). The stated expiration date under the 2008 Ground Lease was December 31, 2058.

B. Effective as of the Effective Date, City, as Landlord, and 200 Marina, as Tenant are replacing the 2008 Ground Lease with that certain Ground Lease, dated on or about the date hereof (“**Ground Lease**”). The stated expiration date under the Ground Lease is December 31, 2080.

C. As additional consideration for the City’s agreement, as Landlord, to enter into the Ground Lease which extends the term of the 2008 Ground Lease, 200 Marina, the Tenant, is agreeing to make the \$3,000,000.00 capital improvement contribution required by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, stipulated and agreed, City and 200 Marina hereby agree as follows:

1. Recitals and Exhibits; Capitalized Terms. The foregoing recitals and Exhibits attached hereto, and the defined terms therein, are incorporated by reference into this Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Ground Lease.

2. Effectiveness of Agreement. This Agreement shall be effective on the date the Ground Lease is effective (“**Effective Date**”).

3. Payment of Capital Improvement Contribution. On or before three (3) business following the Effective Date, 200 Marina shall pay the City Three Million and no/100th Dollars (\$3,000,000.00) (“**Capital Improvement Contribution**”) as consideration for City’s agreement to enter into the Ground Lease which extends the term of the 2008 Ground Lease.

4. City Use of Capital Improvement Contribution.

(a) The City will use the Capital Improvement Contribution only for the Marina Streets Work (as defined below), and not for other municipal purposes. The City will diligently continue the Marina Streets Work consistent with this Agreement, and the (i) work scope, (ii) development budget, (iii) sources and uses schedule, (iv) and milestone dates, set forth on Exhibit 1 hereto. The City shall: (x) report to 200 Marina monthly on the project progress; (y) notify 200 Marina of any milestone delay of three months or longer and the plans to get back on schedule; and (z) use diligent efforts to identify and source additional financial resources to bridge budget cost overruns. 200 Marina acknowledges that both the specifics and timing of the Marina Streets Work are subject to budget approvals by the City's City Council and changes to accommodate changed circumstances over time, and therefore the City cannot assure 200 Marina of either the specific components of the Marina Streets Work or the timing thereof.

(b) **"Marina Streets Work"** means the planned improvement work on and around University Avenue, Marina Boulevard and Spinnaker Way at the Berkeley Marina, as described in Exhibit 1 hereto and subject to Subsection 4(a) above.

5. Marina Development and Commercial Leasing Opportunities. During the Ground Lease Term, the City will notify 200 Marina of planned major development and commercial leasing opportunities at the Berkeley Marina, particularly along Spinnaker Way or Marina Boulevard. Nothing herein will require the City to grant any preferences to 200 Marina in any such matters.

6. Entire Agreement. This Agreement (and the Ground Lease) sets forth the entire understanding of the parties with respect to the subject matter hereof. There are no agreements between City and 200 Marina relating to this Agreement other than those set forth in writing and signed by the parties. Neither party hereto has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Agreement.

7. Miscellaneous.

(a) Successors and Assigns. Except pursuant to an assignment described in Section 13.1B of the Ground Lease, 200 Marina shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Agreement without the City's, which shall not unreasonably be withheld, conditioned or delayed. The provisions contained herein shall bind and inure to the benefit of the heirs, representatives, and permitted successors and assigns of the parties hereto.

(b) Force Majeure. Ground Lease Section **[16.4]** is incorporated herein into this Agreement by this reference.

(c) Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and shall be deemed to have been duly given and received if done so as provided in the Ground Lease.

(d) Disclaimer of Partnership. The relationship of the parties hereto is that of payor and municipality, and it is expressly understood and agreed that the City does not in any way nor for any purpose become a partner of 200 Marina or a joint venturer with 200 Marina in any improvements or in the performance of the Marina Street Improvements or otherwise.

(e) Interpretation. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this

Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

(f) Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

(g) Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

(h) Nonliability of the City's Officials and Employees. No officer, elected official, employee or representative of the City shall be personally liable to 200 Marina, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to 200 Marina or its successors, or on any obligations under the terms of this Agreement. 200 Marina hereby waives and releases any claim it may have against the members, officials or employees of the City with respect to any default or breach by the City or for any amount which may become due to 200 Marina or its successors, or on any obligations under the terms of this Agreement.

(i) Applicable Laws. The laws of the State of California, including all statutes of limitations but without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

IN WITNESS WHEREOF, the City and 200 Marina have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the dates set forth below.

[Signature Page Follows]

10-22-2019

200 MARINA:

200 MARINA BOULEVARD, BERKELEY, LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

Date: _____

CITY:

CITY OF BERKELEY, a public body corporate
and politic

By: _____

Dee Williams-Ridley
City Manager

Date: _____

Approved as to form:

Farimah Brown, City Attorney

Registered by:

_____, City Auditor

Attest:

_____, City Clerk

EXHIBIT 1

MARINA STREETS WORK

This project report will be updated monthly and posted to the City's website at <https://www.cityofberkeley.info/MeasureT1Updates.aspx>.

