

**RETAIL LEASE**

**SUNROAD HARBOR ISLAND, INC.,  
a California corporation  
("Landlord")**

**and**

**KIRSCHCOHN, INC.,  
a California corporation  
("Tenant")**

**November 22, 2013**

**TABLE OF CONTENTS**

	<u>Page</u>
1. Agreement to Let.....	1
2. Option Agreement/Master Lease.....	1
2.1 Master Lease .....	1
2.2 Master Landlord Approval.....	2
3. Principal Lease Provisions .....	2
4. Condition Precedent to Lease Effectiveness.....	4
5. Term.....	5
5.1 Description of Term.....	5
5.2 Extension Right.....	5
6. Delivery of Possession/Opening Requirements.....	6
6.1 Tender of Possession to Premises .....	6
6.2 Final Completion .....	67
6.3 Opening Covenant.....	78
7. Use of Premises and Common Areas .....	78
7.1 Permitted Use of Premises .....	78
7.2 Prohibited Use of Premises.....	78
7.3 Compliance with Laws .....	8
7.4 Continuous Use.....	89
7.5 Use/Operation of Common Areas.....	94
7.6 General Covenants and Limitations on Use .....	104
7.7 Additional Requirements for Liquor Sales .....	104
7.8 Remedies for Breach .....	124
8. Rent.....	124
8.1 Gross Revenue Rent.....	124
8.2 Minimum Monthly Rent.....	13
8.3 Performance Rent.....	134
8.4 Master Lease Rentals .....	154
8.5 Management.....	154
8.6 Performance Covenant Termination Right.....	164
8.7 Rent Generally.....	184
9. Operating Expenses.....	184
9.1 Definitions.....	184
9.2 Tax Expenses.....	202
9.3 Payment of Operating Expenses.....	202
9.4 Landlord's Books and Records.....	212
10. Utilities and Services .....	222
10.1 Utilities and Services.....	222
10.2 Utilities Generally.....	222
11. Maintenance.....	232
11.1 Maintenance and Repair by Landlord .....	232
11.2 General Maintenance and Repair by Tenant.....	232
11.3 HVAC Maintenance and Repair by Tenant .....	242
12. Parking.....	242
12.1 General Parking Rights .....	242
12.2 Specific Parking Rights .....	252
12.3 Parking Maximization .....	252
13. Exteriors/Signs; Advertising .....	252
14. Rules, Regulations, and Covenants.....	252
15. Early Access/Insurance.....	262
16. Tenant's Insurance .....	262
17. Waiver of Subrogation.....	272
18. Landlord's Insurance.....	272

	<u>Page</u>
19. Personal Property Taxes.....	28
20. Alterations.....	<del>28</del> 29
21. Surrender of Premises and Holding Over.....	<del>28</del> 29
21.1 Surrender.....	<del>28</del> 29
21.2 Holding Over.....	29
22. Default.....	<del>29</del> 30
23. Landlord's Remedies.....	<del>30</del> 31
23.1 Continuation of Lease.....	<del>30</del> 31
23.2 Rent from Reletting.....	<del>31</del> 32
23.3 Termination of Tenant's Right to Possession.....	<del>31</del> 32
23.4 Termination Cooperation Requirements.....	<del>31</del> 32
23.5 Landlord's Right to Cure Default.....	<del>33</del> 34
23.6 Enforcement Costs.....	<del>33</del> 34
24. Interest and Late Charges.....	<del>34</del> 35
25. Landlord Default – Tenant's Remedies.....	<del>34</del> 35
26. Lender/Master Landlord Required Modifications.....	<del>34</del> 35
27. Destruction.....	<del>35</del> 36
28. Condemnation.....	<del>36</del> 37
29. Assignment and Other Transfers.....	<del>37</del> 38
29.1 Restrictions on Transfer.....	<del>37</del> 38
29.2 Transfer Provisions Generally.....	<del>38</del> 39
29.3 Recapture.....	<del>39</del> 40
29.4 Right of First Offer.....	<del>39</del> 40
30. Landlord's Reserved Rights.....	<del>40</del> 41
31. Future Construction.....	<del>40</del> 41
32. Easements.....	<del>42</del> 43
33. Access by Landlord.....	<del>42</del> 43
34. Indemnity.....	<del>42</del> 43
35. Exemption of Landlord from Liability.....	<del>43</del> 44
36. Hazardous Substances.....	<del>43</del> 44
36.1 Landlord's Covenants.....	<del>43</del> 44
36.2 Tenant's Covenants.....	<del>44</del> 45
36.3 Definition of Hazardous Materials.....	<del>45</del> 46
37. Prohibition Against Mold, Lead-Based Paint, and Asbestos-Containing Materials.....	<del>45</del> 46
38. Security Measures.....	<del>46</del> 47
39. Subordination and Attornment.....	<del>46</del> 47
40. Estoppel Certificate.....	<del>47</del> 48
41. Waivers.....	<del>48</del> 49
41.1 Waivers Generally.....	<del>48</del> 49
41.2 Statutory Waivers.....	<del>48</del> 49
42. Brokers.....	<del>49</del>
43. Limitations on Landlord's Liability.....	<del>49</del> 50
44. First Right to Negotiate.....	<del>49</del> 50
45. Miscellany.....	<del>50</del> 51
46. OFAC REPRESENTATIONS.....	<del>53</del> 54

**RETAIL LEASE**

This Retail Lease ("Lease") is entered into effective as of November 22, 2013, between SUNROAD HARBOR ISLAND, INC., a California corporation ("Landlord"), and KIRSCHCOHN, INC., a California corporation ("Tenant"), who agree as follows:

1. Agreement to Let. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon all of the terms, provisions, and conditions contained in this Lease, (i) those certain premises described in the Principal Lease Provisions below as the "Premises", which are in turn a part of the Project (as described in the Principal Lease Provisions below), along with (ii) the non-exclusive right to use, in common with Landlord and Landlord's invitees those portions of the Project intended for use by, or benefiting, Tenant and Landlord, and their respective invitees, as limited in this Lease, in common including without limitation, the landscaped areas, passageways, walkways, parking areas, and driveways of the Project (the current configuration of which is shown on attached Exhibit "A", but excluding all interior areas of any other buildings in the Project other than the Premises which are hereafter constructed (collectively the "Common Areas"), but the Common Areas do not include the below-defined Barge—which is part of the Premises. This Lease confers no rights, however, to any other building in the Project, nor with regard to either the subsurface of the land below the ground level of the Project or with regard to the air space above, or the water surrounding, the Premises; provided, however, that Tenant shall have the right to access systems and equipment exclusively serving the Premises (for which Tenant has maintenance and repair responsibilities pursuant to Paragraph 11, below) that may be located on the exterior of the Premises, in the airspace above the Premises, or in any other portion of the Common Areas for the sole purpose of maintaining, repairing, and replacing such systems and equipment. The Island Prime Restaurant (as defined below) portion of the Premises was previously subleased to Tenant by Landlord's affiliate, Sunroad Asset Management, Inc. as lessor, pursuant to that certain Standard Industrial/Commercial Single-Tenant Lease – Net dated March 24, 2004, as amended by that certain First Amendment to Standard Industrial/Commercial Single-Tenant Lease – Net dated February 15, 2005 (collectively, the "Previous Island Prime Sublease"); which Previous Island Prime Sublease shall continue to control Tenant's rights and obligations relative to the Island Prime Restaurant until the Lease Commencement Date (as defined below).

2. Option Agreement/Master Lease.

2.1 Master Lease. The parties acknowledge that, pursuant to that certain Option to Lease Agreement between Landlord and the San Diego Unified Port District ("Master Landlord") dated June 10, 2008, as amended on June 11, 2009, by that certain Agreement for Amendment of Option to Lease Agreement—Amendment No. 1, and on May 4, 2010, by that certain Agreement for Amendment of Option to Lease Agreement—Amendment No. 2 (collectively, the "Option Agreement"), Landlord was granted an option to Lease certain land and water area (the "Optioned Property"), a portion of which constitutes the Premises. Effective as of August 1, 2012, Landlord exercised its option to lease the Optioned Property, and in connection with such exercise Landlord entered into a lease agreement with Master Landlord for the Optioned Property (the "Master Lease"). This Lease is a sublease being created under the authority of the Master Lease, the terms of which shall be incorporated into this Lease. Landlord and Tenant acknowledge and agree that, notwithstanding anything to the contrary expressed or implied herein, this Lease shall at all times be wholly subject and subordinate, in all respects, to the Master Lease, and is subject, in all respects, to the prior approval of the Master Landlord, as provided below. In no event shall Tenant have any rights under this Lease which have not been granted to Landlord under the

Master Lease nor may Tenant take any action under this Lease that would violate any term, provision, requirement, or condition of the Master Lease. Landlord and Tenant understand and agree that nothing contained in this Lease shall be binding upon or enforceable against Master Landlord, nor will Master Landlord incur any liability arising out of or relating to this Lease and Landlord and Tenant hereby release and agree to hold the Master Landlord harmless from and against any claim arising out of, or relating to, this Lease. Landlord and Tenant further acknowledge that nothing contained in this Lease shall in any way amend or modify any of the rights and obligations of Master Landlord and Landlord under, nor be used in the interpretation of any provision of, the Master Lease.

2.2 Master Landlord Approval. The parties acknowledge that the effectiveness of this Lease is conditioned upon Master Landlord's prior written consent hereto, and if such consent is not obtained within 180 days from the date of this Lease (the "Approval Deadline"), either party shall have the right to terminate this Lease by delivering written notice of such election to terminate to the other party (following the Approval Deadline and prior to the date such consent is obtained), without liability to the other. If this Lease is so terminated, the parties shall have no further rights or obligations under this Lease or in connection with the Premises except for any claim Landlord may have against Tenant for any damage caused by Tenant to the Premises or the Common Areas prior to such date of termination. Notwithstanding the foregoing, the Approval Deadline may be extended by Landlord for up to three additional 30-day periods by written notice from Landlord to Tenant prior to the then-scheduled Approval Deadline. The effectiveness of this Lease is further conditioned upon the Master Landlord's agreement in the documentation by which the Master Landlord approves of this Lease (or in a separate instrument) that (i) in the event of a default by Landlord as lessee under the Master Lease resulting in the termination of the Master Lease or any other early termination of the Master Lease, Tenant shall have the right—subject to the prior right of any lender providing financing to Landlord secured by the Master Lease—to cure all such defaults by Landlord and to either (a) have this Lease reinstated as a new direct lease with the Master Landlord or (b) step into the shoes of Landlord as the lessee under the Master Lease (a provision in such instrument allowing for either (a) or (b) shall be considered satisfaction of this requirement), and (ii) in the event of a default by Landlord as lessee under the Master Lease which has not resulted in termination of the Master Lease, Master Landlord agrees to accept Tenant's cure of such default on behalf of Landlord (the "Tenant's Rights"); provided, however, if Landlord fails to obtain Master Landlord's agreement to the Tenant's Rights (or some portion of Tenant's Rights), and within ten business days of the date this Lease is approved by Master Landlord Tenant has failed to elect, in writing, to terminate this Lease due to such failure, then Tenant shall be deemed to have waived such right and the foregoing condition will be of no further force or effect. Upon the Lease Commencement Date, following approval of this Lease by Master Landlord, and the granting of Tenant's Rights by Master Landlord (or the failure of Master Landlord to agree to grant Tenant's Rights and Tenant's failure to timely terminate this Lease, as provided above), the Previous Island Prime Sublease shall terminate.

3. Principal Lease Provisions. The following are the Principal Lease Provisions of this Lease. Other portions of this Lease explain and describe these Principal Lease Provisions in more detail and should be read in conjunction with this Paragraph. In the event of any conflict between the Principal Lease Provisions and the other portions of this Lease, the Principal Lease Provisions will control. (Terms shown in quotations are defined terms used elsewhere in this Lease).

3.1 "Project": That certain tideland property located at 880 Harbor Island Drive in San Diego, California, as more particularly described/depicted on the attached Exhibit "A."

3.2 "Premises": Collectively, the (i) the land and improvements comprising the new restaurant to be constructed by Landlord as part of Landlord's Work (as defined in attached Exhibit "C")

pursuant to attached Exhibit "C", including the related lounge and banquet facilities and the Barge (collectively, the "New Restaurant"), (ii) the Island Prime restaurant and related C Level Lounge (the "Island Prime Restaurant"), and (iii) those certain adjacent water areas which (along the areas described in (i) and (ii), above) are more particularly described/depicted on attached Exhibit "B-2." The New Restaurant and the Island Prime Restaurant are sometimes collectively referred to herein as the "Restaurants" and each individually as a "Restaurant."

3.3 "Barge": That certain barge to be acquired, docked at the Project (in the location described/depicted on the attached Exhibit "B-1"), and renovated as a banquet/dining facility, as more particularly described below.

3.4 "Permitted Use": The Permitted Use of the Premises shall initially be principally for restaurant and cocktail lounge use, including the sale and serving of alcoholic beverages, use for banquets, corporate outings, meetings, and similar events, and the use of live and recorded entertainment and dancing, in strict accordance with all applicable laws, statutes, ordinances, and regulations and the provisions of this Lease and the Master Lease.

3.5 "Permitted Trade Names": 880 Harbor, as the trade name for the Project; Island Prime and C Level Lounge, as the trade names for Island Prime Restaurant; and Coral@ 880 Harbor, as the trade name for the New Restaurant.

3.6 "Initial Lease Term": 25 years and zero months plus any additional days required for the Initial Expiration Date to occur on the last day of a month (as provided in Paragraph 3.6.2), beginning as of the Lease Commencement Date and ending as of the Initial Expiration Date (as such terms are defined below).

3.6.1 "Lease Commencement Date": The Lease Commencement Date shall be that date upon which Landlord tenders possession of the New Restaurant (excluding the Barge) to Tenant in accordance with Paragraph 6.1, below. Landlord estimates that the Lease Commencement Date will occur (subject to matters beyond Landlord's reasonable control—including seeking the consent of the Master Landlord) on or about March 1, 2015.

3.6.2 "Initial Expiration Date": That date which is 25 years and zero months (plus, if such date is not the final day of a calendar month, however many days are left in the final calendar month of the Term) after the Lease Commencement Date.

3.6.3 "Rent Commencement Date": The Rent Commencement Date shall be that date which is the earliest to occur of (i) 60 days following the Lease Commencement Date, or (ii) such earlier date upon which Tenant opens for business to the public in any portion of the New Restaurant.

3.7 Extension Right: Yes  No ; one, nine-year and 11-month extension right (see Paragraph 5.2, below), subject to the Master Lease remaining in effect throughout such period.

3.8 "Lease Year": The term Lease Year refer to those certain periods of time during the Term of this Lease which are determined as follows: (i) as to the first Lease Year, that certain period of time commencing on the Rent Commencement Date and ending on the first December 31 thereafter, (ii) as to every subsequent Lease Year other than the final Lease Year of the Term, the 12 month period from January 1 through December 31 following the prior Lease Year, and (iii) as to the final Lease Year of the Term, the period commencing on that day immediately following the final day of the penultimate Lease

Year of the Term and ending on the Expiration Date (as defined below). [As an example of the foregoing, a Rent Commencement Date of May 13, 1957 would yield a first Lease Year of May 13, 1957 through December 31, 1957. The following Lease Year would be January 1, 1958 through December 31, 1958.]

3.9 "Minimum Monthly Rent": The Minimum Monthly Rent payable by Tenant during each year of the Term, as it may be extended, shall be \$83,333.00.

3.10 "Performance Rent": Yes  No  (see Paragraph 8.3, below);

3.11 Address for Landlord: Sunroad Harbor Island, Inc.  
4445 Eastgate Mall, Suite 400  
San Diego, CA 92121  
Attn: Richard D. Vann

with a copy by email to: Gerald I. Solomon, Esq.  
addressed as follows: gis@smcdslaw.com

3.12 Addresses for Tenant: c/o Cohn Restaurant Group  
2225 Hancock Street  
San Diego, CA 92110  
Attn: David Cohn

with a copy by email to: david@dinecrg.com

with a copy to: J. Michael Wilson, Esq.  
Wilson & Corbin, A.P.L.C.  
17817 Valle de Lobo Drive  
Poway, CA 92064

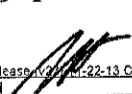

with a copy by email to: mwilson@wilsoncorbin.com

3.13 "Required Operating Hours":

Tuesday through Friday: 11:30 a.m.-9:00 p.m.  
Saturday: 11:30 a.m.-10:00 p.m.  
Sunday: 11:30 a.m.-8:00 p.m.

excluding the following holidays: New Year's Day, Easter, Thanksgiving Day, and Christmas Day; provided, however, Tenant may open for business for additional hours and on any of the foregoing holidays, in each case in its sole discretion.

4. Condition Precedent to Lease Effectiveness. This Lease is subject to the approval of the Master Landlord pursuant to the terms of the Master Lease (as referenced in Paragraph 2, above). Accordingly, notwithstanding anything to the contrary contained in this Lease, this Lease, and the rights and obligations of the parties hereunder, are expressly conditioned upon Landlord having obtained the Master Landlord's consent to this Lease, upon terms, provisions, and conditions satisfactory to Landlord in its sole discretion, and upon Landlord obtaining, either in such consent documentation or in a separate instrument, the Master Landlord's agreement to provide Tenant with the Tenant's Rights, as referenced in Paragraph 2, above. If either of the foregoing conditions precedent is not satisfied prior to the Approval Deadline, either party may terminate this Lease in accordance with, and subject to, the provisions of Paragraph 2.2, above.

Font Sublease-1/21-11/22-13 CLEAN.doc Form Sublease-1/21-with-CRG-comments).doc  
Landlord  Tenant 

5. Term.

5.1 Description of Term. The term of this Lease ("Term") shall commence on the Lease Commencement Date and shall expire on the last day of the Initial Lease Term, subject to (i) the extension rights described in Paragraph 5.2, below, and (ii) earlier termination, as provided in this Lease. The term "Expiration Date," as used in this Lease shall mean the last day of the Initial Lease Term, or if the Term is extended pursuant to Paragraph 5.2, below, then the expiration date of the Extension Term (as defined below), or any earlier date upon which this Lease is terminated by Landlord or Tenant, as provided below.

5.2 Extension Right. Subject to the term of the Master Lease being extended, as provided below, Tenant shall, subject to all of the provisions of this Paragraph 5.2, have a single option to extend the Term ("Option to Extend") for an additional term of nine years and 11 months ("Extension Term"), provided that at the time of Tenant's purported exercise of such Option to Extend (i) Tenant is in occupancy of at least 80% of the Premises, except by reason of condemnation of a Restaurant as set forth in Paragraph 28 below or during a Permitted Closure Period pursuant to Paragraph 7.4.2 below, and (ii) Tenant gives Landlord written notice via overnight nationally-recognized courier (such as FedEx or UPS), with signature acknowledgement by recipient required, of its election to exercise such Option to Extend no less than 12 months and no more than 18 months prior to the Initial Expiration Date. Such notice will constitute Tenant's binding election to extend the Term pursuant to this Paragraph 5.2 and may not subsequently be revoked by Tenant. Time is of the essence with respect to the timing of such requirement to give notice to Landlord. Notwithstanding anything set forth above to the contrary, Tenant shall not have the right to exercise the Option to Extend: (i) during any period of time that an Event of Default (as defined below) hereunder remains uncured, (ii) during any period of time that Tenant is not operating its business in both Restaurants, each as a fully stocked and staffed restaurant and cocktail lounge, except by reason of condemnation of a Restaurant as set forth in Paragraph 28 below or during a Permitted Closure Period pursuant to Paragraph 7.4.2 below, or (iii) if the Performance Covenant (as defined below) is not deemed satisfied at any time during the five year period preceding the Initial Expiration Date. The period of time within which the Option to Extend may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Option to Extend because of the foregoing provisions of this Paragraph 5.2, even if the effect thereof is to eliminate Tenant's right to exercise the Option to Extend. All rights with respect to the Option to Extend shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the Option to Extend, if, after such exercise, but prior to the commencement of the Extension Term, an Event of Default occurs under this Lease or Tenant fails to meet the Performance Covenant. Additionally, Tenant recognizes that its right to exercise the Option to Extend and to extend the Term for the Extension Term is conditioned upon Landlord receiving an extension of the term of the Master Lease to a date that is on or after the final day of the Extension Term. If Landlord requests such an extension of the Master Lease but does not obtain such extension from the Master Landlord, then the Option to Extend and the Extension Term shall be deemed invalidated, notwithstanding Tenant's due and timely exercise thereof, and Landlord shall have no liability to Tenant on account thereof. Notwithstanding the foregoing, Landlord agrees to use its good faith efforts to obtain such an extension if Tenant has duly and timely exercised the Option to Extend; however, Tenant hereby agrees that Landlord will not be liable for its inability to secure such an extension from the Master Landlord provided it has exercised good faith efforts to obtain same.



6. Delivery of Possession/Opening Requirements.

6.1 Tender of Possession to Premises. Tenant acknowledges that Tenant has been in possession of the Island Prime Restaurant since 2005 pursuant to its rights under the Previous Island Prime Sublease and, as such, the portion of the Premises comprising the Island Prime Restaurant is accepted by Tenant with no right to require Landlord to perform any additional work therein. Landlord will use reasonable efforts to tender possession of the New Restaurant (other than the Barge) to Tenant with Landlord's Work Substantially Completed (for purposes of this Lease, the term "Substantially Completed" and its grammatical variations, such as Substantial Completion when used with reference to Landlord's Work, will mean that Landlord's Work has been completed except for minor punch list items—see Paragraph 6.3, below) on or about the estimated Lease Commencement Date described in the Principal Lease Provisions. Additionally, Landlord covenants to provide Tenant with at least 30 days' prior written notice of the anticipated date that Landlord will so tender possession (which written notice may be by electronic transmission—such as by facsimile or e-mail—and such forms of transmission will satisfy the requirements hereof for such notice to be in writing). If possession of the New Restaurant is not tendered to Tenant on or before the estimated Lease Commencement Date stated in the Principal Lease Provisions, then Landlord shall not be liable for any damage caused by such delay, and such delay shall neither affect the validity of this Lease, affect Tenant's obligations under this Lease, nor extend the Term.

6.2 Tender of Possession to Barge. Tenant acknowledges that Landlord will not be required to acquire and install the Barge, or complete the Landlord's Renovation Work (as defined below) relating to the Barge, until a date following the Lease Commencement Date. Landlord will use reasonable efforts to tender possession of the Barge to Tenant, with Landlord's Renovation Work relating thereto Substantially Completed on or about ~~12/15/2021~~. If possession of the Barge is not tendered to Tenant on or before such estimated date, then Landlord shall not be liable for any damage caused by such delay, and such delay shall neither affect the validity of this Lease, affect Tenant's obligations under this Lease, nor extend the Term. Following its acquisition, Landlord shall cause the Barge to be installed at the Project in substantially the location shown on attached Exhibit "B-1", and shall cause the Barge to be improved and renovated into a banquet/dining facility in accordance with mutually approved plans and specifications therefor substantially conforming to the description thereof attached hereto as part of Exhibit "B-1" (the "Landlord's Renovation Work")—with approval of such plans and specifications not to be unreasonably withheld or delayed, except that Landlord will have the absolute right, in its sole discretion, to disapprove any such plans and specifications if the reasonably estimated cost of the work described therein will result in the Barge Expenses (as defined below) exceeding \$1,200,000.00. All costs and expenses of acquiring, transporting, and installing the Barge (including, without limitation, utility hook-ups and gangways), and of designing, permitting, financing, and completing the Landlord's Renovation Work (collectively, the "Barge Expenses") will be shared equally between Landlord and Tenant, subject to the following: (i) in no event will Tenant's share of the Barge Expenses exceed \$600,000.00 without Tenant's prior consent, and (ii) to the extent that the Barge is rented following its acquisition but before its installation at the Project, the amount received on account of such rental shall be used to offset the Barge Expenses otherwise incurred. Tenant's share of the Barge Expenses (which shall constitute Additional Rent hereunder) shall be payable by Tenant on a monthly basis as such Barge Expenses are incurred. Each month that Barge Expenses are incurred, Landlord may provide Tenant with a written demand for payment of Tenant's 50% share thereof. Such written demand shall be accompanied by reasonable evidence of the incurrence of such requested amount.

6.3 Final Completion. Except for any items set forth on a written, detailed "punch-list" of excepted items (which are not the result of Tenant's or Tenant's contractors' acts) delivered to

Landlord within ten business days after the Lease Commencement Date or any latent defects in Landlord's Work which Tenant, despite reasonable inspection of the New Restaurant fails to discover within ten business days after the Lease Commencement Date, Tenant shall, as of the Lease Commencement Date, be deemed to have (i) thoroughly inspected the New Restaurant, and determined that, to the best of Tenant's knowledge, the New Restaurant is in first-class condition and repair, (ii) acknowledged that Landlord's Work has been Substantially Completed, (iii) accepted the New Restaurant and the Island Prime Restaurant in their then as-is condition with no right to require Landlord to perform any additional work therein, except as set forth on the punch list relative to the New Restaurant, and (iv) waived any express or implied warranties regarding the condition of the Premises, including any implied warranties of fitness for a particular purpose or merchantability, except that Landlord warrants, as of the date of delivery of possession of the New Restaurant to Tenant, that (a) the New Restaurant complies with all applicable laws, regulations, and ordinances, and covenants or restrictions of record, and (b) that the New Restaurant will be in good repair and condition, including, but not limited to the electrical and sprinkler systems, and in compliance with Title III of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. 12181 *et seq.*) ("ADA") and applicable zoning, municipal, county, state and federal laws, ordinances, and regulations (collectively "Applicable Laws"), and that any improvements comprising the New Restaurant existing as of such date comply with all Applicable Laws. If the New Restaurant does not comply with the foregoing warranty, Landlord shall promptly, after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, rectify the same at Landlord's sole cost and expense. Notwithstanding the foregoing, the parties recognize that Landlord is not self-performing the Landlord's Work and that Landlord's warranty hereunder, and Landlord's obligations in connection with the foregoing, are to use good faith, diligent efforts to ensure that all contractors and subcontractors involved in the Landlord's Work perform their work in a good and workmanlike fashion and to enforce all warranties obtained by Landlord in connection with Landlord's Work, but Landlord's obligations do not extend beyond same.

6.4 Opening Covenant. Tenant must open the New Restaurant for business to the public, fully fixtured, stocked, and staffed, no later than 90 days following the Lease Commencement Date (the "Required Opening Date"). Landlord agrees to furnish to Tenant a Certificate of Occupancy (or other authorization to occupy—such as a fully signed-off building permit card) from applicable local authorities on or before the Required Opening Date; however if Landlord fails to do so (and such failure is not due to any act or omission by Tenant) the Required Opening Date and the Rent Commencement Date shall be extended until Landlord furnishes the Certificate of Occupancy to Tenant or Tenant opens for business in the New Restaurant.

7. Use of Premises and Common Areas.

7.1 Permitted Use of Premises. Tenant may use the Premises for the Permitted Use specified in the Principal Lease Provisions and for no other use without Landlord's consent, as provided below. Any change in the Permitted Use shall require Landlord's prior written consent, which consent may be granted or withheld in Landlord's reasonable discretion; provided, however, if Landlord disapproves a change in use, Tenant may submit the question of whether Landlord has acted reasonably to arbitration pursuant to Paragraph 45.7, below. Among other reasons, it will be reasonable for Landlord to withhold such consent if such change in use may result in a decrease in the Tenant's PLE (as defined on attached Exhibit "D") and, correspondingly, its Performance Rent payments.

7.2 Prohibited Use of Premises. Notwithstanding anything to the contrary contained herein, and in addition to the other limitations on use contained in this Lease, under no circumstances may

Tenant use the Premises or any portion thereof, for any Prohibited Use (as defined below) without Landlord's prior written consent; which consent may be granted or withheld in Landlord's sole discretion. For purposes hereof, the term "Prohibited Use" will mean and refer to any of the following uses: a bowling alley, pool hall, funeral parlor, massage parlor, any type of karate studio, car wash, off-track betting establishment, video arcade, amusement parlor, or game room, hotel, motel, or similar lodging facility, school, trade school, gun range, adult bookstore or similar facility selling or exhibiting pornographic or sexually explicit materials as a primary part of its business, or any office use, other than offices incidental to the conduct of activities which are otherwise permitted or retail office uses such as travel agencies, real estate offices, banks, or finance companies.

7.3 Compliance with Laws. Throughout the Term, Tenant shall comply with all laws concerning the Premises and/or Tenant's use of the Premises, including without limitation the obligation at Tenant's sole cost to alter, maintain, or restore the Premises in compliance with all applicable laws, even if such laws are enacted after the date of this Lease, and even if compliance entails costs to Tenant of a substantial nature, provided, however, that with respect to the New Restaurant, Tenant's compliance with those laws in effect at the time of Landlord's delivery of the New Restaurant to Tenant is conditioned upon Landlord's delivery of the New Restaurant in compliance with such laws. Such obligation to comply with laws shall include, without limitation, compliance with the ADA; provided, however, that Tenant's compliance with the ADA is conditioned upon Landlord's delivery of the New Restaurant to Tenant in compliance with the ADA as required by Paragraph 6.3, above. In addition to the foregoing obligations of Tenant relative to the Premises, if Tenant's use of the Premises (including any modifications to Tenant's use of the Premises or the Project, or any Alterations (as defined below), result in the need for modifications or alterations to any portion of the Project in order to comply with the ADA or other applicable laws, then Tenant shall additionally be responsible, upon demand, for the cost of such modifications and alterations payable to Landlord.

7.4 Continuous Use.

7.4.1 Continuous Operations. Subject to Tenant's right to close one or both of the Restaurants pursuant to Paragraph 7.4.2, below, and closure of a Restaurant by reason of condemnation pursuant to Paragraph 28 below, Tenant shall, throughout the entire Term and during all of the Required Operating Hours, continuously use and occupy both Restaurants, on a fully fixtured, stocked, and staffed basis, for the Permitted Use, and under the Permitted Trade Names, specified in the Principal Lease Provisions of this Lease. Furthermore, Tenant shall use its commercially reasonable, good faith efforts, as determined in its reasonable discretion, to try to maximize Tenant's Gross Sales (as defined on attached Exhibit "D") from the Premises, including keeping both Restaurants, at all times, fully stocked and staffed, with a Department of Health "A" rating, consistent with similar first class restaurant operations. Tenant will conduct its business in the Restaurants six days per week (except for permitted holiday closures—as provided in the Principal Lease Provisions) during no less than the Required Operating Hours, and Tenant shall keep its exterior signs (to the extent such exterior signs are not on a house or master electrical panel/circuit under the exclusive control of Landlord), lighted at least one hour past such Required Operating Hours.

7.4.2 Notwithstanding the provisions of Paragraph 7.4.1, above, Tenant shall be permitted to close the Restaurants (or whichever Restaurant is actually affected by the subject event or cause) for business for the following reasons (each, a "Permitted Closure"): (i) for the purpose of taking inventory and/or maintenance purposes not to exceed five business days in any calendar year for each Restaurant; (ii) during reasonable periods of time with reasonable prior written notice to Landlord for the

purpose of refurbishing and remodeling the Restaurants, but not more than a total of 30 days every ten years during the Term for each Restaurant unless approved in advance by Landlord; (iii) during periods of casualty restoration as described in Paragraph 27, below; (iv) during periods of permitted closure pursuant to Paragraph 31, below; (v) during periods when utilities are unavailable to the Premises through no fault or failure of Tenant or where access to the Premises has been materially and adversely affected due to construction or repair work in the area of the Project; (vi) during periods of inclement weather in which Tenant, in good faith, believes that closing one (but Tenant may not close both) of the Restaurants is justified because of such inclement weather and that by closing such Restaurant the overall PLE to be produced during such period of inclement weather will be greater than it would be if such Restaurant were not so closed; (vii) during other periods (not to exceed 12 days in any calendar year) in which Tenant, in good faith, believes that closing one of the Restaurants (but Tenant may not close both) is reasonably justified and that by closing such Restaurant, the overall PLE to be produced during such period will be greater than it would be if such Restaurant were not closed—such as, by way of example, on a Tuesday following a 3-day holiday, a typically slow day for restaurants, Tenant closes one Restaurant for lunch; (viii) during any period of time when Tenant is unable to open for business in one or both of the Restaurants due to any action by the San Diego County Health Department or the California Department of Alcoholic Beverage Control which prevents operation, including without limitation, a settlement by Tenant with the California Department of Alcoholic Beverage Control to close for an agreed-upon period of time upon Tenant's good faith determination this is the best course of action--and provided such action is not due to the intentional misconduct of Tenant; and/or (ix) during any period of time that Tenant, in good faith, believes that closing one or both of the Restaurants is justified because of an external factor beyond Tenant's reasonable control--such as, by way of example, closure of San Diego International Airport, third party construction work which eliminates, or substantially eliminates access to the Premises, a terrorist attack which results in a change in general behavior patterns of the local population regarding dining, or a natural or man-made "disaster" that shifts the general attitude of tourists towards the San Diego region as a destination--and that by closing such Restaurant the overall PLE to be produced during such period will be greater than it would be if such Restaurant were not so closed (each of the foregoing periods of Permitted Closure is referred to herein as a "Permitted Closure Period"). Notwithstanding the foregoing, in no event may Tenant use the foregoing provisions as a means of avoiding Tenant's obligations hereunder, and the foregoing provisions shall be so interpreted.

7.4.3 Non-Use Recapture. Should Tenant be in breach of its obligations under Paragraph 7.4.1, above, Landlord may (in addition to Landlord's other rights and remedies) require Tenant to take such measures as may be necessary or desirable, in Landlord's reasonable opinion, to secure the Premises from break-ins and use by unauthorized persons, to minimize the appearance of non-use, and to otherwise maintain the interior and exterior portions of Tenant's Premises, including all windows and doors, in first class condition. Additionally, should Tenant be in breach of its obligations under Paragraph 7.4.1, above, for a period in excess of 90 days, Landlord may (in addition to Landlord's other rights and remedies) recapture the Premises and terminate this Lease by giving written notice (the "Non-Use Recapture Notice") of such election to Tenant. If Landlord elects to exercise such termination and recapture right and delivers a Non-Use Recapture Notice to Tenant, and Tenant fails to cure its breach of Paragraph 7.4.1, above, within five business days of such Non-Use Recapture Notice, this Lease will automatically be deemed terminated as of the effective date stated in the Non-Use Recapture Notice, which shall, in any event, be not less than 15 business days following the date of such Non-Use Recapture Notice, and Tenant shall surrender possession of the Premises to Landlord as of such date. Upon any such recapture, the provisions of Paragraph 23.4, below, shall apply.

7.5 Use/Operation of Common Areas. Tenant's use of the Common Areas shall at all times comply with the provisions of all Rules (as defined below). The Common Areas are and will be

subject to the exclusive control and management of Landlord; provided, however, Landlord may at any time, and from time-to-time, delegate such duties to Tenant, subject to Tenant's consent to such delegation and on terms and conditions mutually agreed upon by Landlord and Tenant, including Landlord's acknowledgement that any expenses incurred by Tenant in connection with such duties (and which are not otherwise excluded expenses pursuant to attached Exhibit "D") will be included as Restaurant Expenses (as defined in such Exhibit "D") in recognition that they replace Operating Expenses Tenant would otherwise incur and have the right to include as Restaurant Expenses. Landlord may at any time, and from time-to-time, during the Term hereof exclude and restrain any persons from the use and occupancy of the parking areas and other Common Areas, excepting, however, bona fide customers, patrons, and service suppliers of Tenant. In order to establish that the Project and any portion thereof is and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or the public therein, Landlord hereby reserves the right to close all or any portion of the Project owned, leased, or controlled by Landlord to the general public for one day in each calendar year, and in connection therewith, to seal off all entrances to the Project, or any portion thereof; provided, however, Landlord agrees, in connection therewith, to consult with Tenant regarding such decision in order to minimize the effect upon Tenant's operations and PLE, while at the same time obtaining the intended benefit of establishing that the Project and each portion thereof is and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or the public therein.

7.6 General Covenants and Limitations on Use. In addition to the Rules and compliance with the requirements of the Master Lease, use of the Premises and the Project by Tenant and by Tenant's agents, employees, contractors, licensees, and invitees (collectively, "Tenant's Invitees"), will be subject to the following additional general covenants and limitations on use: (i) Tenant shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises (and if the rate of any insurance carried by Landlord is increased as a result of Tenant's use or Tenant's failure to continuously use and occupy the Premises, Tenant shall pay the amount of such increase to Landlord, within ten days after Landlord delivers to Tenant a notice of such increase); (ii) no noxious or unreasonably offensive activity shall be carried on, in or upon the Premises by Tenant or Tenant's Invitees which may be or become a public nuisance; (iii) all pipes, wires, conduit, cabling, poles, antennas, and other equipment/facilities for or relating to utilities, telecommunications, computer equipment, or the transmission or reception of audio or visual signals must be kept and maintained enclosed within the Premises (except as otherwise expressly approved by Landlord, such approval not to be unreasonably withheld, and subject to such reasonable conditions as Landlord may impose relating thereto); (iv) neither Tenant nor Tenant's Invitees shall do anything that will cause damage or waste to the Project; (v) no machinery, equipment, apparatus, or other appliance shall be used or operated in or on the Premises that will in any manner injure all or any part of the Project or be allowed to interfere with the transmission and reception of telephone, telecommunications, television, radio, or similar signals; (vi) neither the floors, decks, nor any other portions of the Premises shall be overloaded and Tenant shall be responsible for all structural engineering required to determine structural loads and proper engineering for items placed in the Premises by Tenant following the initial build-out of the Premises; and (vii) all health, police, and governmental regulations shall, in all respects and at all times, be fully complied with by Tenant.

7.7 Additional Requirements for Liquor Sales.

7.7.1 Liquor License. Tenant believes that its existing liquor license for the Island Prime Restaurant in its name will allow lawful sales of alcoholic beverages of all types in both

Restaurants (the "Liquor License"). If, however, the existing liquor license for the Island Prime Restaurant will not allow for lawful sales of alcoholic beverages of all types in both Restaurants, then Tenant shall promptly, and with due diligence, apply for and obtain a liquor license for the new Restaurant to allow for such sales and such new license, along with the existing license, shall collectively and individually be referred to by the above-recited defined term "Liquor License". Landlord shall (if and when it so requests, or as required by the Alcoholic Beverage Control Board) be added as a licensed party under the Liquor License; provided, however, upon the expiration or earlier termination of this Lease, the Liquor License shall remain the property of Tenant and Landlord shall, upon Tenant's written request, promptly be removed as a licensed party under the Liquor License. Landlord agrees to cooperate, and prepare and execute any necessary documents necessary to accomplish the foregoing, including having its officers, directors, and principal shareholders qualify with the Alcoholic Beverage Control Board, if required in connection with the Liquor License. Provided Tenant (i) complies with all state, municipal, and other governmental laws, regulations and rules with respect to the sale of liquor and alcoholic beverages, and (ii) complies with all applicable provisions of this Lease, Landlord agrees that Tenant shall have the right to sell liquor at retail for consumption in or from the Premises, subject to and in accordance with all applicable provisions of the Liquor License and this Lease.

7.7.2 Indemnity and Liability Insurance. Without limiting the generality of Tenant's other indemnity obligations under this Lease, Tenant agrees to indemnify, defend, and hold harmless Landlord, Master Landlord, and their employees, officers, directors, commissioners, shareholders, partners, members, and managers (collectively, the "Indemnitees") from and against any and all actions, claims, demands, liabilities, damages, losses, costs, expenses, and attorneys' fees relating to the sale of liquor and all alcoholic beverages in and from the Premises, including, without limitation, any such actions, claims, demands, liabilities, damages, losses, costs, expenses, and attorneys' fees arising from any act, omission, or negligence of Tenant, or Tenant's Invitees, or from any accident, injury, or damage whatsoever caused to any person or to the property of any person occurring from the Lease Commencement Date until the end of the Lease Term, whether such claim arises or accident, injury, or damages occurs within the Premises, within the Project but outside the Premises, or outside the Project. This indemnity, defense, and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities (including, without limitation, legal fees, court costs and other reasonable disbursements) incurred or made in connection with any such claim or proceeding brought thereon, and the defense thereof, and shall survive the termination of this Lease; but shall exclude any such matter arising due to the acts or omissions of the particular Indemnitee claiming thereunder. Without limiting the generality of the other provisions of this Lease regarding insurance coverage to be maintained by Tenant, for such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain with a responsible and qualified insurance company approved by Landlord (which approval shall not be unreasonably withheld), and with minimum combined limits of at least \$3,000,000.00, or such higher limits as Landlord may from time to time request provided such higher limits are then customarily being carried by first-class restaurant operations in San Diego, California selling alcoholic beverages, the broadest available so-called liquor law liability insurance policy or policies, which shall insure Tenant, Master Landlord, and Landlord, and all those claiming by, through, or under Master Landlord or Landlord, adequately in Landlord's good faith judgment, against any and all actions, claims, demands, liabilities, damages, losses, costs, expenses, and attorneys' fees for personal and bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like, including, without limitation, any claims mentioned in the immediately preceding indemnity, defense, and hold harmless provision; so that at all times Landlord and Master Landlord will be fully protected against any claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises--

and such policies of insurance shall include a waiver of subrogation endorsement and otherwise meet the requirements for insurance set forth in Paragraphs 16 and 17, below. Certificates of such insurance shall at all times be deposited with Landlord showing current insurance in force; and all such policies shall name Landlord and Master Landlord (as well as such other related parties as they may designate from time-to-time) as additional insureds and shall provide that such policies shall not be canceled or the coverage reduced without at least 30 days' prior written notice to Landlord and Master Landlord, and such certificate shall evidence the same.

7.7.3 Suspension, Denial or Revocation. If at any time the/a Liquor License is suspended, denied, or revoked for any reason, other than any reason due to Landlord's acts or omissions or any officer, director, shareholder, or other principal of Landlord being unqualified or disqualified under the laws, rules and regulations related to the Liquor License, including non-compliance with any governmental conditions, requirements, rules, regulations, ordinances, or laws, the same shall constitute a material default in Tenant's obligations under this Lease, and Tenant shall promptly (i) deliver to Landlord written notice of such suspension, denial, or revocation, and (ii) commence the applicable appeal proceedings and proceed with all due diligence to reinstate the Liquor License. Provided Tenant has so commenced the applicable appeal proceedings, such suspension, denial, or revocation shall not ripen into an Event of Default unless the Liquor License has not been reinstated within 180 days. At the time that Tenant makes any filing with or receives a notice or any other communication regarding a hearing or in connection with any purported such non-compliance from any governmental licensing board, agency, commission, or like authority with respect to the Liquor License, Tenant shall promptly deliver a copy of such filing, notice, or other communication to Landlord.

7.8 Remedies for Breach. In the event of any breach of this Paragraph 7 which Landlord determines can reasonably be expected to cause physical injury to persons or damage to property if not remedied promptly, and such breach is not cured within five business days of written notice thereof to Tenant (which notice must reference Landlord's intention to act pursuant to this Paragraph 7.8), Landlord, at its election and in addition to its other rights and remedies under this Lease (provided that if Landlord elects to exercise such remedy, such remedy will be Landlord's sole remedy as to such breach provided Tenant timely pays the costs incurred by Landlord, as provided below), may pay the cost of correcting such breach and Tenant shall immediately, upon demand, pay Landlord the cost thereof; it being understood that if Landlord exercises such remedy (which shall be in Landlord's sole discretion), and Tenant timely pays Landlord the amount owing to Landlord on account thereof, that such breach shall be deemed cured and Landlord shall have no further rights or remedies thereafter on account of such cured breach. Notwithstanding the foregoing, Landlord will not be required to provide written notice to Tenant before exercising such rights if Landlord determines, in its reasonable discretion, that such breach has created a situation which imposes a risk of imminent physical injury to persons or imminent risk of serious or material damage to property.

8. Rent. For purposes hereof, the term "Rent" shall mean and refer to all Minimum Monthly Rent, all Master Lease Rentals, all Performance Rent, all Gross Revenue Rent (as defined below), and all Additional Rent (as defined below).

8.1 Gross Revenue Rent. In addition to paying the Minimum Monthly Rent and the Performance Rent, Tenant shall additionally pay Landlord "Gross Revenue Rent" throughout the Term in accordance with the provisions of this Paragraph 8.1. For purposes of this Lease, the term "Gross Revenue Rent" shall mean an amount of Rent payable by Tenant monthly in arrears equal to two percent of the Gross Sales attributable to the immediately preceding calendar month. Tenant shall pay Gross

Revenue Rent to Landlord, without notice, demand, offset, deduction, or abatement. On or before the 15th day of each calendar month beginning with the 15th day of the first calendar month following the Lease Commencement Date, Tenant shall deliver to Landlord an accounting, certified as true and correct by a duly authorized officer of Tenant, reflecting the Gross Sales for the preceding calendar month, which accounting shall be accompanied by the applicable payment of Gross Revenue Rent applicable thereto. The provisions of this Paragraph 8.1 shall survive the termination of this Lease until all Gross Revenue Rent relative to the Term has been fully paid.

8.2 Minimum Monthly Rent. Tenant shall additionally pay to Landlord, as minimum monthly rent, without deduction, setoff, prior notice, or demand (except as otherwise specifically provided in this Lease), the Minimum Monthly Rent described in the Principal Lease Provisions, in advance, on or before the first day of each calendar month throughout the Term, beginning on the Rent Commencement Date (provided, however, if the Rent Commencement Date does not occur on the first day of a calendar month, then the first such payment of Minimum Monthly Rent shall be payable on the first day of the first calendar month following the calendar month in which the Rent Commencement Date occurs, and such first payment of Minimum Monthly Rent shall additionally include the Minimum Monthly Rent attributable to the partial month in which the Rent Commencement Date occurred).

8.3 Performance Rent. In addition to paying the Minimum Monthly Rent, Tenant shall additionally pay to Landlord Performance Rent in accordance with the provisions of this Paragraph 8.3. For purposes of this Lease, the term "Performance Rent" shall mean an amount of Rent payable by Tenant which is computed for each Lease Year (but payable on a quarterly basis with a year-end reconciliation, as provided below) by multiplying the "Performance Percentage" of 50%, times the amount of Tenant's PLE applicable to such Lease Year, and then subtracting from such result the amount of Minimum Monthly Rent actually paid by Tenant during the corresponding Lease Year (or calendar quarter, as applicable). [By way of example, if the PLE for a Lease Year is \$3,000,000.00, and the entire Minimum Monthly Rent for such Lease Year is \$1,000,000.00, then the Performance Rent payable relative to such Lease Year would be \$500,000.00; *i.e.*, \$3,000,000.00 multiplied times 50% {\$1,500,000.00}, minus \$1,000,000.00.] Notwithstanding anything to the contrary contained herein, if the first Lease Year or the final Lease Year are less than a full twelve month calendar year period, then the Performance Rent will nevertheless apply for such partial year in the same manner described above for such partial calendar year, using such partial calendar year's Minimum Monthly Rent and PLE. Tenant shall pay Performance Rent to Landlord, without notice, demand, offset, deduction, or abatement (except with respect to any Performance Rent credit as provided for in Paragraph 8.3.2, below), in accordance with the provisions set forth below. The provisions of this Paragraph 8.3 shall survive the termination of this Lease until all Performance Rent relative to the Term has been fully paid. Tenant makes no representations or guaranties as to any profits that will be generated by the Restaurants.

8.3.1 Payment of Performance Rent. Performance Rent shall be payable on a quarterly basis with a year-end reconciliation, as more particularly provided in this Paragraph 8.3.1. Within 30 days after the end of each calendar quarter (*i.e.*, January through March, April through June, July through September, and October through December), commencing with the calendar quarter (full or partial) in which the Rent Commencement Date occurs, Tenant shall furnish to Landlord a profit and loss statement for the preceding calendar quarter in the form of attached Exhibit "E" ("Tenant's Income Statement") certified by Tenant to be true and correct, along with cash (or other immediately available funds) in the amount of the Performance Rent applicable to the quarter to which such Tenant's Income Statement applies. Such quarterly Performance Rent amount shall be calculated by (i) taking the total PLE for such quarter and (ii) multiplying the total amount of PLE under clause (i) by the 50% Performance Percentage, and then (iii) deducting from the result of the calculation described in clauses (i) and (ii) an



amount equal to the Minimum Monthly Rent paid by Tenant relative to such calendar quarter (it being understood that if the result of the calculation described in clauses (i) and (ii), above, in any particular calendar quarter is less than the Minimum Monthly Rent paid by Tenant relative to such calendar quarter, then no Performance Rent shall be payable relative to such calendar quarter (subject to the annual reconciliation as part of Tenant's PLE Statement—as defined below). Within 60 days after the end of each Lease Year (including the final Lease Year), commencing with the first Lease Year, Tenant shall furnish to Landlord a statement of PLE for the preceding Lease Year in the form of attached Exhibit "F" ("Tenant's PLE Statement") certified by Tenant to be true and correct. Each such Tenant's PLE Statement shall be accompanied by a Performance Rent payment to Landlord equal to the Performance Rent owing for the preceding Lease Year less any payments previously made by Tenant pursuant to the preceding sentence of this Paragraph. If Tenant fails to timely furnish Landlord with any Tenant's Income Statement or Tenant's PLE Statement, as required by this Paragraph, and such failure continues for a period of ten business days following written notice, Tenant shall pay to Landlord, as Additional Rent, on demand, a late charge of \$50.00 per day (as such daily sum may be increased from time-to-time pursuant to the Rules) until the subject statement is submitted (provided that such payment of such late charge will not be deemed to excuse or cure Tenant's default). For the purpose of confirming the Performance Rent and the Gross Revenue Rent payable by Tenant, Tenant shall keep in the Premises, at Tenant's principal place of business, or at its accountant's office, an accurate set of books and records, in an auditable format, of all sales of merchandise, fees for services, and revenue derived from business conducted in or from the Premises, and all supporting records such as tax reports, banking records, cash register tapes, sequential sales slips and other sales records necessary to comply with the requirements of the Master Lease (collectively, "Tenant's Records"). If Tenant fails to maintain all necessary records and make them available to Landlord, then, at Landlord's sole option, in addition to all other rights and remedies for such default by Tenant, Landlord shall have the right to conduct a Landlord's Audit (as defined below), in which case Tenant shall pay all reasonable costs and expenses of such Landlord's Audit upon demand regardless of the results of such Landlord's Audit. Tenant shall keep Tenant's Records for at least five years after the Lease Year to which such Tenant's Records pertain (provided, however, if the Master Lease or the Master Landlord, at any time, do not require Landlord to maintain its records relating to the Premises for five years, then such five year period will be reduced to three years). Tenant also shall furnish to Landlord, upon request by Landlord, accurate and exact copies of all sales tax reports made to the State of California, to the County in which the Premises are located, or to any other governmental authority.

8.3.2 Performance Rent Credit. Notwithstanding anything to the contrary in this Lease, if in any Lease Year the amount of the PLE applicable to such Lease Year is less than \$2,000,000, then Tenant shall be entitled to a credit against Tenant's future Performance Rent obligations hereunder in an amount equal to 50% of the difference between \$2,000,000 and the amount of the PLE for such Lease Year.

8.3.3 Landlord's Audits. Landlord shall have the right, at any time, and from time-to-time, to conduct a Landlord's Audit (as hereinafter defined) in order to confirm proper payment of Performance Rent and/or Gross Revenue Rent. A "Landlord's Audit" is an audit/inspection of Tenant's Records conducted by, at Landlord's choice, either (i) Landlord, its employees, or agents, or (ii) a certified public accountant of Landlord's choice. Whether Landlord's Audit is prepared by Landlord or a certified public accountant, Tenant shall have the right to dispute the contents of the Landlord's Audit. If Tenant desires to dispute the contents of the Landlord's Audit, it must provide Landlord with a written notice of the basis of the dispute ("Tenant's Dispute") within 30 days following Tenant's receipt of notification of the contents of the Landlord's Audit. Landlord and Tenant shall thereupon attempt in good faith to resolve Tenant's Dispute. If Landlord and Tenant cannot resolve Tenant's Dispute within 45 days following Tenant's delivery to Landlord of Tenant's Dispute, then Tenant shall have the right to submit an

independent audit prepared by a certified public accountant with respect to Tenant's Dispute. Landlord or Landlord's certified public accountant, whoever conducts the Landlord's Audit, on the one hand, and Tenant's certified public accountant, on the other hand, shall determine whether Tenant's Dispute is correct. Landlord shall pay the costs and expenses of Landlord's Audit, except if Landlord's Audit, subject to the resolution of Tenant's Dispute, if any, reveals that (i) the amount of Performance Rent and/or Gross Revenue Rent due as determined by Landlord's Audit exceeds by five percent or more the amount of Performance Rent and/or Gross Revenue Rent paid by Tenant pursuant to the preceding provisions of this Paragraph 8 or reflects an understatement of Performance Rent and/or Gross Revenue Rent which is a result of Tenant's intentional acts or omissions (with the term "intentional" meaning with the intent to understate PLE), or (ii) Tenant has failed to maintain all necessary Tenant's Records, in either of which events Tenant shall pay all reasonable costs and expenses of Landlord's Audit upon demand. If a Landlord's Audit, subject to the resolution of Tenant's dispute, if any, determines that any Performance Rent and/or Gross Revenue Rent is outstanding and such Performance Rent and/or Gross Revenue Rent is not paid by Tenant within ten business days after written notice from Landlord, Tenant shall pay to Landlord, as Additional Rent, on demand, a late charge of \$50.00 per day (as such daily sum may be increased from time-to-time pursuant to the Rules) until such payment is made. Additionally, if such payment is not made within 30 days after written notice from Landlord, the outstanding amount shall bear interest at the Default Rate (as defined below) until paid. If Landlord's Audit, subject to the resolution of Tenant's Dispute, if any, discloses that any Performance Rent and/or Gross Revenue Rent was overpaid by Tenant, Landlord shall promptly reimburse to Tenant such amount of overpayment.

8.4 Master Lease Rentals. Tenant shall pay to Landlord, as Additional Rent, all amounts Landlord is obligated to pay to Master Landlord under the Master Lease, as such amounts may be increased pursuant to the provisions of the Master Lease (the "Master Lease Rentals"), including, without limitation, minimum annual rent, percentage rent based on gross income generated by Tenant's operations, in accordance with the Master Lease, any rent on parking income, including valet income, generated by Tenant's operations, and any amounts due as a result of Tenant's actions or omissions, at least three business days prior to the date such amounts are due under the Master Lease; provided, however, where the due date of any such Master Lease Rental is not specified by the terms of the Master Lease (*i.e.*, such payment is not a regularly scheduled payment), then such amount shall be due within five business days of written demand from Landlord. To enable all payments under the Master Lease to be paid in accordance with the provisions thereof, Tenant shall, upon demand, provide Landlord with all required accounting information as is called for under the Master Lease, all of which shall be provided to Landlord at least five business days prior to the date such items are to be submitted to Master Landlord under the Master Lease; provided that Landlord has given Tenant at least ten business days prior written notice of the date upon which such items are to be submitted to the Master Landlord under the Master Lease.

8.5 Management. In recognition of the importance of generating maximum profits in order to maximize Gross Sales and PLE and, in turn, maximize the Gross Revenue Rent and Performance Rent payable to Landlord, Tenant shall manage and operate the Restaurants as first-class operations and shall use its commercially reasonable, good faith efforts to maximize the Gross Sales with respect to the Restaurants. Tenant shall cause David Cohn (the "Key Individual") to be personally involved in and to remain regularly focused on the programming, management, and operation of the Restaurants. If the Key Individual desires to retire, Tenant shall first obtain Landlord's consent to a replacement Key Individual to take the place of such retiring Key Individual who has the capability to operate the Restaurants in accordance with the requirement of this Lease; such consent to be in Landlord's reasonable discretion. Further, the Key Individual shall be the person in charge of both Restaurants' overall operations. The operation of the Restaurants shall be in the Key Individual's reasonable discretion. If the Key Individual

ceases to be personally involved in, and to remain regularly focused on, the programming, management, and operation of the Restaurants, Tenant shall be in default hereunder; provided, however, if the reason the Key Individual cannot be involved in the operation of the Restaurants is because of such individual's death or disability (each, a "Termination Event") Tenant shall not be in default hereof provided that, Tenant names a temporary replacement for such individual within 30 days of the Termination Event and that, within 180 days of such Termination Event, Tenant replaces such affected Key Individual with a person or persons, consented to by Landlord, or Tenant has requested approval of such temporary replacement as the new Key Individual and Landlord has consented to such individual as the new Key Individual, which consent (in either case) shall be in Landlord's reasonable discretion--and in each case (*i.e.*, both in the case of such temporary replacement and in the case of such proposed permanent replacement) such individual must have the capability to operate the Restaurants in accordance with the requirements of this Lease. Tenant shall cause the Restaurants to receive "most favored nation" status (*i.e.*, no other restaurant affiliated with Tenant will receive any goods or services at a more favorable rate or on more favorable terms—including, without limitation, the sharing of discounts and rebates—or be treated in connection with any operational matter in a more favorable manner, than the Restaurants; provided, however, the foregoing shall not restrict Tenant from reasonably allocating costs among its various restaurants as long as the result thereof is not to impose upon the Restaurants, or either of them, the financial burden associated with a benefit of another of such affiliated restaurants) in connection with all purchases, products, expenses, consulting, and other similar items or "back-office" services with other restaurants and businesses of Tenant or its affiliates (*i.e.*, the Cohn Restaurant Group). Tenant shall consult with Landlord and keep Landlord advised as to only the following major policy matters affecting the Restaurants, and Tenant shall not (i) make any change in the Restaurants' respective concepts/levels of quality (the Island Prime portion of the Island Prime Restaurant as a high-end, white table cloth, steak restaurant; the C Level portion of the Island Prime Restaurant as a midscale, California cuisine restaurant; and the New Restaurant as a high quality, high-end or mid-scale, restaurant; provided, however, any change in theme/concept—as opposed to a change from high quality or change from high-end or mid-scale—regarding the New Restaurant will not require Landlord's prior consent provided such change will not involve incurring costs in excess of \$250,000), without Landlord's prior written consent, which consent will not unreasonably be withheld, (ii) make any change to the Key Individual or their respective responsibilities relative to the management and operations of the Restaurants without Landlord's prior written consent, which consent will not be unreasonably withheld, or (iii) institute any legal actions or proceedings with respect to the Premises or the Restaurants without Landlord's prior written consent, which consent will not unreasonably be withheld (other than with respect to (a) any legal action or proceeding Tenant may bring against Landlord to enforce its rights under this Lease and (b) any matter which by the express terms of this Lease is to be submitted to arbitration pursuant to Paragraph 45.7, below).

8.6 Performance Covenant Termination Right. Landlord shall have the right, by written notice to Tenant, to terminate the Lease, without prejudice to any amounts owing by Tenant to Landlord, if the performance covenant set forth in Paragraph 8.6.1 below (the "Performance Covenant") is not satisfied as of any Comparison Date (as defined below).

8.6.1 Performance Covenant. Upon that date which is the first January 1 following the fifth, fifteenth, and, if the Option to Extend has been exercised by Tenant, twenty-fifth anniversaries of the Rent Commencement Date (each a "PLE Baseline Date"), the Annual PLE (as defined in attached Exhibit "D") of the Restaurants for the preceding three calendar years shall be averaged and such average PLE shall constitute the "PLE Baseline" (*i.e.*, if the Rent Commencement Date is during calendar year 2013, then the Annual PLE for each of calendar years 2016, 2017, and 2018 would be

averaged and the average of such three Annual PLE figures would be the initial PLE Baseline); provided, however, in no event will the PLE Baseline determined upon any PLE Baseline Date be less than the PLE Baseline in effect immediately prior to such PLE Baseline Date. Upon every second anniversary of the initial PLE Baseline Date (each a "Comparison Date"), the average Annual PLE for the immediately preceding three calendar years (the "Annual Average PLE") shall be compared against the most recently calculated PLE Baseline; provided, however, if a Comparison Date would be the same as the PLE Baseline Date in any particular year, then the parties shall use the prior PLE Baseline for such Comparison Year (e.g., on the Comparison Date which occurs on the fifteenth anniversary of the Rent Commencement Date, since such Comparison Date is also a PLE Baseline Date, the PLE Baseline determined on the initial PLE Baseline Date will be the applicable PLE Baseline to be used and the PLE Baseline as of such fifteenth anniversary of the Rent Commencement Date will not be used until the seventeenth anniversary of the Rent Commencement Date). If the Annual Average PLE for the applicable three year period is at least 85% of the most recently calculated PLE Baseline, then the Performance Covenant shall be deemed satisfied and an Event of Default shall not be deemed to have occurred. If the Annual Average PLE for the applicable three year period is at least 70% but less than 85% of the most recently calculated PLE Baseline, then the Performance Covenant shall not be deemed satisfied and an Event of Default shall be deemed to have occurred entitling Landlord to terminate this Lease unless Tenant pays to Landlord, within 45 days of the applicable Comparison Date, Additional Rent in the amount necessary to equal the amount of Performance Rent that Tenant would have paid to Landlord if the Annual Average PLE for the applicable three year period had been 85% of the most recently calculated PLE Baseline, in which case the Performance Covenant shall be deemed satisfied and an Event of Default shall not be deemed to have occurred. Notwithstanding the foregoing, if (as described in the preceding sentence) the Annual Average PLE for the applicable three year period is at least 70% but less than 85% of the most recently calculated PLE Baseline, and Tenant fails to pay Landlord Additional Rent in the amount necessary to equal the amount of Performance Rent that Tenant would have paid to Landlord if the Annual Average PLE for the applicable three year period had been 85% of the most recently calculated PLE Baseline (as provided in the preceding sentence), then Landlord will have 12 months from the expiration of such 45 day period to elect to terminate this Lease on account of such Event of Default, and if Landlord does not deliver a written notice electing to so terminate this Lease within such 12-month period, such Event of Default (*i.e.* Tenant's failure to pay such Additional Rent) shall be deemed waived by Landlord; but only as to that failure by Tenant, and not regarding any subsequent failure or any other Event of Default by Tenant. If the Annual Average PLE for the applicable three year period is less than 70% of the most recently calculated PLE Baseline, then the Performance Covenant shall not be deemed satisfied and an Event of Default shall exist pursuant to Paragraph 22.10, below. The foregoing analysis shall be conducted on each Comparison Date (*i.e.*, every two years after the initial PLE Baseline Date) throughout the Term. If on any Comparison Date only one of the Restaurants is still a part of this Lease by virtue of the operation of Paragraph 27 or 28, below, then only the PLE relating to such Restaurant shall be used for purposes of determining whether the Performance Covenant has been met. To that end, (i) the applicable PLE Baseline will be adjusted to reflect the elimination of the PLE relating to the then-closed Restaurant, (ii) the Annual Average PLE for the applicable three year period will be adjusted to reflect the elimination of the PLE relating to the then-closed Restaurant, and (iii) to the extent, in connection with making the adjustments under clauses (i) or (ii), above, the amount of the adjustment cannot clearly be made on the basis of the Restaurants' books and records (such as, by way of example, in the case of Minimum Monthly Rent) the parties shall adjust such amount by 50% as if one-half of such item of income or expense were attributable to each Restaurant. In no event will the effect of the foregoing result in double-counting of any adjustment—*i.e.* if the definition of PLE already would take into account an adjustment that would otherwise be made pursuant to the foregoing provisions, such adjustment will only be counted once.

8.6.2 New Island Prime Lease. In the event this Lease is terminated as a result of Tenant's failure to satisfy the Performance Covenant, as provided above, or pursuant to Paragraph 29.3, below, then subject to Tenant's satisfaction of its Termination Cooperation Requirements (as defined in Paragraph 23.4, below), Landlord shall enter into a new lease with Tenant for just the Island Prime Restaurant, on terms the same as the terms of the Previous Island Prime Sublease except as set forth on attached Exhibit "G" (the "New Island Prime Lease")--it being understood that no other termination of this Lease shall entitle Tenant to a New Island Prime Lease.

8.7 Rent Generally. Operating Expenses, payable pursuant to Paragraph 9, below, together with all other amounts of any kind (other than Minimum Monthly Rent, Master Lease Rentals, Performance Rent, and Gross Revenue Rent) payable by Tenant to Landlord under the terms of this Lease, constitute additional rent for the Premises and are collectively and individually referred to in this Lease as "Additional Rent." All "Rent" (which includes all Minimum Monthly Rent, all Master Lease Rentals, all Performance Rent, all Gross Revenue Rent, and all Additional Rent hereunder) shall be paid to Landlord at the same address as notices are to be delivered to Landlord pursuant to the Principal Lease Provisions, as Landlord may change such address from time to time pursuant to the terms of this Lease.

9. Operating Expenses. In addition to paying the Minimum Monthly Rent, Performance Rent, and Gross Revenue Rent pursuant hereto, Tenant shall pay to Landlord (in accordance with this Paragraph 9), commencing on the Rent Commencement Date, the Operating Expenses of the Project during the Term.

9.1 Definitions. The following definitions apply in this Paragraph 9 (and elsewhere in this Lease):

9.1.1 Operating Expenses. As used in this Lease, the term "Operating Expenses" shall mean and refer to all costs and expenses, of any kind or nature, which are paid or incurred by Landlord relative to the operation, repair, restoration, replacement, maintenance, and/or management of the Project. Operating Expenses include, without limitation, the following amounts paid or incurred by Landlord relative to the Project: (a) the cost of supplying utilities to all portions of the Project (other than tenant premises), (b) Tax Expenses and Insurance Expenses (as such terms are defined below), (c) the cost of providing janitorial services and of operating, managing, maintaining, and repairing all systems serving the Project (other than those which are Tenant's or another tenant's responsibility to maintain), and the cost of supplies, tools, and equipment, as well as maintenance and service contracts in connection with those systems, (d) the cost of licenses, certificates, permits, and inspections relating to the operation of the Project, (e) the cost of contesting the validity or applicability of any government enactments that may affect the Operating Expenses, (f) the cost of maintenance, repair, and restoration of any parking areas or structures, including, without limitation, resurfacing, repainting, restriping, and cleaning costs, (g) fees, charges, and other costs (but not including administrative, management fees and accounting costs or amounts in lieu of such fees), whether paid to Landlord, an affiliate of Landlord's, or a third party, consulting fees, and legal fees reasonably incurred by Landlord in connection with the operation, management, maintenance, and repair of the Project and not otherwise excluded in Paragraph 9.1.2, below, (h) wages, salaries, and other compensation and benefits of all persons engaged in the operation, maintenance, repair, or security of the Project plus employer's Social Security taxes, unemployment taxes, insurance, and any other taxes imposed on Landlord that may be levied on those wages, salaries, and other compensation and benefits (if any of Landlord's employees provide services for more than one project of Landlord's, only the prorated portion of those employees' wages, salaries, other compensation and benefits, and taxes reflecting the percentage of their working time devoted to the Project will be included

in the Operating Expenses), (i) payments under any easement, CC&R's, license, operating agreement, declaration, restrictive covenant, or other instrument relating to the sharing of costs affecting the Project, (j) amortization (including interest on the unamortized cost at a rate equal to the floating commercial loan rate announced from time to time by Bank of America as its "reference rate" (or a comparable rate selected by Landlord if such reference rate ceases to be published) plus three percentage points per annum) of the cost of acquiring or renting personal property used in the maintenance, repair, and operation of the Project, (k) any amount of reserves required by a Lender (as defined below), (l) fees and expenses for consultants retained, from time to time, by Landlord for the purposes of energy conservation, waste treatment, and water recycling and the costs of any capital improvements, equipment, or devices installed or paid for by Landlord in connection with such energy conservation, waste treatment, and water recycling efforts (with the costs of such items, other than the fees and expenses for the consultants so retained, to be amortized in the same manner as set forth in clause (o) of this Paragraph below), (m) the cost of maintenance of all heating, ventilating, and air condition systems relating to individual premises and/or the Common Areas, other than HVAC systems exclusively serving other tenants' premises that are directly paid for, or reimbursed, by such other tenants, (n) the cost of holiday decorations and activities and the cost of preparing for, overseeing, and providing clean-up, (if applicable) security, and other related services relative to any entertainment provided at the Project (but excluding the cost of the performers providing the actual entertainment), and (o) capital improvements or structural modifications required by applicable laws, ordinances, rules, or regulations governing the Project or by the Master Lease, or other capital improvements or structural modifications which are intended as a labor saving or cost saving device or to effect other economies in the maintenance or operation of the Project; provided, however, any costs of such capital improvements or structural modifications shall be amortized (including interest on the unamortized cost at the rate stated in clause (j) of this Paragraph) over their useful life, as reasonably determined by Landlord's certified public accountant. Operating Expenses will not, however, include any Excluded Costs (as defined below).

9.1.2 Excluded Costs. As used in this Lease, the term "Excluded Costs" means the following expenses, as they relate to the Operating Expenses: (i) depreciation, principal, interest, and fees on mortgages or ground lease payments, except as otherwise provided herein, (ii) legal fees incurred in negotiating and enforcing tenant leases, disputes with other tenants, (iii) real estate brokers' leasing commissions and advertising costs in connection with leasing space in the Project, (iv) initial improvements or alterations to tenant spaces in the Project, (v) the cost of providing any service directly to and paid directly by a single individual tenant, or costs incurred for the benefit of a single tenant, (vi) costs of any items to the extent Landlord actually receives reimbursement therefor from insurance proceeds, under warranties, or from a tenant or other third party (such costs shall be excluded or deducted--as appropriate--from Operating Expenses in the year in which the reimbursement is received), or which are paid out of reserves previously included in Operating Expenses, (vii) costs incurred due to Landlord's grossly negligent, or intentional, breach of a law or ordinance, (viii) repairs necessitated by the gross negligence or willful misconduct of Landlord or Landlord's employees, agents, or contractors, (ix) capital expenses other than those included in the definition of Operating Expenses, (x) charitable or political contributions and membership fees or other payments to trade organizations, (xi) costs of Landlord's Work which are to be borne by Landlord pursuant to attached Exhibit "C", if any (xii) rent and similar charges for Landlord's on-site management office and/or leasing office or any other offices of Landlord or its affiliates, (xiii) Landlord's general overhead expenses not related to the Project, (xiv) reserves, other than those specifically included in Paragraph 9.1.1 in the definition of Operating Expenses, (xv) the original construction costs of the Project, (xvi) legal fees and costs incurred in connection with any action or proceeding with respect to (A) the Master Lease or Master Landlord, (B) Tenant or the Premises, or (C) any project other than the Project; (xvi) interest or penalties incurred for late payment of any bills or

taxes (unless due to any delinquency by Tenant in the payment of Operating Expenses); (xvii) costs, fines, or penalties for Landlord's violation of any federal, state, or local law; (xviii) any expense described in the Lease as Landlord's sole expense, and (xix) any expense of Landlord incurred in fulfilling its indemnification obligations to Tenant.

9.1.3 Calendar Year Allocations. The references in this Paragraph 9.1 to the actual Operating Expenses allocable to a calendar year, shall include (i) if such calendar year is the calendar year during which the Rent Commencement Date occurs, the actual annualized Operating Expenses allocable to the portion of such calendar year following the Rent Commencement Date, and (ii) if such calendar year is the Last Calendar Year, the actual annualized Operating Expenses allocable to the portion of the Last Calendar Year prior to the Expiration Date.

9.1.4 Adjustments Where Common Area Work is Performed by Tenant. If pursuant to the rights of Landlord under Paragraph 11.1, below, Landlord elects to have any Common Area work performed by Tenant (subject to Tenant's right to consent to such election as described in Paragraph 7.5, above, and Paragraph 11.1, below), then the expenses so incurred by Tenant directly (which, if Landlord had performed such work, would result in Landlord incurring expenses which would qualify as Operating Expenses) will not be included as Operating Expenses; it being acknowledged that in such instance such expenses are being directly paid by Tenant and, therefore, no reimbursement of expenses shall apply relative thereto.

9.2 Tax Expenses. The term "Tax Expenses" shall mean and refer to the sum of all Taxes (as defined below) that are paid or incurred by Landlord because of or in connection with the ownership, leasing, and/or operation of the Project from time to time, where "Taxes" means and refers to all federal, state, county, or local government or municipal taxes, fees, charges, or other impositions of every kind or nature, whether general, special, ordinary, or extraordinary. Taxes include taxes, fees, and charges such as real property taxes, general and special assessments, transit taxes, leasehold taxes, and taxes based on the receipt of rent (including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant), and personal property taxes imposed on Landlord's fixtures, machinery, equipment, apparatus, systems, appurtenances, and other personal property used in connection with the Project, as the case may be, along with reasonable legal and other professional fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce real property taxes. Notwithstanding the foregoing, the following shall be excluded from Taxes: (i) all gift taxes, inheritance and succession taxes, estate taxes, documentary transfer taxes, federal, state, and local income taxes, and other taxes applied or measured by Landlord's general or net income (as opposed to rents, receipts, or income attributable to operations at the Project), and (ii) personal property taxes attributable to property owned or installed by or for other tenants of the Project. Any penalties or interest for late payments of Taxes shall not be included in Taxes payable by Tenant and shall be the sole responsibility of the Landlord, unless such late payment is caused by Tenant. All net refunds, rebates and discounts actually received by Landlord in connection with Taxes attributable to any period for which Tenant paid or is obligated to pay Taxes under this Lease shall be deducted prior to the calculation of Tenant's proportionate share of such Taxes. Upon Tenant's request, Landlord shall provide Tenant copies of the actual tax statements and bills paid by Landlord.

9.3 Payment of Operating Expenses. Tenant shall pay to Landlord, on the first day of each calendar month during the Term following the Rent Commencement Date, as Additional Rent, without notice, demand, offset, or deduction, an amount equal to one-twelfth of the Operating Expenses for such Lease Year ("Tenant's Monthly Payment"), as estimated by Landlord in the most recently

delivered Estimated Statement (as defined below). Landlord shall deliver to Tenant, approximately 30 days prior to the commencement of each Lease Year during the Term, a written statement ("Estimated Statement") setting forth Landlord's estimate of the Operating Expenses allocable to the ensuing Lease Year. Landlord may, at its option, during any Lease Year, deliver to Tenant a revised Estimated Statement, revising Landlord's estimate of the Operating Expenses, in accordance with Landlord's most current estimate. Within 90 days after the end of each Lease Year during the Term, Landlord shall deliver to Tenant a written statement ("Actual Statement") setting forth the actual Operating Expenses allocable to the preceding Lease Year. Tenant's failure to object to Landlord regarding the contents of an Actual Statement, in writing, within 180 days after delivery to Tenant of such Actual Statement, shall constitute Tenant's absolute and final acceptance and approval of the Actual Statement. If the sum of Tenant's Monthly Payments actually paid by Tenant during any Lease Year exceeds the actual Operating Expenses allocable to such Lease Year, then such excess will be credited against future Tenant's Monthly Payments, unless such Lease Year was the Lease Year during which the Expiration Date occurs (the "Last Calendar Year"), in which event either (i) such excess shall be credited against any monetary default of Tenant under this Lease, or (ii) if Tenant is not in default under this Lease, then Landlord shall within ten business days pay to Tenant such excess. If the sum of Tenant's Monthly Payments actually paid by Tenant during any Lease Year is less than the actual Operating Expenses allocable to such Lease Year, then Tenant shall, within ten business days of delivery of the Actual Statement, pay to Landlord the amount of such deficiency. Landlord's delay in delivering any Estimated Statement or Actual Statement will not release Tenant from its obligation to pay any Tenant's Monthly Payment or any such deficiency upon receipt of the Estimated Statement or the Actual Statement, as the case may be. The references in this Paragraph to the actual Operating Expenses allocable to a Lease Year, shall include, if such Lease Year is the Last Calendar Year, the actual Operating Expenses allocable to the portion of such year prior to the Lease Expiration Date, calculated on a pro rata basis, without regard to the date of a particular expenditure. The provisions of this Paragraph 9.3 shall survive the termination of this Lease, and even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Operating Expenses for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated expenses paid by Tenant pursuant hereto and conversely any overpayment made in Tenant's estimated payments shall be immediately rebated by Landlord to Tenant. Notwithstanding the foregoing, or anything to the contrary in this Lease, if at any time Tenant is not the sole tenant or operator of space within the Project (such as, by way of example, following a termination of this Lease relative to only one of the Restaurants following a casualty), then the Operating Expenses shall be allocated among Tenant and the other tenant(s)/operator(s) of space in the Project based on the respective rentable square footages of their premises.

9.4 Landlord's Books and Records. If Tenant disputes (in a writing delivered to Landlord setting forth with specificity the basis for such dispute and the portions of such Actual Statement which Tenant disputes) the amount of Additional Rent stated in an Actual Statement within 180 days of Tenant's receipt thereof, Tenant may, upon at least five business days' notice to Landlord, request an opportunity to inspect and audit Landlord's records and supporting documentation regarding such Actual Statement. Such inspection and audit must be conducted by an independent certified public accountant within 210 days of the date Tenant received the Actual Statement, shall be at Tenant's sole cost and expense (except as provided below), and Landlord shall, at its election, either provide copies of such records and supporting documentation to Tenant, or make such records and supporting documentation, relating to the matter in dispute available to Tenant for its inspection at Landlord's business office during normal business hours. If Tenant fails to dispute (in writing, as provided above) the amount of Additional Rent stated in an Actual Statement within 180 days of Tenant's receipt thereof, or if Tenant's audit fails to disclose a discrepancy in such Actual Statement within 210 days after Tenant's receipt of the Actual



Statement in question, then the Actual Statement will be deemed accurate and binding on Tenant and Tenant will be estopped from raising or pursuing any claim or defense to the contrary. If it is determined as a result of Tenant's timely audit of Landlord's records (and Landlord's certified public accountant's concurrence therein) that Tenant was overcharged relative to the Operating Expenses, such overcharge shall entitle Tenant to a credit against its next payment of Operating Expenses in the amount of the overcharge plus, in the case of an overcharge exceeding three percent of the Operating Expenses, the reasonable third party costs of such audit (and if such credit occurs following the expiration of the Term, Landlord shall promptly pay the amount of such credit to Tenant). If it is determined as a result of Tenant's timely audit of Landlord's records (and Landlord's certified public accountants concurrence therein), or otherwise, that Tenant was undercharged relative to the Operating Expenses, Tenant shall, within ten business days of written demand, pay such undercharge to Landlord. Landlord shall be entitled to a copy of any such audit. Notwithstanding anything to the contrary in this Paragraph 9.4, Tenant's right to audit Landlord's records and to otherwise dispute any Actual Statement are subject to the condition that all of the following additional criteria are met: (i) no audit may be conducted during the months of December or April, and Tenant's auditor must make an advance appointment with Landlord's audit supervisor at a mutually acceptable time (which Landlord will use reasonable efforts to schedule within 60 days of Tenant's request; provided, however, if Landlord is unable to schedule such appointment within 60 days of Tenant's request, then the 210 day deadline described above shall be extended for a length of time equal to the length of time beyond such 60 days that it takes for Landlord to schedule the appointment for Tenant's auditor), (ii) before conducting an audit, Tenant must pay the full amount of Operating Expenses billed and must not be in default of any other provisions of this Lease, (iii) Tenant may review only those records of Landlord specifically related to the specific Operating Expenses which Tenant has disputed. Tenant may not review any other records or any other leases or agreements, or Landlord's tax returns or financial statements, (iv) in conducting an audit, Tenant must utilize an independent certified public accountant experienced in auditing records for businesses similar to the Project, subject to Landlord's reasonable prior approval, and (v) upon completion of the audit, the certified public accountant shall be required to concurrently deliver to both Tenant and Landlord a written audit report and all supporting data.

10. Utilities and Services.

10.1 Utilities and Services. Tenant shall make all arrangements for and pay the cost of all utilities and services (including without limitation their connection charges and taxes thereon) furnished to the Premises or used by Tenant; provided, however, Landlord shall be responsible for all connection charges and fees associated with the initial establishment of utility service to the New Restaurant and such charges will be considered part of the Landlord's Work.

10.2 Utilities Generally. Tenant agrees that, except as specifically provided below, Landlord will not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any utility or service or for diminution in the quality or quantity of any utility or service. Such failure, delay, or diminution will not constitute an eviction or a disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease, except that Tenant will be entitled to an equitable abatement of Rent for the period of such failure, delay, or diminution to the extent such failure, delay, or diminution (i) is directly attributable to Landlord's gross negligence or intentional misconduct, (ii) prevents Tenant from using, and Tenant does not use, the Premises or the affected portion thereof for the conduct of Tenant's business operations therein, (iii) Tenant was using the Premises or such affected portion for the conduct of Tenant's business operations immediately prior to the failure, and (iv) such failure, delay, or diminution continues for more than two consecutive business days (or ten business days in any twelve month period) after delivery of

written notice of such failure, delay, or diminution from Tenant to Landlord. Landlord and Tenant acknowledge that such abatement of Minimum Monthly Rent and Additional Rent constitutes reasonable liquidated damages for any and all of Tenant's monetary loss caused by the interruption of such utility and/or service, given that Tenant's actual damages are extremely difficult or impossible to calculate. Except as otherwise expressly provided in this Lease, in no event shall such failure, delay, or diminution relieve Tenant of any of its obligations under the Lease, or constitute constructive eviction or entitle Tenant to consequential damages. Landlord agrees to use reasonable efforts to promptly correct any such interruption of utilities or services. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance, or governmental regulation permitting the termination of this Lease due to the interruption or failure of or inability to provide any utility or services required to be provided by Landlord hereunder. If any governmental authority having jurisdiction over the Project imposes mandatory controls, or suggests voluntary guidelines applicable to the Project, relating to the use or conservation of water, gas, electricity, power, or the reduction of automobile emissions, Landlord, at its sole discretion, may comply with such mandatory controls or voluntary guidelines and, accordingly, require Tenant to so comply. Landlord shall not be liable for damages to persons or property resulting from the imposition of any such controls or guidelines, nor shall such imposition in any way be construed as a partial eviction of Tenant, cause an abatement of Rent, or operate to release Tenant from any of Tenant's obligations under this Lease.

11. Maintenance.

11.1 Maintenance and Repair by Landlord. Landlord shall keep the Common Areas clean, safe, and in good repair consistent with what would reasonably be expected for common areas in a project containing a restaurant of the same level of quality as the Restaurants, and in accordance with all Applicable Laws, ordinary wear and tear excepted. Any repairs required to be made by Landlord hereunder which are occasioned by the act or negligence of Tenant or any of the Tenant Parties (as defined below) shall be paid for by Tenant upon demand to the extent not covered by net insurance proceeds paid to Landlord therefor. If the Common Areas should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall not be responsible for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. Landlord's obligation hereunder is limited to performing the repairs specified in this Paragraph 11.1 only, and Landlord shall have no liability for any damages, loss, injury, or other expense incurred or suffered by Tenant or any of the Tenant Parties arising out of, or as a consequence of, any condition or occurrence causing a need for such repairs. Tenant waives the right to make repairs at Landlord's expense under California Civil Code Section 1942, or under any other law, statute, or ordinance now or hereafter in effect. Notwithstanding anything to the contrary contained herein, Landlord reserves the right to designate some or all of such work to be performed directly by Tenant, rather than by Landlord (subject to Tenant's consent to such delegation and on terms and conditions mutually agreed upon by Landlord and Tenant, including Landlord's acknowledgment that any expenses incurred by Tenant in connection with such work will be included as Restaurant Expenses), in which event Tenant shall pay the costs thereof and such payment shall result in the exclusion of such costs from Tenant's obligation to pay same as Operating Expenses. Any such election shall be in Landlord's sole discretion and may be made and/or withdrawn from time-to-time. Tenant shall perform all such work in a good and workmanlike manner to ensure that the Project meets all requirements of this Lease, the Master Lease, and good retail center management practices.

11.2 General Maintenance and Repair by Tenant. Tenant shall take good care of the Premises and shall keep the Premises clean, safe, and free from deterioration and waste, and shall maintain

the Premises, and conduct all business therein, in accordance with this Lease and all Applicable Laws and lawful directions of proper police officials. Landlord may arrange for collection of all trash and garbage and, should Landlord exercise such election, the cost thereof will be an Operating Expense. In addition to the foregoing general obligations relative to care and maintenance of the Premises, Tenant shall keep and maintain the Premises (including the exterior and interior walls, windows, doors, door closure devices, window and door frames, moldings, locks and hardware, and painting or other treatment of interior and exterior walls), and all utility/building systems, lines, and equipment exclusively serving any portion of the Premises, in good, clean, safe, and operating condition and shall, at its sole cost and expense, make all needed repairs and replacements thereto which are reasonably necessary to keep the condition of the Premises in a manner consistent with a first class restaurant operation and in full compliance with the requirements of the Master Lease; except to the extent any such repairs and replacements are expressly required to be made by Landlord under the provisions of Paragraph 27 or 28, below. Tenant shall keep all plumbing units, pipes, and connections free from obstruction. Tenant shall arrange for the collection of all trash, recycling, composting, and grease disposal. Tenant shall be responsible for the cleaning and maintenance of any vent hoods serving the Premises (including the cost of repair of damage to the roofs or Project caused by Tenant's use of the vent hoods; provided, however that Tenant shall use a contractor approved by Landlord to consummate such repairs). At the request of Tenant, Landlord shall assign to Tenant any new building warranties and/or contractor repair warranties relating to the New Restaurant. If any repairs, replacements, or maintenance required on the part of Tenant hereunder are not accomplished within ten business days after written notice to Tenant from Landlord (or, in the event of emergency, such shorter notice, or no notice, as is reasonable under the circumstances), Landlord may, at its option, perform such repairs, replacements, or maintenance without liability to Tenant for any loss or damage which may result to its property or business by reason thereof, and Tenant shall pay to Landlord immediately upon demand, as Additional Rent hereunder, all costs associated with such repairs, replacements, or maintenance. Landlord may (in Landlord's reasonable discretion) require Tenant to use specific contractors or construction/repair techniques for the purpose of maintaining warranties or the integrity of any portion of the Premises or the Project.

11.3 HVAC Maintenance and Repair by Tenant. Maintenance, repair, and replacement of heating, ventilation, and air conditioning equipment ("HVAC") for the Premises shall be solely the responsibility of Tenant throughout the entire Term. Tenant shall enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all HVAC systems and equipment within or serving the Premises. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) within 30 days of the date Tenant takes possession of the Premises. Tenant shall from time to time upon request furnish proof reasonably satisfactory to Landlord that all such systems and equipment are being serviced in accordance with the maintenance/service contract. Within the 30-day period preceding Tenant's vacating the Premises for any reason, whether due to expiration or earlier termination of the Term, or otherwise, Tenant shall have the systems and equipment checked and serviced to insure proper functioning and shall furnish Landlord satisfactory proof thereof upon request.

12. Parking.

12.1 General Parking Rights. Tenant's use of the parking areas located from time-to-time within the boundaries of and serving the Project (the "Parking Area") shall be subject to the provisions of the Parking Management Plan required pursuant to the Master Lease. Additionally, Landlord reserves the right to have the Parking Area (or portions thereof) to be operated by a third party parking operator or valet service and Tenant shall comply with all reasonable restrictions and limitations

arising therefrom and pay all costs relating thereto. All revenue from parking and valet services generated from the Common Areas and the Premises shall be included in Gross Sales. Notwithstanding anything to the contrary in this Lease, Landlord may, at its election, construct improvements upon, realign, or otherwise alter in any manner the Parking Area, provided that Landlord ensures that reasonable amounts of parking remain (or are made) available to Tenant elsewhere within the Project (or within a reasonable distance from the Premises). In exercising any of the rights of Landlord set forth in this Paragraph 12, Landlord shall use good faith efforts to not unreasonably interfere with the operations of the Restaurants or to take action which is likely to have a material adverse effect on PLE.

12.2 Specific Parking Rights. Tenant shall cooperate with Landlord's parking needs in connection with special events (but not in excess of three such special events in any 12-month period unless Landlord and Tenant agree that such additional special event is beneficial to the Restaurants) upon written notice from Landlord, which cooperation may require Tenant and Tenant's Invitees to temporarily park outside of the boundaries of the Project (but within a reasonable distance from the Premises) such that Landlord and Landlord's affiliates may utilize such Parking Area for their invitees in connection with special events in the area, such as boat shows. Notwithstanding the foregoing, with the exception of the current boat show operated at the adjacent marina project, Tenant shall not be required to consent to any such request for Tenant and Tenant's Invitees to temporarily park outside of the boundaries of the Project if Tenant reasonably determines that such action is likely to have a material adverse effect on PLE or Tenant's operations. If Landlord and Tenant are unable to agree upon whether a particular special event (other than the boat show as to which the parties have agreed in advance Landlord shall have the foregoing rights) will have a material adverse effect on PLE or Tenant's operations, Landlord may submit the question of whether Tenant has acted reasonably to arbitration pursuant to Paragraph 45.7, below.

12.3 Parking Maximization. Landlord shall use commercially reasonable efforts (at no additional cost to Landlord) to maximize the number of parking spaces available to Tenant. Tenant shall cooperate with Landlord to accomplish such parking space maximization and all costs associated therewith shall be borne by Tenant—such as the cost of providing valet parking services. Subject to any required approval from the Master Landlord, Landlord agrees to use its good faith efforts to cause the lessee of the marina project adjacent to the Project to make overflow parking in the marina parking lot available for use by Tenant's employees and/or invitees, subject to such reasonable controls and limitations as such lessee deems appropriate to protect its tenants and invitees and quality operations and to avoid any default under its lease with the Master Landlord for such property. Similarly, and again subject to any required approval from the Master Landlord, Tenant agrees to allow overflow parking in the Parking Area for use by the employees and/or invitees of the adjacent marina property, subject to such reasonable controls and limitations as Tenant deems appropriate to protect Tenant's Invitees and quality operations and to avoid any decrease in PLE.

13. Exteriors/Signs; Advertising. All signage and exterior media will be subject to Landlord's signage plan/criteria and the requirements of applicable law and the Master Lease. Tenant shall, additionally, maintain, keep, and repair all of Tenant's signs in first class condition, properly illuminated and undamaged. Any damaged signage must be promptly repaired or replaced by Tenant. Subject to the foregoing, Tenant shall be allowed the maximum signage allowed by local ordinance, Landlord's signage plan/criteria, and the provisions of the Master Lease.

14. Rules, Regulations, and Covenants. Tenant shall observe (and shall cause Tenant's Invitees to observe) faithfully and comply strictly with any rules and regulations which Landlord may from time to time adopt for the Project (and provide Tenant with a copy of—the rules and regulations in effect as of the

date of this Lease are attached hereto as Exhibit "H"); provided, however, that such rules and regulations shall not materially increase Tenant's obligations under this Lease, as well as any recorded easement agreements, maintenance agreements, CC&R's, or like instruments affecting the Project, whether now existing or hereafter adopted or amended from time to time (all of the foregoing, collectively, "Rules"). Notwithstanding anything contained in this Lease to the contrary, any Rules promulgated by the Landlord shall not materially impair Tenant's rights under this Lease, nor conflict with the express terms of this Lease, and shall be enforced in a reasonable, non-discriminatory manner.

15. Early Access/Insurance. If prior to the Lease Commencement Date Tenant is planning to (and permitted by Landlord to—see attached Exhibit "C") make any Alterations to the Premises or install any of Tenant's Personal Property (as defined below), then in addition to complying with the provisions of attached Exhibit "C," (i) Tenant shall, at Tenant's sole cost, prior to first entering onto the Project, obtain and thereafter at all times maintain all of the insurance to be maintained by Tenant during the Term pursuant to this Lease, and (ii) all obligations of Tenant under the provisions of this Lease other than those relating to the obligation to pay Rent, shall be operative. Any work pursuant to this Paragraph shall be subject to all of the provisions of Paragraph 20, below. Nothing in this Paragraph shall be construed as granting permission to Tenant to enter the Premises, or to make any Alterations, prior to the Lease Commencement Date and no such right shall exist unless specified in Exhibit "C" or agreed to by Landlord in its sole discretion.

16. Tenant's Insurance. Tenant shall procure and maintain throughout the Term, at its sole cost and expense: (a) a policy of commercial general liability insurance, including , damage to premises you rent coverage (not limited to fire damage) and an assumed contractual liability endorsement, insuring both Tenant and Landlord (and all persons, firms and corporations designated by Landlord) as an additional insured, against all claims, demands or actions arising out of or in connection with occurrences within the Premises, Tenant's use or occupancy of the Premises, the condition of the Premises, the acts or omissions of all Tenant Parties in the Premises and elsewhere in the Project, and for liabilities assumed under this Lease, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate per Restaurant location with a blanket (umbrella) policy with limits of \$8,000,000; (b) fire and extended coverage insurance covering the full replacement value of all Alterations, equipment, furniture, fixtures and inventory made or placed by Tenant in the Premises against "all-risk" of physical loss and covering loss of income or business interruption losses (over a 12-month period); and (c) worker's compensation insurance with limits no less than that required by Law. All such policies shall be written by insurance companies licensed to do business in the state in which the Project is located with a Best's Rating of at least "A-" and a Best's Financial Size Category rating of at least "VIII," as set forth in the most current edition of "Best's Insurance Reports," and from a responsible company reasonably satisfactory to Landlord and Landlord's lender. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least 30 days prior to cancellation of such insurance, and the liability policy shall contain an assumed contractual liability endorsement. Tenant's liability policy shall include coverage for premises and operations, products and completed operations, blanket contractual, personal injury, operation, ownership, maintenance, and use of owned, non-owned, and hired automobiles, bodily injury and property damage, as aforesaid. The general liability and umbrella/excess liability policy(ies) required under this Paragraph shall (1) contain a cross-liability endorsement between Landlord and Tenant (or such policy shall not contain a cross-liability exclusion); (2) contain a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance; (3) be written on an "occurrence" basis and not on a "claims-made" basis; The property policy shall provide that, at the election of any holder of a deed of trust encumbering Landlord's interest in the Master Lease

("Landlord's Mortgagee"), the proceeds of any insurance will be paid to a trustee or depository designated by Landlord's Mortgagee; All policies required under this Paragraph shall (1) contain a waiver by the insurer of any right of subrogation in favor of Landlord, its agents, employees, or representatives, as contemplated by Paragraph 17, below; (2) not be cancelable or subject to reduction of coverage or other modification except after 30-days' (10 days for non-payment of premium) prior written notice to Landlord, Master Landlord, and any Lender (Note: the words "endeavor to" and "failure to mail such notice shall impose no obligation for liability . . ." or any words of similar meaning contained in any insurance certificate regarding the obligation set forth in this clause are unacceptable and these two phrases must be crossed out if they appear in the printed certificate form); and (3) shall not provide for a deductible in excess of \$5,000.00. At Landlord's election, Tenant shall also name Master Landlord and Landlord's Lender as loss payee under all fire and extended coverage policies, and as an additional insured under all general public liability policies of insurance, as their interests may appear. Such policies or duly executed certificates of insurance shall promptly be delivered to Landlord, and in all events, prior to the Rent Commencement Date, and renewals thereof shall be delivered to Landlord and Master Landlord and Lender at least 30 days prior to the expiration of the respective policy terms. Tenant's failure to comply with the foregoing requirements relating to insurance shall constitute an Event of Default hereunder. In addition to the other remedies provided in this Lease, upon such failure by Tenant, Landlord may, but is not obligated to, obtain such insurance on behalf of the parties hereto, whereupon Tenant shall pay to Landlord upon demand, as Additional Rent, the premium cost thereof plus interest thereon at the Default Rate from the date of payment by Landlord until repaid by Tenant. All such insurance may be carried under a blanket policy covering the Premises and other locations; provided that the coverage afforded Landlord by such blanket policy shall not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Lease are otherwise satisfied. Upon written request from Landlord, Tenant shall make such modifications to the insurance coverages specified herein, including adding additional coverages and/or modifying coverage amounts, in order to meet the requirements of the Master Lease or Lender requirements.

17. Waiver of Subrogation. Landlord and Tenant release each other, Tenant's Invitees, and Landlord's guests, landlord, invitees, customers and licensees (collectively, "Landlord's Invitees") from all claims for damage, loss, or injury to the Project, to Tenant's Personal Property, and to the fixtures and Alterations of either Landlord or Tenant in or on the Project to the extent such damage, loss or injury is covered by any insurance policies carried by Landlord and Tenant and in force at the time of such damage, or which would have been covered by insurance policies required by this Lease to be carried by Tenant, but which Tenant failed to carry. Subject to the remaining provisions of this Paragraph, Landlord and Tenant shall each cause all insurance policies obtained by it pursuant to this Lease to provide that the insurance company waives all right of recovery by way of subrogation against Landlord and Tenant in connection with any damage, loss, or injury covered by such policy. The foregoing release by Tenant will additionally extend to the Master Landlord and the Master Landlord shall be a named released party in any such waiver of subrogation endorsement to Tenant's insurance.

18. Landlord's Insurance. Landlord shall maintain such insurance and coverages as may be required by any lender holding a security interest encumbering Landlord's interest in this Lease or the Master Lease ("Lender") or required by the Master Lease, as well as such other or additional coverages as Landlord deems reasonable and as are commonly maintained by Landlords of similar projects to the Project. Landlord shall also maintain insurance covering exterior plate glass breakage in the Premises. The premiums, costs, expenses, and deductibles (or similar costs or charges) of and/or with respect to any such insurance (all of the preceding, collectively, "Insurance Expenses") shall be included in Operating Expenses. Any such coverage may be part of an umbrella or blanket policy, whereupon the premiums,

costs, and expenses hereof will be reasonably apportioned between the Project and the other properties so included under such policy(ies).

19. Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied or assessed against, or based upon the value of, Tenant's personal property installed or located in or on the Premises including without limitation trade fixtures, furnishings, equipment, and inventory (collectively, "Tenant's Personal Property"). On written demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of such payments. If any such taxes, assessments, license fees, and/or other charges are levied against Landlord or Landlord's property, or if the assessed value of the Premises is increased by the inclusion of a value placed on Tenant's Personal Property, and if Landlord pays such taxes, assessments, license fees, and/or other charges or any taxes based on the increased assessments caused by Tenant's Personal Property, then Tenant, on demand, shall immediately reimburse Landlord, as Additional Rent, for the sum of such taxes, assessments, license fees, and/or other charges so levied against Landlord, or the proportion of taxes resulting from such increase in Landlord's assessment. Landlord may, at its election, pay such taxes, assessments, license fees, and/or other charges or such proportion, and receive such reimbursement, regardless of the validity of the levy.

20. Alterations. Tenant shall not make any alterations, improvements, additions, installations, or changes of any nature in or to the Premises (any of the preceding, "Alterations") unless Tenant first obtains Landlord's and Master Landlord's written consent to such Alteration and otherwise complies with the provisions of this Paragraph 20; provided, however, no such consent will be required in connection with any minor, interior cosmetic Alterations the aggregate cost of which will not exceed \$30,000.00. Other than any such minor Alteration, Landlord reserves the right to perform or control the performance of any Alteration requested by Tenant, whereupon Tenant shall pay the cost thereof to Landlord within ten business days of written demand.

21. Surrender of Premises and Holding Over.

21.1 Surrender. On the Expiration Date, Tenant shall surrender to Landlord the Premises and all Alterations in a first class and clean condition, less any normal wear and tear, free of trash and debris and otherwise in a condition meeting the requirements for surrender under the Master Lease. Tenant shall additionally, as of the Expiration Date, (i) remove all of Tenant's Personal Property (subject to the provisions of Paragraph 23.4, below) and perform all repairs and restoration required by the removal of Tenant's Personal Property, and (ii) surrender to Landlord all keys to the Premises (including without limitation any keys to any exterior or interior doors). Landlord may elect to retain or dispose of in any manner any of Tenant's Personal Property that Tenant does not remove from the Premises (subject to the provisions of Paragraph 23.4, below) on the Expiration Date as required by this Lease by giving written notice to Tenant. Any such Tenant's Personal Property that Landlord elects to dispose of shall immediately upon notice to Tenant vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such Tenant's Personal Property. Tenant will be liable to Landlord for Landlord's costs for storing, removing (including related restoration work), or disposing of any such Tenant's Personal Property. If Tenant fails to surrender the Premises to Landlord on the Expiration Date in the condition required by this Paragraph, Tenant shall indemnify, defend, and hold Landlord harmless from and against all liabilities, damages, losses, costs, expenses, attorneys' fees and claims resulting from such failure, including without limitation any claim for damages made by Master Landlord or by a succeeding tenant, and in addition to all other rights and remedies of Landlord hereunder or at law or equity, any costs incurred by Landlord in causing the Premises to be placed in the surrender condition required of Tenant hereunder (plus interest thereon at the

Default Rate) shall be due and payable by Tenant to Landlord, upon demand. The provisions hereof shall survive termination of this Lease.

21.2 Holding Over. If Tenant, with Landlord's consent, remains in possession of the Premises after the Expiration Date, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on 30-days' written notice given at any time by Landlord or Tenant. During any such month-to-month tenancy, or any other holdover tenancy which is without Landlord's consent, Tenant shall pay, as minimum monthly rent, an amount equal to 120% of the total Rent which would otherwise be payable hereunder but for the occurrence of the Expiration Date; which rental amount Tenant acknowledges is fair and reasonable under all of the facts and circumstances existing as of the date of this Lease. All provisions of this Lease except for those pertaining to Term shall apply to any such tenancy. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute consent to a holdover tenancy hereunder or result in a renewal. The foregoing provisions of this Paragraph 21.2 are in addition to, and do not affect, Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon expiration or other termination of this Lease. The provisions of this Paragraph 21.2 shall not be considered to limit or constitute a waiver of any other rights or remedies of Landlord provided in this Lease or at law.

22. Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (each an "Event of Default"):

22.1 The abandonment (as defined in the California Civil Code 1951.3) of either Restaurant by Tenant.

22.2 Tenant's failure to make any payment of Rent (including late charges) as and when due, where such failure continues for a period of ten business days following written notice to Tenant. Such written notice will be deemed to satisfy the statutory notice requirements of applicable unlawful detainer statutes and will be in lieu thereof (and not in addition thereto). No grace period prior to the imposition of a late charge pursuant to Paragraph 24, below, shall extend the date when such Rent is due and payable, and Tenant shall be in default under this Lease if such payment is not timely made.

22.3 Tenant's failure to timely deliver an estoppel certificate to Landlord in accordance with the provisions of Paragraph 40, below or to timely deliver a subordination, non-disturbance, and attornment agreement in accordance with the provisions of Paragraph 39, below.

22.4 Tenant's breach of its obligations under Paragraph 7.4.1, by failing to so operate the Premises (subject to Paragraph 7.4.2, above) for a period in excess of five consecutive business days, and where such failure continues for a period of five business days following written notice thereof from Landlord to Tenant, or if such breach occurs more than three times in any calendar year.

22.5 Tenant's failure to comply with the provisions of Paragraph 8.5, above, where such failure continues for a period of ten days following written notice to Tenant.

22.6 Tenant's failure to complete the removal of any Prohibited Substances pursuant Paragraph 37, below, within the 30 days period following written notice from Landlord, as provided for in such Paragraph, and where such failure thereafter continues for an additional ten days following a written notice of default under this Paragraph 22.6.



22.7 Tenant's failure to observe or perform any of the provisions of this Lease to be observed or performed by Tenant (other than matters described in Paragraphs 22.1 through 22.6, above, or Paragraphs 22.8 through 22.11, below, as to which such Paragraphs shall control) where such failure shall continue for a period of 30 days after written notice of such failure from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable unlawful detainer statutes; and provided further, that if the nature of Tenant's default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure promptly within such 30-day period and thereafter diligently prosecutes such cure to completion within 90 days after Landlord's written notice. Such written notice will be deemed to satisfy the statutory notice requirements of applicable unlawful detainer statutes and will be in lieu thereof (and not in addition thereto).

22.8 The making by Tenant of any general arrangement or assignment for the benefit of creditors; Tenant's becoming bankrupt, insolvent or a "debtor" as defined in 11 U.S.C. Section 101, or any successor statute (unless, in the case of a petition filed against Tenant, such petition is dismissed within 60 days after its original filing); the institution of proceedings under the bankruptcy or similar laws in which Tenant is the debtor or bankrupt; the appointing of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease (unless possession is restored to Tenant within 60 days after such taking); the attachment, execution, or judicial seizure of substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease (unless such attachment, execution, or judicial seizure is discharged within 60 days after such attachment, execution, or judicial seizure); or, if Tenant is a partnership or consists of more than one person or entity, any partners of the partnership or any such other person or entity becoming bankrupt or insolvent or making a general arrangement or assignment for the benefit of creditors.

22.9 Any act or omission by Tenant which results in a default under the Master Lease where such default is not cured by Tenant within ten business days of Landlord's delivery to Tenant of a written notice from Master Landlord claiming such default, or within the time frame for curing a default under Paragraph 22.7, above, where Landlord has not received a notice of default from the Master Landlord.

22.10 Tenant's failure to satisfy the Performance Covenant as of any Comparison Date.

22.11 If Tenant shall, directly or indirectly, operate, manage, or own any restaurant that is wholly or partially located on any portion of San Diego Bay that is north of the Coronado Bridge and that either: (i) competes with either of the Restaurants' theme, décor, and/or food/menu, or (ii) has more than 200 seats, or (iii) has meeting and/or banquet facilities.

23. Landlord's Remedies. Landlord shall have the following remedies if Tenant commits an Event of Default under this Lease. These remedies are not exclusive, but are cumulative and in addition to any remedies provided elsewhere in this Lease or now or later allowed by law.

23.1 Continuation of Lease. No act by Landlord shall terminate Tenant's right to possession unless Landlord notifies Tenant in writing that Landlord elects to terminate Tenant's right to possession. As long as Landlord does not terminate Tenant's right to possession, Landlord may (i) continue this Lease in effect, (ii) continue to collect Rent when due and enforce all the other provisions of this Lease, and (iii) enter the Premises and relet them, or any part of them, to third parties for Tenant's account, for a period shorter or longer than the remaining Term of this Lease. Tenant shall immediately pay to Landlord all costs Landlord incurs in such reletting, including, without limitation, brokers'

commissions, attorneys' fees, advertising costs, and expenses of remodeling the Premises for such reletting. The parties agree that Landlord is to have the remedy described in California Civil Code Section 1951.4 (which effectively provides that a lessor may continue a lease in effect after the lessee's breach and recover rent as it becomes due), and the Tenant hereby acknowledges that this Lease meets the requirements of such statutory provision and that Tenant's rights to sublet or assign hereunder are subject only to reasonable limitations.

23.2 Rent from Reletting. If Landlord elects to relet all or any portion of the Premises as permitted above, rent that Landlord receives from such reletting shall be applied to the payment of, in the following order and priority, (i) any indebtedness from Tenant to Landlord other than Rent due from Tenant, (ii) all costs incurred by Landlord in such reletting, and (iii) Rent due and unpaid under this Lease. After applying such payments as referred to above, any sum remaining from the rent Landlord receives from such reletting shall be held by Landlord and applied in payment of future Rent as it becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord unless and until all obligations of Tenant under this Lease, including all future obligations, are satisfied in full.

23.3 Termination of Tenant's Right to Possession. Landlord may terminate Tenant's right to possession of the Premises at any time, by notifying Tenant in writing that Landlord elects to terminate Tenant's right to possession. Such written notice will result in the immediate termination of this Lease upon the date such right of possession is terminated. Upon termination of this Lease, Landlord has the right to recover from Tenant (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of such termination, (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after such termination until the time of award exceeds the amount of such loss of Rent that Tenant proves could have been reasonably avoided, (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award (had there been no such termination) exceeds the amount of such loss of Rent that Tenant proves could be reasonably avoided, and (iv) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or in the ordinary course of things would be likely to result therefrom. The "worth at the time of the award" of the amounts referred to in clauses (i) and (ii) above is to be computed by allowing interest at the Default Rate. The "worth at the time of the award" of the amount referred to in clause (iii) above is to be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

23.4 Termination Cooperation Requirements. In addition to the provisions of Paragraph 23.3, above, upon the termination of this Lease, under any provision hereof, the following additional provisions shall apply, which provisions shall survive the termination of this Lease (the "Termination Cooperation Requirements").

23.4.1 Upon any such termination: (i) Tenant shall cause all Gross Sales and Restaurant Expenses (as defined on attached Exhibit "D") to be prorated as of the termination of this Lease; (ii) Tenant shall terminate all of the Restaurants' employees (unless the New Island Prime Lease is required to be entered into pursuant to Paragraph 8.6.2, above, or Paragraph 29.3, below, in which case Tenant shall be obligated to terminate only the New Restaurant's employees), and pay any unpaid vacation pay, bonuses, sick pay, or other benefits relating thereto and thereafter, Landlord (either directly or through its designee) shall have the right (but not the obligation) to re-hire such employees for the Restaurants (or just the New Restaurant if the New Island Prime Lease is required to be entered into); (iii) (a) within 20 days after the receipt of the items described in subclause (a) of clause (iv) of this sentence,

Landlord shall provide Tenant with a written list of information (the "Information Request") Landlord will reasonably require to support the final accounting described in this subparagraph (the "Final Accounting Information") and the amounts due by Landlord to Tenant pursuant to Paragraph 23.4.2 (the "Final Payment Information"), and (b) Tenant shall, within 20 days after its receipt of the Information Request or 30 days after termination of the Lease, whichever is later, deliver to Landlord a final accounting for both Restaurants through the date of termination of this Lease, which shall, among other things, specifically identify any and all Restaurant Expenses which have been incurred as of such date but which have yet to be paid; (iv) Tenant shall, within ten days after the termination of this Lease, deliver and convey to Landlord (a) copies of Tenant's Records with respect to the Restaurants prepared and/or maintained by Tenant for the prior two complete calendar years preceding the termination of this Lease, as well as year-to-date, along with such other books, records, and information in Tenant's possession or control that are reasonably necessary for the ownership, operation and management of the Restaurants by Landlord or its designee (or just the New Restaurant if the New Island Prime Lease is required to be entered into), (b) originals or copies of all permits, insurance policies, licenses, warranties, contracts, and other documents pertaining to the Restaurants in the possession or under the control of Tenant (provided that if the New Island Prime Lease is required to be entered into, Tenant shall be obligated to deliver only those items related to the New Restaurant), (c) trademarks, names, copyrights, recipes, menus, websites, domain names, telephone numbers, facsimile numbers, documentation, manuals, creative works, and information created on behalf of Tenant with respect to the Restaurants, including, without limitation, any development of the New Restaurant's concept (collectively, the "Intangible Property"); provided, however, if the New Island Prime Lease is required to be entered into pursuant to Paragraph 8.6.2, above, or Paragraph 29.3, below, the Intangible Property related to the Island Prime Restaurant shall be excluded, and (d) menus and recipes for all items on such menus (provided that Landlord will use such recipes and menus only for up to six months, and if the New Island Prime Lease is required to be entered into, the menus and recipes related to the Island Prime Restaurant shall be excluded), lists of customers, mailing lists, records, sketches, drawings, prints, computations, charts, reports, menus, proposals to prospective customers, and other records or documents pertaining to the Restaurants in the possession or under the control of Tenant which are necessary or desirable for the ownership, operation, and management of the Restaurants (provided that if the New Island Prime Lease is required to be entered into, Tenant shall be obligated to deliver only those items related to the New Restaurant); (v) Tenant shall, at Landlord's request, assign or cause to be assigned to Landlord or its designee such then-existing agreements, if any, that are in Tenant's name or control pertaining to the Restaurants (or just the New Restaurant Lease if the New Island Prime Lease is required to be entered into); provided, however, that Landlord shall have no obligation to assume any such agreements and may reject any such agreement; (vi) Tenant shall transfer and surrender (and Landlord shall be deemed the owner of without payment of additional consideration other than as provided in Paragraph 23.4.2, below) all inventory and supplies relating to the New Restaurant, and all cutlery, flatware, china, silverware, glassware, and smallware which Landlord elects to continue to use in the New Restaurant, and all equipment in the New Restaurant which Landlord elects to continue to use in the New Restaurant; and (vii) Tenant, at no additional expense to Landlord, shall reasonably cooperate with Landlord or its designee in the transition of the management and operation of the Restaurants (or just the New Restaurant if the New Island Prime Lease is required to be entered into) and, in that connection (if as of such termination Landlord has not yet obtained a liquor license solely in its name [the "New Liquor License"] for the New Restaurant or for both Restaurants if the New Island Prime Lease is not required to be entered into pursuant to Paragraph 8.6.2, above, or Paragraph 29.3, below), Tenant shall, at Landlord's option, enter into a commercially reasonable operating/management agreement reasonably required by Landlord such that Tenant shall continue to operate the pre-existing Liquor License (on Landlord's behalf) with respect to the New Restaurant (or both Restaurants, if applicable) in compliance with the Alcoholic Beverage Control laws of the State of California and all rules and

regulations promulgated thereunder until Landlord has obtained the New Liquor License and Tenant shall promptly execute and deliver to Landlord any applications and other documents reasonably necessary in connection with Landlord's applying for and obtaining the New Liquor License. The obligations in this Paragraph 23.4.1 shall survive the termination of this Lease.

23.4.2 Upon Tenant's compliance with the requirements of Paragraph 23.4.1, above, including the obligation to turn over all inventory and consumable supplies related to the New Restaurant, Landlord shall reimburse Tenant for 100% of Tenant's actual costs incurred to purchase the inventory of food, beverages and other products held for resale which are turned over to Landlord and 50% of the consumable supplies on hand which are so turned over to Landlord, as such amounts are equitably reduced to reflect the actual remaining quantity of such items as of the date such items are turned over to Landlord. Additionally, once Tenant shall have turned over to Landlord all cutlery, flatware, china, silverware, glassware, and smallware which Landlord elects to continue to use in the New Restaurant, Landlord shall reimburse Tenant for 50% of the unamortized portion of the actual cost incurred by Tenant to purchase the cutlery, flatware, china, silverware, glassware, and smallware which Landlord elects to continue to use (calculated on a straight-line basis over the useful life of five years) of these items in the New Restaurant. Additionally, if the termination occurs before the fifth anniversary of the Lease Commencement Date, Landlord shall reimburse Tenant for the unamortized portion of the actual cost (calculated on a straight-line basis over the useful life of ten years) of any furniture, fixtures, and equipment purchased for the New Restaurant as of such termination which was purchased by Tenant out of Tenant's own funds (and not reimbursed to Tenant out of the FF&E Work Allowance—as defined in attached Exhibit "C") and 50% of the unamortized portion of the actual cost (calculated on a straight-line basis over the useful life of ten years) of any furniture, fixtures, and equipment purchased by Tenant during the first five years of the Term for use in the New Restaurant and which Landlord elects to continue to use in the New Restaurant (with Tenant having the right and obligation to remove—including repair of damage caused by such removal—any other furniture, fixtures, and equipment which Landlord does not so elect to continue to use). In addition to the foregoing, upon a termination of this Lease where Landlord is electing to continue to operate the New Restaurant and/or (subject to Paragraph 8.6.2 and Paragraph 29.3) the Island Prime Restaurant, Tenant and Landlord will work together to cause a smooth transition including, at Landlord's reasonable election, assumption by Landlord of obligations of Tenant relating to the Restaurants and which relate to the period following termination of this Lease. The amounts payable by Landlord pursuant to this Paragraph 23.4.2 shall be paid within 60 days after the later of (i) the date Tenant provides Landlord with the Final Accounting Information, or (ii) the date Tenant provides Landlord with the Final Payment Information.

23.5 Landlord's Right to Cure Default. Landlord, at any time after Tenant commits an Event of Default, may cure such Event of Default at Tenant's sole cost. If Landlord at any time, by reason of Tenant's default or breach, pays any sum or does any act that requires the payment of any sum, such sum shall be due immediately from Tenant to Landlord at the time such sum is paid, and shall be deemed Additional Rent under this Lease. If Tenant fails to timely pay any amount due under this Paragraph within ten business days of receipt of Landlord's invoice for such costs, then (without curing such default) interest at the Default Rate shall accrue (and be immediately payable) on such overdue amount until it is paid.

23.6 Enforcement Costs. All costs and expenses incurred by Landlord in connection with collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease, or to enforce any provision of this Lease, including reasonable attorneys' fees, whether or not any action is commenced by Landlord, provided that if an action is commenced by Landlord or the matter is made subject to arbitration as set forth in Paragraph 45.7, below, Landlord is the prevailing party, shall be paid

by Tenant to Landlord upon demand. If Tenant fails to timely pay any amount due under this Paragraph, then (without curing such default) interest at the Default Rate shall accrue (and be immediately payable) on such overdue amounts until it is paid.

24. Interest and Late Charges. Late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which would be impracticable or extremely difficult to fix. Such costs include, without limitation, processing, collection and accounting charges, and late charges that may be imposed on Landlord by the terms of any deed of trust covering the Premises. Therefore, if any Rent (in the form of good funds) is not received by Landlord within ten business days of its due date, then, without any requirement for notice to Tenant, Tenant shall owe and pay to Landlord an additional sum of ten percent of such overdue amount as a late charge. Such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment by Tenant, and therefore this Paragraph is reasonable under the circumstances existing at the time this Lease is made. Acceptance of such late charge by Landlord shall not constitute a waiver or cure of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease any or all of which may be exercised before, concurrently, or after Landlord's exercise of its rights hereunder. In addition to the late charge payable by Tenant, as provided above, if any such Rent is not paid within 30 days of the date such Rent was due, then Tenant shall pay to Landlord interest on such overdue Rent (from such 30th day until all amounts, including interest, are paid in full) at the rate of seven percent per annum above the "reference rate" announced from time to time by Bank of America, NT&SA, or the maximum amount permitted by law, whichever is less (the "Default Rate"). If such reference rate ceases to be announced, then a comparable "prime rate" shall be utilized, as selected by Landlord.

25. Landlord Default – Tenant's Remedies. If Landlord fails to cure a default by Landlord within any applicable cure period (or if no cure period is specified, then within 15 days of written notice from Tenant setting forth the nature of the claimed default; provided, however, if the nature of the cure of such default will reasonably require more than 15 days to complete and Landlord is proceeding with due diligence to remedy such matter, then such 15 day period will be extended for such additional time as may be necessary for Landlord to complete such cure), Tenant may, as Tenant's sole remedy, remedy such default, whereupon Landlord shall reimburse Tenant for the reasonable third-party costs incurred by Tenant to remedy such default within 30 days after receipt of Tenant's written demand therefor, together with copies of the paid invoices evidencing the costs so incurred. In no event will Tenant have any right to offset any amount owed by Landlord (regardless of whether Landlord is in default hereunder) against Tenant's monetary obligations under this Lease. Notwithstanding anything to the contrary in this Paragraph, no act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder or to terminate this Lease (if any), shall result in a release of such obligations or a termination of this Lease unless (i) Tenant has given notice by registered or certified mail to Landlord and to the Master Landlord, or any Landlord's Mortgagee whose identity and address shall have been furnished to Tenant, and (ii) Tenant offers such third parties a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or judicial foreclosure, if such should prove necessary to effect a cure. Landlord shall, from time to time, give Tenant written notice of the identity and address of any such Lender and/or the lessor under any master or ground lease.

26. Lender/Master Landlord Required Modifications. If Master Landlord or any potential Lender requests commercially reasonable modifications to this Lease, or a separate agreement between Tenant and such third party, Tenant shall promptly, and in good faith, negotiate the terms of such

amendment or separate agreement and execute and deliver such instrument in a timely manner. Notwithstanding the foregoing, in no event will Tenant be required to relinquish any material rights under this Lease, or accept any additional material obligations, as a result of any such instrument.

27. Destruction. If the Project is totally or partially destroyed during the Term, rendering the Premises totally or partially inaccessible or unusable, then, subject to the remainder of this Paragraph 27, (i) Landlord shall promptly commence work necessary to restore the Project to substantially the same condition as it was in immediately before such destruction and shall diligently prosecute such restoration work until completed, (ii) Landlord shall not be required to restore Tenant's Alterations or Tenant's Personal Property, unless they are an integral part of the Premises and they are specifically covered by insurance proceeds received by Landlord, such excluded items being the sole responsibility of Tenant to restore, (iii) such destruction shall not terminate this Lease (except as provided below), and (iv) all obligations of Tenant under this Lease shall remain in effect, except that the Minimum Monthly Rent shall be abated or reduced, between the date of such destruction and the date of Substantial Completion of restoration, in proportion to the amount of space in the Premises rendered unusable or inaccessible by the destruction and if, as a result thereof, Tenant is unable to operate in one or both of the Restaurants, then Tenant's share of the Operating Expenses shall be equitably reduced in proportion to the extent to which such Operating Expenses are not benefitting Tenant. Notwithstanding anything to the contrary in this Paragraph, Landlord shall have ten business days from the date of Landlord's determination that this sentence applies to the subject destruction/reconstruction, in which to terminate this Lease (or if such damage/destruction only affects one of the Restaurants to the extent described in this sentence, then Landlord may terminate this Lease only as it applies to such affected Restaurant, whereupon the Minimum Monthly Rent payable hereunder shall be reduced by 50% and Tenant's share of the Operating Expenses shall be equitably reduced in proportion to the extent to which such Operating Expenses are not benefitting Tenant as a result of such partial termination of this Lease) if Landlord determines that (1) such destruction (which is not de minimus in nature) occurs during the last year of the Term (as such Term may have been extended by Tenant pursuant to Paragraph 5.2, above), (2) then-existing laws do not permit such restoration, (3) any Lender exercises its right not to allow Landlord to rebuild or exercises its right to apply insurance proceeds to its debt, or (4) Master Landlord (or the Master Lease) does not permit such reconstruction or such damage/destruction event results in a termination of the Master Lease. Additionally, if Landlord fails to Substantially Complete such restoration work within one year, Tenant may, by 30 days' written notice to Landlord delivered after such year (during which period of time such restoration is not Substantially Completed), terminate this Lease, and if the damage/destruction only affects one of the Restaurants, Tenant may limit its termination of this Lease as to only the affected Restaurant, in which event the Minimum Monthly Rent payable hereunder shall be reduced by 50% and Tenant's share of the Operating Expenses shall be equitably reduced in proportion to the extent to which such Operating Expenses are not benefitting Tenant as a result of such partial termination of this Lease. In addition to the foregoing rights, Landlord may, at its election, terminate this Lease (or if such damage/destruction only affects one of the Restaurants to the extent described in this sentence, then Landlord may terminate this Lease only as it applies to such affected Restaurant and the Minimum Monthly Rent shall be reduced by 50%) by so notifying Tenant in writing on or before the later of 60 days after such destruction or 30 days after Landlord's receipt of the proceeds (or written notice of the amount of proceeds) from insurance maintained by Landlord, if (I) such destruction exceeds 20% of the then-replacement value of the Island Prime Restaurant, the New Restaurant, or the Project, or (II) Landlord reasonably determines that the cost of such restoration will exceed the amount of insurance proceeds relating to such destruction actually received (or to be received) by Landlord from insurance maintained by Landlord, excluding deductibles, by more than \$100,000.00. If Landlord or Tenant so terminates this Lease, then (x) Landlord shall have no obligation to restore the Project, (y) Landlord shall

retain all insurance proceeds relating to such destruction (other than proceeds from insurance maintained by Tenant on Tenant's Personal Property or Alterations), and (z) this Lease shall terminate as of 30 days after such notice of termination from Landlord to Tenant. Tenant hereby waives the provisions of California Civil Code Sections 1932(2) and 1933(4) or any successor statute with respect to any destruction of the Premises. If Landlord restores the Premises following any such destruction, Tenant shall immediately re-fixturate, re-equip, and restock the Premises (and the proceeds of all insurance carried by Tenant will be held by Tenant in trust for such purposes) and shall re-open the Premises for business as soon thereafter as is reasonably practicable. Further, Tenant shall, to the extent commercially reasonable, continue to operate its business in the Premises during such period of reconstruction. If Tenant does not intend to so reopen the Island Prime Restaurant or the New Restaurant (whichever is the subject of the damage or destruction) for business, it must notify Landlord in writing within 20 business days of such damage or destruction, whereupon Landlord may cease its repair work and Landlord may terminate this Lease. If pursuant to this Paragraph 27, this Lease is terminated as to one, but not both, of the Restaurants, Landlord and Tenant will jointly decide what to do with the portion of the Premises as to which this Lease terminated. If Landlord and Tenant are able to agree upon a new lease for such area, they shall promptly execute same—subject to obtaining any required approvals from Master Landlord—and proceed with such plan. If Landlord and Tenant cannot agree upon such plan within 90 days following such termination, then either party may submit such issue to arbitration pursuant to Paragraph 45.7, below; provided, however, the results of such arbitration may not impose upon Landlord an obligation to construct a new building or undertake any other project if it deems such construction/project economically unwise or is unable to obtain financing upon terms deemed satisfactory by Landlord, however, in such event Landlord will not be allowed to proceed with any development of such area without following the arbitrator's ruling or obtaining the approval of Tenant. If within 180 days following such termination Landlord and Tenant have been unable to agree upon such plan, and during such period neither party has submitted such matter to arbitration pursuant to the preceding sentence, then Landlord shall have no further obligation to include Tenant in any plan for such property and may pursue such plan or activities relative thereto as Landlord in its sole discretion deems appropriate.

28. Condemnation. If during the Term, or during the period of time between the execution of this Lease and the Lease Commencement Date, there is any taking of all or any part of the Premises or any interest in this Lease by the exercise of any governmental power, whether by legal proceedings or otherwise, by any public or quasi-public authority, or private corporation or individual, having the power of condemnation (any of the preceding a "Condemnor"), or a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending (any of the preceding, a "Condemnation"), the rights and obligations of Landlord and Tenant shall be determined pursuant to this Paragraph 28. If such Condemnation is of the entire Premises, then this Lease shall terminate on the date the Condemnor takes possession of the Premises (the "Date of Condemnation"). If such Condemnation is of any portion, but not all, of the Premises, and such Condemnation does not result in a termination of the Master Lease, then this Lease shall remain in effect, except that, if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises, as reasonably determined by Tenant, then Tenant may elect to terminate this Lease (or if such Condemnation only affects one of the Restaurants, then Tenant may so terminate this Lease only as it applies to such affected Restaurant and the Minimum Monthly Rent shall be reduced by 50%), by so notifying Landlord in writing (the "Termination Notice") within 30 days after the date that the nature and extent of the Condemnation have been determined. Such termination shall be effective on the earlier of (i) the date that is 30 days after the giving of the Termination Notice, or (ii) the Date of Condemnation. If Tenant does not give to Landlord the Termination Notice within such 30-day period, then all obligations of Tenant under this Lease shall remain in effect, except that (unless the Premises are restored as set forth

below) Minimum Monthly Rent and Tenant's share of Operating Expenses shall be equitably reduced in proportion to the degree of impairment to Tenant's continued use of the Premises. Unless Tenant gives to Landlord the Termination Notice within the relevant 30-day period, Tenant at its sole cost shall accomplish any restoration required by Tenant to use the Premises. A temporary Condemnation of the Premises, or any part of the Premises, for less than 180 days, shall not constitute a Condemnation under this Paragraph; but the Minimum Monthly Rent and Tenant's share of Operating Expenses shall be equitably abated as to the portion of the Premises affected during such temporary Condemnation. All compensation, sums, or anything of value awarded, paid, or received on a total or partial Condemnation (the "Award") shall belong to and be paid to Landlord and Tenant shall have no right to any part of the Award; notwithstanding the foregoing, Tenant shall be entitled to that part of the Award, if any, attributable to Tenant's relocation costs, restoration costs associated with the Premises (if this Lease is not terminated as a result of such Condemnation), Tenant's Personal Property, severance damages, and loss of business goodwill (excluding any bonus value or under-market premium attributable to this Lease), and Tenant hereby assigns to Landlord all of Tenant's right, title, and interest in and to any part of the Award other than those component enumerated above as to which Tenant is entitled. Landlord and Tenant waive the provisions of any statute (including, without limitation, California Code of Civil Procedure Section 1265.130 or any successor statute) that allows Landlord or Tenant to petition the superior court (or any other court) to terminate this Lease in the event of a partial Condemnation of the Premises. Notwithstanding the foregoing, Landlord and Tenant agree that all references to any condemnation awards and/or payments set forth herein shall refer to only such awards and/or payments that Landlord may receive under the provisions of the Master Lease and shall not in any manner affect the rights of the Master Landlord under the Master Lease. Further, the provisions hereof shall be subject and subordinate to the provisions relating to condemnation set forth in any deed of trust encumbering Landlord's interest in the Master Lease, and the provisions of such deed of trust shall control in the event of any conflict between such deed of trust and this Lease.

29. Assignment and Other Transfers.

29.1 Restrictions on Transfer. Without Landlord's prior written consent, which shall not be unreasonably withheld subject to compliance with Paragraph 29.4, below, none of the following shall occur (nor be permitted by Tenant to occur), voluntarily, involuntarily, by operation of law, or otherwise (any of the following, a "Transfer"): (i) any assignment, sublease, disposition, sale, concession, license, license agreement for the use of any portion of the Premises, mortgage, encumbrance, hypothecation, pledge, collateral assignment, or other transfer, by Tenant of this Lease, any interest in this Lease, or all or any portion of the Premises, (ii) any assignment, disposition, sale, transfer, acquisition, or issuance of the equitable interests in Tenant (whether stock, partnership or otherwise, and whether direct interests or indirect interests, as in the case of a transfer of equitable interests in an entity which in turn owns equitable interests in Tenant--any such interests are referred to herein as the "Equitable Interests"), to or by any person, entity, or group of related persons or affiliated entities, whether in a single transaction or in a series of related or unrelated transactions, (iii) any sale or other transfer of all or substantially all of the furniture, fixtures, and equipment of either or both Restaurants (unless such assets are being completely replaced with new furniture, fixtures, and equipment sufficient to allow the continued operation of the subject Restaurant(s)), or (iv) any other assignment, disposition, sale, transfer, acquisition, issuance of Equitable Interests, or other transaction which results in any change in control of Tenant such that Tenant ceases to be controlled by the Key Individual. Notwithstanding the foregoing, Landlord's prior consent will not be required for (a) a transfer, solely for estate planning purposes, of up to 49% of the Equitable Interests (in the aggregate, over the entire Term, and with any transaction under clause (b) being counted against such 49% cap--i.e., if a transaction under clause (b) has occurred transferring ten



percent of such Equitable Interests, then only 39% of such Equitable Interests can be transferred pursuant to this clause (a)), or (b) a transfer, which is not for estate planning purposes, of up to ten percent of such Equitable Interests (in the aggregate, over the entire Term)--provided that in the case of any transaction under clause (a) or (b) there may be no actual or potential change in control over Tenant or the day-to-day operations of Tenant as a result thereof, and provided further that Tenant provides Landlord with at least ten business days' prior written notice of such proposed transaction--which written notice must contain sufficient information to allow Landlord to confirm Tenant's compliance with the requirements hereof.

29.2 Transfer Provisions Generally.

29.2.1 At least 30 days prior to entering into any proposed Transfer, Tenant shall submit to Landlord the sum of \$1,000.00 (as payment toward Landlord's and Landlord's attorneys' cost of reviewing, consenting to, rejecting and/or consummating any proposed Transfer--provided that such \$1,000.00 payment will not be required for a Transfer where Landlord's consent is not required, as provided in Paragraph 29.1, above, and in the case of such Transfers which do not require prior consent Tenant will simply reimburse Landlord for any actual costs incurred by Landlord, not to exceed \$1,000.00, in connection with the process of confirming that the Transfer does not require prior consent and in reviewing the documents relating to such Transfer within ten business days of written demand), and a written notice ("Tenant's Notice") which includes (i) a fully executed copy of the instrument of transfer (*i.e.*, the sublease or assignment instrument) relating to the proposed Transfer, along with all related agreements, documents, instruments, exhibits, and escrow instructions, (ii) the name and address of the proposed subtenant, assignee or other transferee (any of the preceding a "Proposed Transferee"), (iii) an abstract of the terms and conditions of the proposed Transfer, including without limitation the economics of such proposed Transfer and the commencement or effective date of the proposed Transfer, which shall be at least 30 days after Tenant's Notice is given, and (iv) the nature, character, and current banking, financial, and other credit information and references with respect to the Proposed Transferee and the business of the Proposed Transferee (including without limitation tax returns for the three most-recent years, a business plan with cash-flow projections and financial projections with assumptions and competitive market analysis), in reasonably sufficient detail to enable Landlord to determine the Proposed Transferee's financial responsibility.

29.2.2 Within 20 days after Landlord's receipt from Tenant of such sum and Tenant's Notice, Landlord shall notify Tenant in writing that (i) Landlord consents to the proposed Transfer (subject to the approval of the Master Landlord and/or any Landlord's Mortgagee--it being acknowledged that any proposed Transfer will require both Landlord's consent as well as the subsequent consent, if Landlord conditionally consents to such Transfer pursuant to this clause (i), of the Master Landlord and any Landlord's Mortgagee), (ii) Landlord requires more information as a condition to granting or withholding its consent, (iii) Landlord elects to exercise its right of first offer pursuant to Paragraph 29.4, below, (iv) Landlord does not consent to the proposed Transfer, but does not elect to exercise its recapture right pursuant to Paragraph 29.3, below, or (v) Landlord does not consent to the proposed Transfer, and Landlord is electing to exercise its recapture right pursuant to Paragraph 29.3, below. Any consent by Landlord to any proposed Transfer shall not constitute a consent with respect to any other Transfer. If Landlord consents to any proposed Transfer, and Tenant fails to consummate such Transfer within 30 days of the commencement or effective date of the proposed Transfer (as set forth in Tenant's Notice) or, if Tenant's Notice fails to identify such a date, then within 150 days of the Tenant's Notice, then such consent shall be deemed withdrawn and Tenant shall be required again to comply with this Paragraph 29.2 before making a Transfer. While Landlord's consent to a Transfer will not unreasonably be withheld, Landlord and Tenant specifically acknowledge that, by virtue of the unique nature of the subject transaction, and the relationship between Landlord and Tenant's Key Individual, the

identity, experience, and financial wherewithal/acumen of any Proposed Transferee is uniquely important to Landlord and, accordingly, in addition to the right to reasonably disapprove of any proposed Transfer (including, without limitation, a sublease transaction which would circumvent the provisions relating to the Key Individual), Landlord and Tenant have specifically negotiated for Landlord to have the right of recapture and right of first offer described in Paragraphs 29.3 and 29.4, below. Further, Landlord shall have the right to impose reasonable conditions upon any such consent to Transfer. Tenant shall promptly reimburse Landlord for Landlord's reasonable cost (less the \$1,000.00 previously paid) of reviewing, consenting to, rejecting, and/or consummating any proposed Transfer, including without limitation reasonable attorneys' fees and costs/fees of Landlord's Lender in connection therewith. If Tenant fails to pay such amount within ten business days of written demand, Tenant shall be in default hereunder and Landlord shall have the right, in addition to its other rights and remedies under this Lease, to revoke its prior approval of the proposed Transfer if such Proposed Transferee has not yet taken over possession of the Premises.

29.3 Recapture. Landlord is hereby granted the right, exercisable within 20 days of receipt of Tenant's Notice, and if Landlord does not consent to the subject Transfer, by giving written notice (the "Recapture Notice") to Tenant of such election, to recapture the Premises and to terminate this Lease. If Landlord elects to exercise such right and delivers a Recapture Notice to Tenant, then (i) this Lease shall automatically be deemed terminated as of the commencement or effective date stated in Tenant's Notice for the proposed Transfer or that date which is 30 days following the delivery of the Recapture Notice, whichever is earlier, (ii) Landlord and Tenant shall enter into the New Island Prime Lease, (iii) Tenant shall be obligated to perform all of the Termination Cooperation Requirements (as described in Paragraph 23.4 above), and (iv) Tenant shall surrender possession of the Premises, subject to its right to retain the Island Prime Restaurant premises pursuant to the New Island Prime Lease, as of such date. Tenant acknowledges that any such election by Landlord shall benefit Tenant by relieving it of further liability under this Lease as to the subject space first accruing after the date of such recapture. Landlord's failure to exercise such right to give a Recapture Notice shall not constitute Landlord's consent to Tenant's proposed Transfer. Notwithstanding the foregoing, (i) Landlord's recapture right will not apply to a transfer, solely for estate planning purposes, of up to 49% of the Equitable Interests (as permitted without Landlord's prior consent by clause (a) of Paragraph 29.1, above), and (ii) Tenant shall have five business days from receipt of the Recapture Notice to rescind the request for a Transfer which triggered Landlord's rights under this Paragraph 29.3, and Landlord shall not have the right following any such recapture to enter into a lease for such portion of the Premises with the Proposed Transferee for a period of 36 months following the issuance of the Recapture Notice.

29.4 Right of First Offer. Notwithstanding anything to the contrary in this Paragraph 29, and in addition to Landlord's other rights relative to a proposed Transfer, Landlord is hereby granted a right of first offer in the case of any Transfer which involves any assignment, disposition, sale, transfer, acquisition, or issuance of the equitable interests in Tenant (whether stock, partnership or otherwise, and whether direct interests or indirect interests, as in the case of a transfer of equitable interests in an entity which in turn owns equitable interests in Tenant), to acquire the equitable interests which are the subject of such proposed Transfer upon the same terms and conditions as Tenant indicates it is willing to Transfer such equitable interests to a third party--provided that in no event will the closing for such transaction be less than 60 days after the date of delivery of the subject Tenant's Notice. To effectuate the foregoing, before committing to any proposed Transfer, Tenant shall deliver to Landlord a written notice containing an offer to Transfer the subject equitable interests to Landlord. Such written offer notice (the "Offer Notice") must set forth all of the material terms, provisions, and conditions upon which Tenant is offering to Transfer such equitable interests to Landlord (the "Offer Terms"). Landlord shall have 20 business days following receipt of the Offer Notice to accept such offer, by delivering a

written notice of acceptance to Tenant; whereupon the parties shall proceed to complete such Transfer in accordance with the Offer Notice. If Landlord fails to accept the Offer Notice within such 20 business day period, then Tenant shall have the right to proceed—subject to compliance with the requirements of the preceding portions of this Paragraph 29—with seeking to Transfer the equitable interests which were the subject of the Offer Notice; provided, however, if Tenant desires to Transfer such equitable interests upon any terms, provisions, or conditions which are more favorable to the Proposed Transferee than the Offer Terms, then prior to entering into an agreement with such Proposed Transferee, Tenant must first deliver to Landlord a written offer (the "Secondary Notice") to Transfer such equitable interests to Landlord upon the same terms and conditions as such equitable interests are being offered to the Proposed Transferee—provided that in no event will the closing for such transaction be less than 60 days after the date of delivery of the subject Secondary Notice. Such right of Landlord to consummate the Transfer of such equitable interests to Landlord upon the same terms and conditions as such equitable interests are being offered to the Proposed Transferee shall be exercisable within ten business days after Landlord's receipt from Tenant of the subject Secondary Notice, by Landlord's delivery of written notice to Tenant indicating such election to exercise such right. Upon delivery of such a notice of exercise by Landlord, the parties shall proceed in accordance herewith and in accordance with the subject Secondary Notice to consummate such Transfer. Notwithstanding the foregoing, Landlord's right of first offer will not apply to a transfer, solely for estate planning purposes, of up to 49% of the Equitable Interests (as permitted without Landlord's prior consent by clause (a) of Paragraph 29.1, above).

30. Landlord's Reserved Rights. In addition to the specific reserved rights identified in Paragraph 31, below, and subject to the terms, conditions, and limitations regarding Landlord's rights as set forth in this Lease, Landlord, as owner of the Project, in addition to Landlord's other rights, reserves the right from time to time: (i) to utilize portions of the Common Areas for, among other things, entertainment, outdoor shows, displays, automobile, boat and other product shows, the leasing of kiosks and carts, overflow parking in connection with the operation of the adjacent Sunroad Marina project, or such other uses which, in Landlord's reasonable judgment, are appropriate, (ii) to utilize the lighting standards and other areas or improvements in the Common Areas for advertising, notice purposes, or other reasonable purposes, (iii) to close any of the Common Areas to the extent required in the opinion of Landlord's legal counsel to prevent a dedication of any of the Common Areas or the accrual of any rights to any person or to the public in and to any portion of the Common Areas, (iv) to close, temporarily, any of the Common Areas for maintenance purposes, (v) to designate other property outside the boundaries of the Project to become part of the Common Areas, (vi) to close off or otherwise utilize portions of the Common Areas while constructing improvements or making repairs or alterations to any portion of the Project, (vii) to utilize portions of the Common Areas, on a temporary basis, as a staging area for any construction work by Landlord or its affiliates, agents, tenants, or contractors, and (viii) to make any changes to the Common Areas, or any part of the Project, including without limitation changes to buildings or other improvements, the addition of new buildings or other improvements, and/or changes in (among other things) the location of driveways, entrances, exits, vehicular parking spaces, or the direction of the flow of traffic. In exercising such rights, Landlord agrees to use commercially reasonable efforts to minimize any interference with Tenant's use of the Premises. In exercising any of the rights of Landlord set forth in this Paragraph 30, Landlord shall use good faith efforts to not unreasonably interfere with the operations of the Restaurants or to take action which is likely to have a material adverse effect on PLE.

31. Future Construction. Tenant acknowledges and agrees that Landlord may, from time to time, at its sole election, construct, reconstruct (including without limitation the replacement of certain improvements with other improvements), improve, modify, expand, or otherwise alter the Project, or portions thereof, including the installation of the Barge and the completion of the Landlord's Work relative to the Barge (collectively, "Construction Work"). In no event however will Landlord have any

obligation to do so. Tenant acknowledges that any such Construction Work will necessarily involve, among other things, the generation of noise, dust, and vibrations, barricading portions of the Project and the placement of scaffolding within the Project, demolition, structural alterations, storage of materials and equipment within the Project, and the presence of workmen within the Project, all of which may require the rearrangement of the Common Areas, including, without limitation, landscaping, parking areas (which may include the provision of temporary parking areas during periods of construction), roadways, lighting facilities, and the re-direction of vehicular and pedestrian traffic. Further, Landlord hereby reserves such licenses and easements in, on, above, or below the Premises as may be reasonably required (i) for the installation, inspection, surveying, maintenance, or construction of mains, conduits, shafts, columns, footings, piers, pipes, or other facilities to serve any building within the Project, or (ii) for any Construction Work; provided, however, Landlord will use its good faith efforts to minimize any unreasonable interference with Tenant's use, occupancy, or enjoyment of the Premises as contemplated by this Lease or any adverse impact upon the amount of PLE generated by the Premises. Except as provided below, Tenant waives any and all claims, defenses, rights of offset, or deductions based upon any inconvenience suffered by Tenant or any interruption of or interference with Tenant's business including, without limitation, any loss of business, damage to property, loss of electronic information, or inconvenience to Tenant or Tenant's Invitees as a result of or relating to such Construction Work. If (a) Tenant's business is materially and adversely impacted by such Construction Work, or (b) such Construction Work or the shoring up or erection of scaffolding and protective barricades in the event of excavation or other construction on any adjacent property or nearby street as described in Paragraph 33 below, results in Tenant being unable to access the Premises, or portions thereof, for the Permitted Use for a period of greater than three consecutive business days, then Tenant shall have the right to close the Restaurants (or if only one Restaurant is so affected, then only such affected Restaurant) temporarily until such material and adverse impact has ceased or access is restored, and during such period of temporary closure, all Minimum Monthly Rent shall be abated and, to the extent appropriate based on the circumstances and the extent of the effect upon Tenant, Tenant shall be entitled to an equitable abatement of its obligation to pay all or a portion of the Operating Expenses; further, the Term shall be extended for the same number of days as the period of closure (but in no event beyond the term of the Master Lease). Landlord hereby reserves for itself and its agents, employees, licensees, and contractors, the right to enter the Premises to the extent reasonably necessary to pursue such Construction Work upon 24 hours' prior notice to Tenant. Except for Tenant's right to temporarily close the Restaurant(s) and the abatement of Minimum Monthly Rent as set forth in this Paragraph 31, the exercise of any of Landlord's rights pursuant to this Paragraph will not entitle Tenant to any abatement of Rent or other claim, right of offset, or defense against Landlord, except that Tenant shall have the right (subject to the provisions of Paragraph 17) to bring an action against Landlord (as Tenant's sole remedy) in the event Tenant suffers any damages as a result of Landlord's gross negligence or intentional misconduct in pursuing such Construction Work. The expansion of the Project shall not increase the amount of the Operating Expenses and the portion thereof payable by Tenant. Anything in this Lease to the contrary notwithstanding, Landlord shall not (i) change the location, size or configuration of the Premises, or (ii) do or permit anything which would have a material, adverse effect on the visibility of the Premises, access to the Premises, or ingress and egress to the Project. Notwithstanding anything to the contrary contained herein, if such Construction Work involves the addition of a third restaurant at the Project (*i.e.* in addition to there already being two restaurants in the Project, Landlord elects to construct a new building as a restaurant, or converts a building hereafter constructed on the Project into a third restaurant) Tenant shall be entitled to a 30-day first right of negotiation relative to leasing such third restaurant from Landlord. If Landlord and Tenant are unable to agree upon terms for Tenant to lease such third restaurant within such 30-day period, then Tenant's rights shall terminate and Landlord shall be free to lease such third restaurant to a third party

provided that the economic terms of such lease are not materially more favorable to such third party tenant than the terms which Landlord offered to Tenant.

32. Easements. Landlord may, at its election, from time to time, grant such easements, rights and dedications, and cause the recordation of parcel maps, easement and operating agreements, and restrictions affecting the Premises and the Project, provided that no such acts materially and adversely affect Tenant's rights of ingress or egress to the Premises or Tenant's right to use the Premises. Tenant shall promptly sign any documents or instruments to accomplish the foregoing upon request by Landlord. Tenant irrevocably appoints Landlord as Tenant's special attorney-in-fact to execute and deliver such documents or instruments on behalf of Tenant if Tenant refuses or fails to do so within ten business days of written request.

33. Access by Landlord. Except as otherwise set forth in this Paragraph 33, Landlord and any of Landlord's Invitees shall have the right to enter the Premises at all reasonable times, during normal business hours if feasible under the circumstances, and upon 12 hours' notice to Tenant, if feasible under the circumstances, (i) to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease, (ii) to do any necessary maintenance or make any restoration to the Premises that Landlord has the right or obligation to perform, (iii) to serve, post, or keep posted any notices required or allowed under this Lease, (v) to post "for sale" or "for rent" or "for lease" signs during the final nine months of the Term (or the Extension Term if the Option to Extend has been exercised), (vi) to show the Premises to brokers, lenders, agents, prospective buyers, prospective tenants, or other persons interested in a listing of, financing, purchasing, or occupying the Project, the Premises or any portion of the Project or the Premises (but with respect to prospective tenants or occupants, only during the final nine months of the Term (or the Extension Term if the Option to Extend has been exercised)), and (vii) to shore the structural components of the Project, and to erect scaffolding and protective barricades around and about the Premises, but not so as to prevent entry to the Premises, and to do any other act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street. In the event of an emergency Landlord shall have the right to enter the Premises at any time, without prior notice to Tenant. Landlord's rights under clause (vii) of this Paragraph 33 extend, with Landlord's consent and at least 24 hours' notice to Tenant, to the owner of adjacent property on which excavation or construction is to take place and the adjacent property owner's agents, employees, officers, and contractors. Landlord shall not be liable for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of any entry on the Premises as provided in this Paragraph except actual damages resulting directly from the negligent acts or willful misconduct of Landlord or Landlord's Invitees. Except as set forth in Paragraph 31, Tenant shall not be entitled to any abatement or reduction of Rent because of the exercise by Landlord of any rights under this Paragraph. Landlord shall use its commercially reasonable, good faith efforts to minimize interference with Tenant's use of the Premises by its entry into the Premises pursuant to this Paragraph.

34. Indemnity. Tenant hereby agrees to indemnify, defend, protect, and hold harmless Landlord and Master Landlord and their respective shareholders, officers, directors, managers, agents, property managers, employees, contractors, and the partners and/or members comprising Landlord and/or Master Landlord (if any) ("Landlord Parties") from and against all Claims (as defined below) and all costs, expenses, and attorneys' fees incurred in the defense or handling of any such Claims or any action or proceeding brought on any of such Claims. For purposes of this Lease, the term "Claims" shall mean all actions, demands, liabilities, damages, losses, costs, expenses, attorneys' fees, and claims (except to the extent they result from Landlord's or Master Landlord's negligent acts or willful misconduct) arising from

or which seek to impose liability under or because of (i) Tenant's or Tenant's Invitees' use of the Premises, (ii) the conduct of Tenant's business, (iii) any activity, work, or things done, permitted, or suffered by Tenant or any of Tenant's Invitees in or about the Premises or elsewhere, (iv) any breach or default in the performance of any obligation to be performed by Tenant under this Lease, and/or (v) any negligence of Tenant or any of Tenant's Invitees. If any action or proceeding is brought against Landlord and/or Master Landlord and/or any Landlord Parties by reason of any such Claims, Tenant upon notice from Landlord shall defend such action or proceeding, at Tenant's sole cost, by legal counsel satisfactory to Landlord. Similarly, Landlord hereby agrees to indemnify, defend, protect, and hold harmless Tenant and its shareholders, officers, directors, managers, agents, employees, contractors, affiliates, and the partners and/or members comprising Tenant (if any) ("Tenant Parties") from and against all Tenant Claims (as defined below) and all costs, expenses, and attorneys' fees incurred in the defense or handling of any such Tenant Claims or any action or proceeding brought on any of such Tenant Claims. For purposes of this Lease, the term "Tenant Claims" shall mean all actions, demands, liabilities, damages, losses, costs, expenses, attorneys' fees, and claims (except to the extent they result from Tenant's negligent acts or willful misconduct) arising from or which seek to impose liability under or because of any breach or default in the performance of any obligation to be performed by Landlord under this Lease, and/or any gross negligence of Landlord or any of Landlord's agents, employees, or contractors. If any action or proceeding is brought against Tenant and/or any Tenant Parties by reason of any such Tenant Claims, Landlord upon notice from Tenant shall defend such action or proceeding, at Landlord's sole cost, by legal counsel satisfactory to Tenant. The provisions of this Paragraph 34 are subject to the provisions of Paragraph 17, above, and each party shall look to available insurance coverage prior to any action against the other hereunder.

35. Exemption of Landlord from Liability. Except to the extent caused by Landlord's negligent acts or willful misconduct, Tenant assumes all risk of, Tenant waives all claims against Landlord and Master Landlord in respect of, and neither Landlord nor Master Landlord shall be liable for any of the following: injury to Tenant's business, loss of income from such business, or damage or injury to the goods, wares, merchandise, or other property or the person of Tenant, Tenant's Invitees, or any other persons in, upon, or about the Premises, whether such damage, loss, or injury is caused by or results from criminal acts, fire, steam, electricity, gas, water, rain, the breakage, leakage, obstruction or other defects of pipes, sewer lines, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or any other cause, conditions arising upon the Premises, or other sources or places, and regardless of whether the cause of such damage, loss, or injury or the means of repairing such damage, loss, or injury is inaccessible to Tenant. In connection with the foregoing, Tenant hereby waives any defense would otherwise be provided by Section 1542 of the California Civil Code (which states "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor"), or laws of a similar nature, which would limit any such release to matters known or suspected to exist by Tenant. This Lease shall not be affected or impaired by any change to any part of the Project or any sidewalks, streets, or improvements nearby the Project.

36. Hazardous Substances.

36.1 Landlord's Covenants. Landlord hereby notifies Tenant, and Tenant hereby acknowledges that, prior to the leasing of the Premises pursuant to this Lease, Tenant has been notified, pursuant to California Health and Safety Code Section 25359.7 (or any successor statute), that Landlord knows, or has reasonable cause to believe, that certain hazardous substances (as such term is used in such Section 25359.7), such as common cleaning supplies, office supplies, spillage of petroleum products from motor vehicles, and other consumer products, may have come (and may in the future come) to be located

on or beneath the Premises and/or the Project. Notwithstanding the foregoing, Landlord shall not cause any unlawful accumulations of Hazardous Material (as defined below) to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Project by Landlord or its agents, employees, or contractors, except for limited quantities of standard office and janitorial supplies and petroleum and petroleum-related products commonly used on or at similar restaurant projects. Furthermore, Landlord shall: (i) use, store, and dispose of all such permitted Hazardous Material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the Term that govern and/or relate to Hazardous Material, public health and safety and protection of the environment, and (ii) comply at all times during the Term with all environmental laws (as defined in Paragraph 36.2, below. Except as to those matters which are Tenant's responsibility pursuant to Paragraph 36.2, below, Landlord shall be responsible, at its expense (or the expense of others; but not as an Operating Expense) to cause any unlawful accumulations of Hazardous Materials to be remediated in accordance with the requirements of all applicable environmental laws.

36.2 Tenant's Covenants. Prior to or following its execution of this Lease, Tenant shall, upon request from Landlord, complete and deliver to Landlord an Environmental Questionnaire in the form provided by Landlord. Tenant covenants, represents, and warrants that all of the information contained therein will be true, complete, and correct, and Tenant shall immediately notify Landlord of any fact or circumstance thereafter occurring which would change the information on such Environmental Questionnaire if such Environmental Questionnaire were completed as of the date of such changed fact or circumstance. Tenant covenants, represents, and warrants to the Landlord that its use of the Premises and the Project will be in full compliance with all environmental laws. Tenant hereby agrees to indemnify Landlord and Master Landlord against all actions, claims, demands, liabilities, damages, losses, costs, expenses, and attorneys' fees (except to the extent they arise as a result of Landlord's or Master Landlord's grossly negligent acts or willful misconduct), arising from or relating to: (i) any discharges, releases, or threatened releases of any Hazardous Material into ambient air, water, or land by Tenant or Tenant's Invitee's from, on, under, or above the Premises, (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or hazardous or toxic wastes, substances, or materials by Tenant or Tenant's Invitees, from, on, or under, the Premises, or (iii) Tenant's or Tenant's Invitees' violation of any environmental law on, under, or above the Premises (for purposes of this Lease, "environmental laws" shall mean any Federal, State, or local law, statute, regulation, ordinance, guideline, or common law principle relating to public health or safety or the use or control of the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Carpenter-Presley-Tanner Hazardous Substance Account Act, the California Hazardous Waste Control Law, the Federal Clean Air Act, the California Air Resources Act, the Federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, the Federal Resource Conservation and Recovery Act, the California Nejedly-Z'berg-Dills Solid Waste Management and Recovery Act, and California Health and Safety Code Section 25359.7). Tenant agrees to promptly reimburse Landlord and/or Master Landlord for all of Landlord's and/or Master Landlord's costs, as applicable, arising from periodic monitoring of Tenant's use, handling, or storage of Hazardous Substances at or surrounding the Premises. Tenant shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Project by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office and restaurant supplies and cleaning products. Tenant shall: (a) use, store, and dispose of all such permitted Hazardous Material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the Term that govern and/or relate to Hazardous Material, public health and safety and protection of the environment, and (b) comply at all times during the Term with all environmental laws. If the Premises and/or the Project are contaminated due to the acts or omissions of Tenant or Tenant's Invitees

by any Hazardous Material during the Term, then (1) Tenant shall promptly notify Landlord and Master Landlord in writing of such contamination, and (2) Landlord may elect to either (A) demand that Tenant perform all remediation required by Landlord and/or Master Landlord (to Landlord's and Master Landlord's satisfaction and at Tenant's sole cost, necessary to return the Premises (and/or the Project) to at least as good a condition as the Premises (or the Project) are in as of the date of this Lease, which Tenant shall immediately do upon receipt of notice from Landlord, or (B) proceed to cause such investigation, clean-up, and remediation work which Landlord and/or Master Landlord deems necessary or desirable to be undertaken, whereupon the entire cost thereof will be payable by Tenant to Landlord upon demand as Additional Rent. If, after demand by Landlord, as provided in this Paragraph, Tenant does not promptly commence and diligently pursue such remediation, then Landlord may, at Landlord's election, perform or cause to be performed such remediation and Tenant shall immediately, upon demand, pay the cost thereof to Landlord. Tenant's obligations and liability under this Paragraph shall survive the termination of Tenant's tenancy and the Term of this Lease, except that nothing contained in this Paragraph shall be deemed to impose liability on Tenant for any problem arising after the Term of this Lease provided neither Tenant nor Tenant's Invitees contributed to such problem during the Term of the Lease.

36.3 Definition of Hazardous Materials. As used in this Lease, the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Premises. Hazardous Material includes, without limitation: (i) any "hazardous substance", as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675); (ii) "hazardous waste", as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-6992k); (iii) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect); (iv) petroleum products; (v) radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297; (vi) asbestos in any form or condition; and (vii) polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

37. Prohibition Against Mold, Lead-Based Paint, and Asbestos-Containing Materials. Tenant shall not allow or permit any lead based paint to be used in the Premises, nor shall Tenant allow or permit any condition to occur which could result in the growth of mold within the Premises. Additionally, Tenant shall not allow or permit any materials which contain asbestos in any form or concentration ("Asbestos-Containing Materials") to be used or stored in the Premises or used in the construction of any improvements or alterations to the Premises, including, without limitation, building or construction materials and supplies. Such prohibition against Asbestos-Containing Materials shall apply regardless of whether the Asbestos-Containing Materials may be considered safe or approved for use by a manufacturer, supplier, or governmental authority, or by common use or practice. Landlord shall have the right, upon 24-hours' notice, to enter upon and conduct inspections of the Premises to determine Tenant's compliance with this Paragraph. If Tenant violates the foregoing covenants relating to lead-based paint, mold, and Asbestos-Containing Materials (collectively "Prohibited Substances"), then (i) Tenant shall, upon notice from Landlord, immediately remove such Prohibited Substances and remediate any damage from such Prohibited Substances at Tenant's sole cost, (ii) such removal and remediation shall comply with all applicable laws, regulations, and requirements, (iii) Tenant shall reimburse Landlord for all expenses incurred in connection with any inspection and testing of the Premises conducted by Landlord, and (iv)



unless Tenant completes such removal within 30 days after written notice from Landlord, Landlord may, at its election, do either or both of the following: (a) deliver a written notice of default pursuant to Paragraph 22.6, and/or (b) remove and remediate such Prohibited Substances and obtain reimbursement from Tenant for the cost of such removal and remediation. Tenant shall indemnify Landlord and Master Landlord, and their respective directors, officers, employees, and agents against all costs, liabilities, expenses, penalties, and claims for damages, including, without limitation, litigation costs and attorneys' fees, arising from (A) the presence of Prohibited Substances upon the Premises, to the extent that such Prohibited Substances are used, stored, or otherwise permitted in the Premises or used in the construction of any Alterations by Tenant or Tenant's agents, employees, representatives, or independent contractors, (B) any lawsuit, settlement, governmental order, or decree relating to the presence, handling, removal, or disposal of Prohibited Substances upon or from the Premises, to the extent that such Prohibited Substances are used, stored, or otherwise permitted in the Premises or used in the construction of any improvements or Alterations to the Premises by Tenant or Tenant's agents, employees, representatives, or independent contractors, or (C) Tenant's failure to perform its obligations to remove such Prohibited Substances under this Paragraph. The provisions of this Paragraph shall not apply to any Prohibited Substances brought onto the Premises by Landlord or Landlord's Invitees or resulting from the acts of Landlord or Landlord's Invitees. If any Asbestos-Containing Materials are brought onto the Premises by Landlord or Landlord's Invitees or resulted from the acts of Landlord or Landlord's Invitees subsequent to the Lease Commencement Date, Landlord shall remove and remediate same at its sole cost and expense.

38. Security Measures. Tenant acknowledges that (i) the Minimum Monthly Rent does not include the cost of any security measures for any portion of the Project (ii) Landlord shall have no obligation to provide any such security measures, (iii) Landlord has made no representation to Tenant regarding the safety or security of the Project, and (iv) Tenant will be solely responsible for providing any security it deems necessary to protect itself, its property, and Tenant's Invitees in, on, or about the Project. If Landlord provides any security measures at any time, then the cost thereof shall be included as part of the Operating Expenses, but Landlord will not be obligated to continue providing such security measures for any period of time, Landlord may discontinue such security measures without notice and without liability to Tenant, and Landlord will not be obligated to provide such security measures with any particular standard of care. Tenant assumes all responsibility for the security and safety of Tenant, Tenant's property, and Tenant's Invitees. Tenant releases Landlord and Master Landlord from all claims (other than due to Landlord's or Master Landlord's gross negligence or intentional misconduct) for damage, loss, or injury to Tenant, Tenant's Invitees, and/or to the personal property of Tenant and/or of Tenant's Invitees, even if such damage, loss, or injury is caused by or results from the criminal, reckless, or negligent acts of third parties. In connection with the foregoing, Tenant hereby waives any defense would otherwise be provided by Section 1542 of the California Civil Code (which states "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor"), or laws of a similar nature, which would limit any such release to matters known or suspected to exist by Tenant. Tenant is hereby instructed to conduct its own investigation through local police agencies regarding any criminal acts or dangerous conduct that has occurred in or near the Project. Landlord shall have no duty to warn Tenant of any criminal acts or dangerous conduct that has occurred in or near the Project, regardless of Landlord's knowledge of such crimes or conduct, and Tenant hereby undertakes to remain informed regarding such issues.

39. Subordination and Attornment. In addition to the fact that this Lease and Tenant's rights under this Lease are subject and subordinate to the Master Lease, as described in Paragraph 2, above, this Lease and Tenant's rights under this Lease are additionally subject and subordinate to any mortgage or

deed of trust encumbering the Landlord's interest in the Master Lease, and to all renewals, modifications, consolidations, replacements, or extensions of the foregoing, as well as to all other encumbrances and matters of public record applicable to the Project (collectively "Senior Instruments"). The provisions of this Paragraph shall be self-operative, and no further instrument of subordination shall be required. In confirmation of such subordination, however, Tenant shall execute and deliver, within ten business days of written request, any instruments that Landlord, any Lender, or the holder of any other Senior Instrument, may request to evidence such subordination, provided such instrument contains customary non-disturbance language in favor of Tenant and is consistent with the provisions of this Paragraph. If Tenant fails to execute and deliver to Landlord any such instrument within ten business days after Tenant's receipt thereof, then in addition to Landlord's other rights and remedies on account of such default, Tenant shall owe Landlord Additional Rent (which amount shall be payable upon demand) in an amount equal to \$100.00 for each day beyond such ten-day period that it delays in the execution and delivery thereof (as such daily sum may be increased from time-to-time pursuant to the Rules); provided, however, such \$100.00 per day penalty shall not apply (provided Tenant responds promptly to the submittal thereof with Tenant's reasonable objections thereto) if the subject instrument contains provisions that are not reasonable or, in the case of an instrument from a Lender or potential Lender, if it fails to include customary non-disturbance and recognition language acknowledging that so long as Tenant is not in default hereunder the holder of such Senior Instrument will not disturb Tenant's quiet enjoyment of the Premises and will recognize Tenant's rights under this Lease, including options to extend the Term, notwithstanding any exercise of remedies by the Lender under such Lender's Senior Instrument. If any Landlord's Lender, or the holder of any other Senior Instrument affecting the Premises, shall hereafter succeed to the rights of Landlord under this Lease, whether by foreclosure, deed in lieu of foreclosure, or otherwise, then (i) such successor landlord shall not be subject to any offsets or defenses which Tenant might have against Landlord, (ii) such successor landlord shall not be bound by any prepayment by Tenant of more than one month's installment of Minimum Monthly Rent or any other Rent, (iii) such successor landlord shall not be subject to any liability or obligation of Landlord except those arising after such succession, (iv) Tenant shall attorn to and recognize such successor landlord as Tenant's landlord under this Lease, (v) Tenant shall promptly execute and deliver any commercially reasonable instruments that may be necessary to evidence such attornment, (vi) upon such attornment, this Lease shall continue in effect as a direct lease (whether separately documented or not) between such successor landlord and Tenant upon and subject to all of the provisions of this Lease, and (vii) Tenant shall be entitled to quiet enjoyment of the Premises for so long as Tenant is not in default under the terms of this Lease or any substitute lease referenced above. Notwithstanding the preceding provisions of this Paragraph, if any ground lessor or Lender, or the holder of any other Senior Instrument, elects to have this Lease prior to the lien of its ground lease, deed of trust, mortgage, or other Senior Instrument, and gives written notice thereof to Tenant that this Lease shall be deemed prior to such ground lease, deed of trust, mortgage, or other Senior Instrument, whether this Lease is dated prior or subsequent to the date of such ground lease, deed of trust, mortgage, or other Senior Instrument, then this Lease shall be deemed to be prior to the lien of such ground lease, deed of trust, mortgage, or other Senior Instrument and such ground lease, deed of trust, mortgage, or other Senior Instrument shall be deemed to be subordinate to this Lease.

40. Estoppel Certificate. Within ten business days after written request from Landlord, Tenant shall execute and deliver to Landlord, in recordable form, an estoppel certificate stating (i) that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating all modifications, (ii) the then-current Minimum Monthly Rent, (iii) the dates to which Minimum Monthly Rent has been paid in advance, (iv) the amount of any security deposit, prepaid rent, or other payment constituting Rent which has been paid, (v) whether or not Tenant or, to Tenant's knowledge, Landlord is in default under this Lease and whether there currently exist any defenses or rights of offset under the

Lease in favor of Tenant, (vi) that any work by Landlord required by this Lease is complete (or stating any exceptions), and (vii) such other matters as Landlord may reasonably request. Tenant's failure to deliver such certificate within such ten business day period shall be conclusive upon Tenant for the benefit of Landlord, and any successor in interest to Landlord, any Lender or proposed Lender, and any purchaser or proposed purchaser of the Project that, except as may be represented by Landlord, this Lease is unmodified and in full force and effect, no Rent has been paid more than 30 days in advance, neither Tenant nor Landlord is in default under this Lease, no defenses or rights of offset under the Lease exist in favor of Tenant, and that all Landlord's work required by this Lease is complete. If Tenant fails to execute and deliver to Landlord a requested estoppel certificate within ten business days after its receipt of request therefor, then in addition to Landlord's other rights and remedies on account of such default, Tenant shall owe Landlord Additional Rent (which amount shall be payable upon demand) in an amount equal to \$100.00 for each day beyond such ten-day period that it delays in the execution and delivery thereof (as such daily sum may be increased from time-to-time pursuant to the Rules); provided, however, such \$100.00 per day penalty shall not apply (provided Tenant responds promptly to the submittal thereof with Tenant's reasonable objections thereto) if the estoppels certificate contains provisions that are beyond the scope described in this Paragraph.

41. Waivers.

41.1 Waivers Generally. No delay or omission in the exercise of any right or remedy of Landlord in the event of any default or Event of Default by Tenant shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any default other than the particular Rent payment accepted. Landlord's receipt and acceptance from Tenant, on any date (the "Receipt Date"), of an amount less than the Rent actually due on such Receipt Date, or to become due at a later date but applicable to a period prior to such Receipt Date, shall not release Tenant of its obligation (i) to pay the full amount of such Rent due on such Receipt Date or (ii) to pay when due the full amount of such Rent to become due at a later date but applicable to a period prior to such Receipt Date. No act or conduct of Landlord, including without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance by Landlord of the surrender of the Premises by Tenant before the Expiration Date. Only a written notice from Landlord to Tenant stating Landlord's election to terminate Tenant's right to possession of the Premises shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any other or subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

41.2 Statutory Waivers. In addition to such other statutory waivers set forth in this Lease, Tenant hereby waives any rights granted to Tenant under California Code of Civil Procedure Section 1179, California Civil Code Section 3275, and/or any successor statute(s). Tenant represents and warrants that if Tenant breaches this Lease and, as a result, this Lease is terminated, Tenant will not suffer any undue hardship as a result of such termination and, during the Term, will make such alternative or other contingency plans to provide for its vacation of the Premises and relocation in the event of such termination. Tenant acknowledges that Tenant's waivers set forth in this Paragraph are a material part of the consideration for Landlord's entering into this Lease and that Landlord would not have entered into this Lease in the absence of such waivers.

42. Brokers. Tenant represents that no real estate broker, agent, finder, or other person is responsible for bringing about or negotiating this Lease, and Tenant has not dealt with any real estate broker, agent, finder, or other person, relative to this Lease in any manner. Tenant shall indemnify, defend, and hold Landlord and Master Landlord harmless from and against all liabilities, damages, losses, costs, expenses, attorneys' fees and claims arising from any claims that may be made against Landlord or Master Landlord by any real estate broker, agent, finder, or other person alleging to have acted on behalf of or to have dealt with Tenant. Landlord represents that no real estate broker, agent, finder, or other person is responsible for bringing about or negotiating this Lease, and Landlord has not dealt with any real estate broker, agent, finder, or other person, relative to this Lease in any manner. Landlord shall indemnify, defend, and hold Tenant harmless from and against all liabilities, damages, losses, costs, expenses, attorneys' fees and claims arising from any claims that may be made against Tenant by any real estate broker, agent, finder, or other person alleging to have acted on behalf of or to have dealt with Landlord.

43. Limitations on Landlord's Liability. If Landlord is in default of this Lease, and as a consequence Tenant recovers a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy against the right, title, and interest of Landlord in the Master Lease, and out of rent or other income from the Project receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title, and interest in the Master Lease. Neither Landlord nor Landlord's shareholders, members, officers, directors, agents, property managers, employees, contractors, or the partners comprising Landlord (if any) shall be personally liable for any deficiency. If Landlord sells, assigns, or transfers its interest in this Lease or the Master Lease (whether voluntarily or involuntarily), Landlord, on consummation of the sale, assignment, or transfer, shall be released from any liability thereafter accruing under this Lease.

44. First Right to Negotiate. Notwithstanding anything to the contrary contained in this Lease, and in addition to all of Landlord's rights under Paragraph 29, above, if at any time during the Term of this Lease, Tenant intends to sell or otherwise transfer or convey, or to pursue a potential transaction involving the sale, transfer, or other conveyance of, all or any portion of its business conducted on the Premises (any of the foregoing a "Restaurant Business Transaction")—and in all events prior to entering into any letter of intent, memorandum of understanding, or purchase agreement relative to any Restaurant Business Transaction—Tenant shall notify Landlord in writing of such intention (the "First Right Notice"). Upon the delivery of the First Right Notice, Landlord and Tenant shall, in good faith, for a period of 30 days, attempt to negotiate the terms, provisions, and conditions upon which Tenant would be willing to enter into such proposed Restaurant Business Transaction with Landlord. If Landlord and Tenant have been unable to reach agreement upon the terms, provisions, and conditions upon which Tenant would be willing to enter into such proposed Restaurant Business Transaction with Landlord by the end of such 30-day period, then upon the final day of such 30-day period Tenant will provide Landlord with a written offer of the terms, provisions, and conditions upon which Tenant would be willing to enter into such proposed Restaurant Business Transaction with Landlord (such terms, provisions, and conditions in Tenant's written notice being referred to herein as the "Transaction Terms"); and Landlord shall have three business days in which to accept such offer upon the Transaction Terms. If Landlord and Tenant were unable to reach agreement upon the terms, provisions, and conditions upon which Tenant would be willing to enter into such proposed Restaurant Business Transaction with Landlord, and Landlord fails to accept Tenant's written offer of the Transaction Terms, then Tenant will be free to pursue the subject Restaurant Business Transaction with a third-party. Notwithstanding the foregoing, if Tenant has not consummated the subject Restaurant Business Transaction within six months following the expiration of

such 30-day negotiation period, then Tenant must provide Landlord with a new First Right Notice relative thereto and the parties shall follow the procedure set forth herein as if such new First Right Notice were the original First Right Notice. Furthermore, if Tenant desires to engage in a Restaurant Business Transaction on terms, provisions, and conditions which are less favorable to Tenant (or more favorable to the other party to such transaction) than the Transaction Terms, then prior to obligating itself to enter into such Restaurant Business Transaction, Tenant shall provide Landlord with a new written offer to enter into such Restaurant Business Transaction upon such different terms, provisions, and conditions, and Landlord shall have ten business days from receipt thereof to accept or reject such offer. If Landlord fails to timely accept such offer, then Tenant shall be free to pursue the subject Restaurant Business Transaction as if such failure were the equivalent of Landlord's failure to accept Tenant's original offer containing the original Transaction Terms. Notwithstanding anything to contrary in this Lease, Landlord's failure to exercise its rights hereunder shall not affect any of the Landlord's rights under this Lease. The foregoing rights are a continuing right and shall apply until a Restaurant Business Transaction has been consummated by Tenant in accordance with the requirements of this Paragraph (e.g., after the expiration of the six-month period described above, if no Restaurant Business Transaction has been consummated by Tenant in accordance with the requirements of this Paragraph, the Landlord's rights under this Paragraph shall reinstate and Tenant and Landlord shall follow the above described procedure as if no First Right Notice had been previously made by Tenant). Any third party consummating a Restaurant Business Transaction as described above shall acquire its rights to Tenant's business subject to the terms and conditions of this Lease. In no event may Tenant enter into any Restaurant Business Transaction, or any agreement relative to a Restaurant Business Transaction, without first complying with the provisions of this Paragraph 44.

45. Miscellany.

45.1 Tenant shall execute and deliver to Landlord on the Expiration Date, promptly on Landlord's request, a quitclaim deed to the Premises, in recordable form, designating Landlord as transferee. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of this Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate any existing subleases or may, at the option of Landlord, operate as an assignment to Landlord of any such subleases.

45.2 Neither this Lease nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Landlord and Tenant other than as lessor and lessee.

45.3 Tenant, upon paying the Rents herein reserved and performing and observing all of the other terms, covenants, and conditions of this Lease on Tenant's part to be performed and observed, will peaceably and quietly have, hold, and enjoy the Premises during the Term, free of lawful claims by any party acting by or through Landlord, subject, nevertheless, to the terms of this Lease, the Master Lease, and to any other Senior Instruments to which this Lease is or may be subordinated.

45.4 This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

45.5 This Lease shall be governed by and construed in accordance with the laws of the State of California. For purposes of venue and jurisdiction, this Lease shall be deemed made and to be

performed in the City of San Diego, California and Landlord and Tenant hereby consent to the jurisdiction of the Courts of State of California located in the County of San Diego.

45.6 Whenever the context so requires, all words used in the singular shall be construed to have been used in the plural (and vice versa), each gender shall be construed to include any other genders, and the word "person" shall be construed to include a natural person, a corporation, a firm, a partnership, a joint venture, a limited liability company, a trust, an estate, or any other entity. Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lease or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Lease.

45.7 In the event any litigation, arbitration, mediation, or other proceeding ("Proceeding") is initiated by any party against any other party to enforce, interpret or otherwise obtain judicial or quasi-judicial relief in connection with this Lease the prevailing party in such Proceeding shall be entitled to recover from the unsuccessful party all costs, expenses, and reasonable attorney's fees and expert witness fees relating to or arising out of such Proceeding (whether or not such Proceeding proceeds to judgment), and any post-judgment or post-award proceeding including, without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorneys' fees and expert witness fees. Notwithstanding the foregoing, any dispute which by the express terms of this Lease is to be submitted to arbitration (but no other matters) shall be submitted to arbitration with the American Arbitration Association (or any successor or substantially equivalent entity if the American Arbitration Association ceases to operate in San Diego) at their offices in San Diego, California, for resolution before a single arbitrator in accordance with its Commercial Arbitration Rules.

45.8 This Lease shall become effective and binding upon the parties (subject to the provisions of Paragraph 2, above) when it has been executed by each of Landlord and Tenant; notwithstanding the fact that the Term of this Lease (*i.e.*, Tenant's rights of full occupancy hereunder) will not commence until the Lease Commencement Date.

45.9 Subject to any restriction on transferability contained in this Lease, this Lease shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of each party to this Lease. Nothing in this Paragraph shall create any rights enforceable by any person not a party to this Lease, except for the rights of the successors-in-interest and assigns of each party to this Lease, unless such rights are expressly granted in this Lease to other specifically identified persons.

45.10 The headings of the Paragraphs of this Lease have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Lease, or be used in any manner in the interpretation of this Lease.

45.11 Time and strict and punctual performance are of the essence with respect to each provision of this Lease. All references to "days" in this Lease will refer to calendar days, unless such reference specifically indicates that "business days" are intended. Business days will mean and refer to all calendar days other than Saturdays, Sundays, and national or California state holidays.

45.12 Each party to this Lease and its legal counsel have had an opportunity to review and revise this Lease. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any Addendum or Exhibit to this Lease, and such rule of construction is hereby waived by Tenant.

45.13 All notices required or permitted to be given to Tenant or Landlord hereunder shall be in writing and shall be personally delivered, sent by certified mail, postage prepaid, return receipt requested, or sent by a nationally or locally recognized overnight express courier service that provides written confirmation of delivery at the address for the addressee set forth in the Principal Lease Provisions of this Lease. Each such notice or other communication shall be deemed given, delivered and received upon its actual receipt, except that if it is sent by mail in accordance with this Paragraph, then it shall be deemed given, delivered and received three business days after the date such notice or other communication is deposited with the United States Postal Service in accordance with this Paragraph, and if it is sent by nationally recognized overnight express courier service, it shall be deemed given one business day after deposit with the courier. Landlord or Tenant must give a notice of a change of its address to the other, if such address changes. Notwithstanding the foregoing, routine correspondence between Landlord and Tenant may be deliverable by fax, by email, or by such other means of delivery as may become customary.

45.14 If more than one person is Tenant, then the obligations of Tenant under this Lease shall be the joint and several obligations of each of such persons; provided, however, that any act or signature of one or more of any of such persons and any notice or refund given to or served on any one of such persons shall be fully binding on each of such persons. All provisions, whether covenants or conditions, to be performed or observed by Tenant shall be deemed to be both covenants and conditions. All indemnity, defense, and hold harmless obligations of Tenant hereunder shall survive the termination of this Lease.

45.15 All payments to be made by Tenant to Landlord under this Lease shall be in United States currency.

45.16 This Lease, the Exhibits and Addenda, if any, attached hereto (which are incorporated herein by this reference), constitute all of the covenants, promises, assurances, representations, warranties, statements, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and the Project, and there are no other covenants, promises, assurances, representations, warranties, statements, conditions, or understandings, either oral or written, between them. Except as herein otherwise provided, no subsequent alteration, change, modification, or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each of them. Notwithstanding the foregoing, the Landlord may, from time to time, establish and amend such Rules, regulations, and signage criteria, in a written form, for the benefit of the Project and the Premises, as it deems appropriate (subject to Paragraph 14, above). Violations of such Rules, regulations, and signage criteria by Tenant or Tenant's Invitees shall constitute a material default of this Lease.

45.17 This Lease, upon full execution, supersedes and revokes any and all previous leases governing the Premises, lease negotiations, arrangements, letters of intents, offers to lease, lease proposals or drafts, brochures, representations, and information conveyed, whether oral or written, between parties hereto or their respective representations or any other person purported to represent Landlord or Tenant. The Tenant acknowledges it has not been induced to enter into this Lease by any representations not set forth in the Lease, nor has it relied on any such representations. No such representations should be used in

the interpretation or construction of this Lease and the Landlord shall have no liability for any consequences arising as a result of any such representations.

45.18 Whenever in this Lease the phrase "at Tenant's sole cost" (or words of similar import) is used, such phrase shall mean, and be interpreted to mean, that Tenant is to bear such cost without reimbursement or contribution from Landlord; however, such phrase shall not be construed as limiting Tenant's right to treat such costs as Restaurant Expenses to the extent such costs are otherwise properly categorized as such pursuant to attached Exhibit "D."

46. OFAC REPRESENTATIONS. Each party to this Lease hereby represents and warrants that:

a. The Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") has not listed such party of any of such party's affiliates, or any person that controls, is controlled by, or is under common control with such party, on its list of Specially Designated Nations and Blocked Persons; and

b. It is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order, the United States Treasury Department, or United States Office of Homeland Security as a terrorist, Specially Designated National and Blocked Person, or other banned or blocked person, entity, nation or pursuant to any law, order, rule or regulation that is enforced or administered by the OFAC.

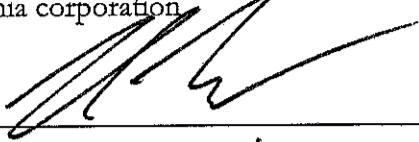
[SIGNATURES ON THE NEXT PAGE]

Form Sublease (023) 11-22-13 CLEAN.doc Form Sublease (021-with GRG comments).doc  
Landlord Tenant



LANDLORD:

SUNROAD HARBOR ISLAND, INC.,  
a California corporation

By: 

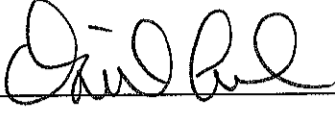
Name: Uri Feldman

Title: Executive Vice President

Dated: Nov 25 2013

TENANT:

KIRSCHCOHN, INC.,  
a California corporation

By: 

Name: DAVID COHN

Title: PRESIDENT

Dated: NOVEMBER 22, 2013

**EXHIBIT "A"**

**DESCRIPTION/DEPICTION OF PROJECT**  
(including depiction of Common Areas)

Exhibit A

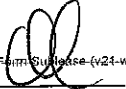
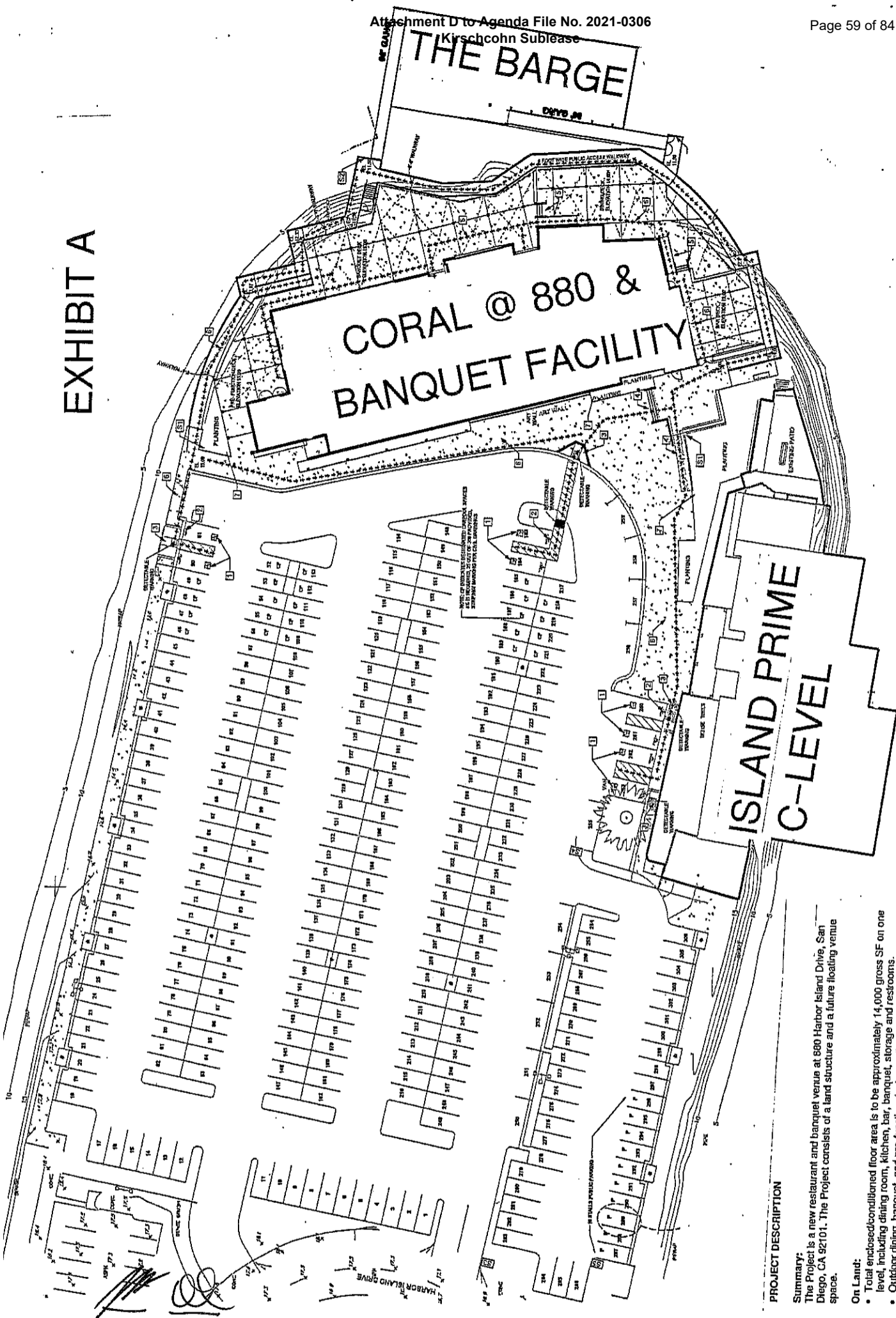
Form Sublease (1/23/11-22-19 CLEAN.doc Form Sublease (v24-with-CRC-comments).doc  
Landlord \_\_\_\_\_ Tenant 

EXHIBIT A



PROJECT DESCRIPTION

**Summary:**  
 The Project is a new restaurant and banquet venue at 880 Harbor Island Drive, San Diego, CA 92101. The Project consists of a land structure and a future floating venue space.

- On Land:**
- Total enclosed/conditioned floor area is to be approximately 14,000 gross SF on one level, including dining room, kitchen, bar, banquet, storage and restrooms.
  - Outdoor dining, banquet, and pre-function decks totaling approximately 9,800 SF.
- On Water, Consisting of:**
- Steel hull barge.
  - Enclosed floor area estimated to be 1,300 SF on one level, including galley / prep kitchen, restrooms.
  - Outdoor bar, dining and decks of approximately 3,600 SF.

Harbor Island Restaurant & Banquet 880 Harbor Island Drive  
 San Diego, California 92101

**EXHIBIT "B"**

**DESCRIPTION/DEPICTION OF PREMISES**

Exhibit B

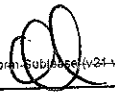
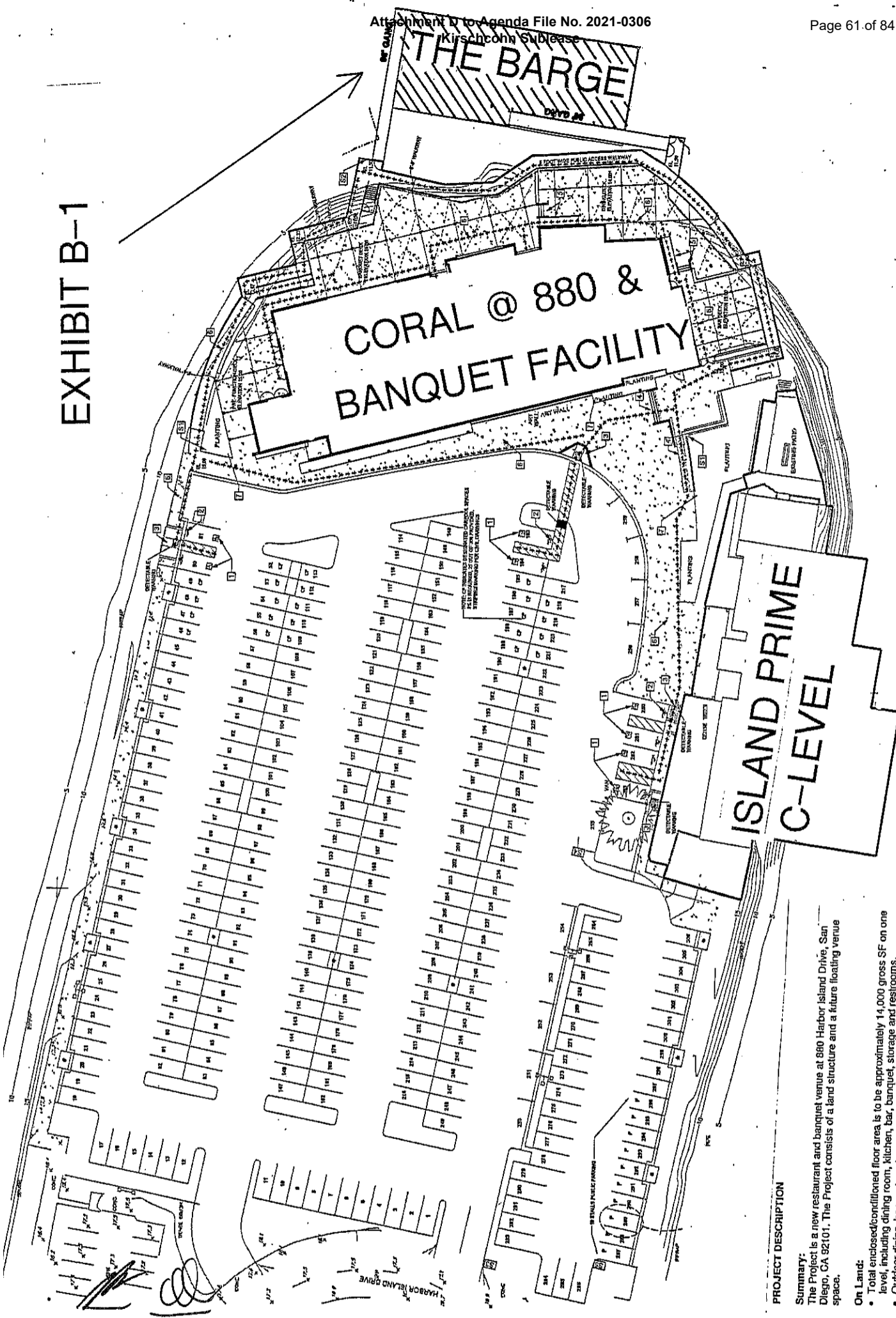
Form Sublease 10/20/2022-13 CLEAN.doc Form Sublease (v24 with CRC comments).doc  
Landlord \_\_\_\_\_ Tenant 

EXHIBIT B-1



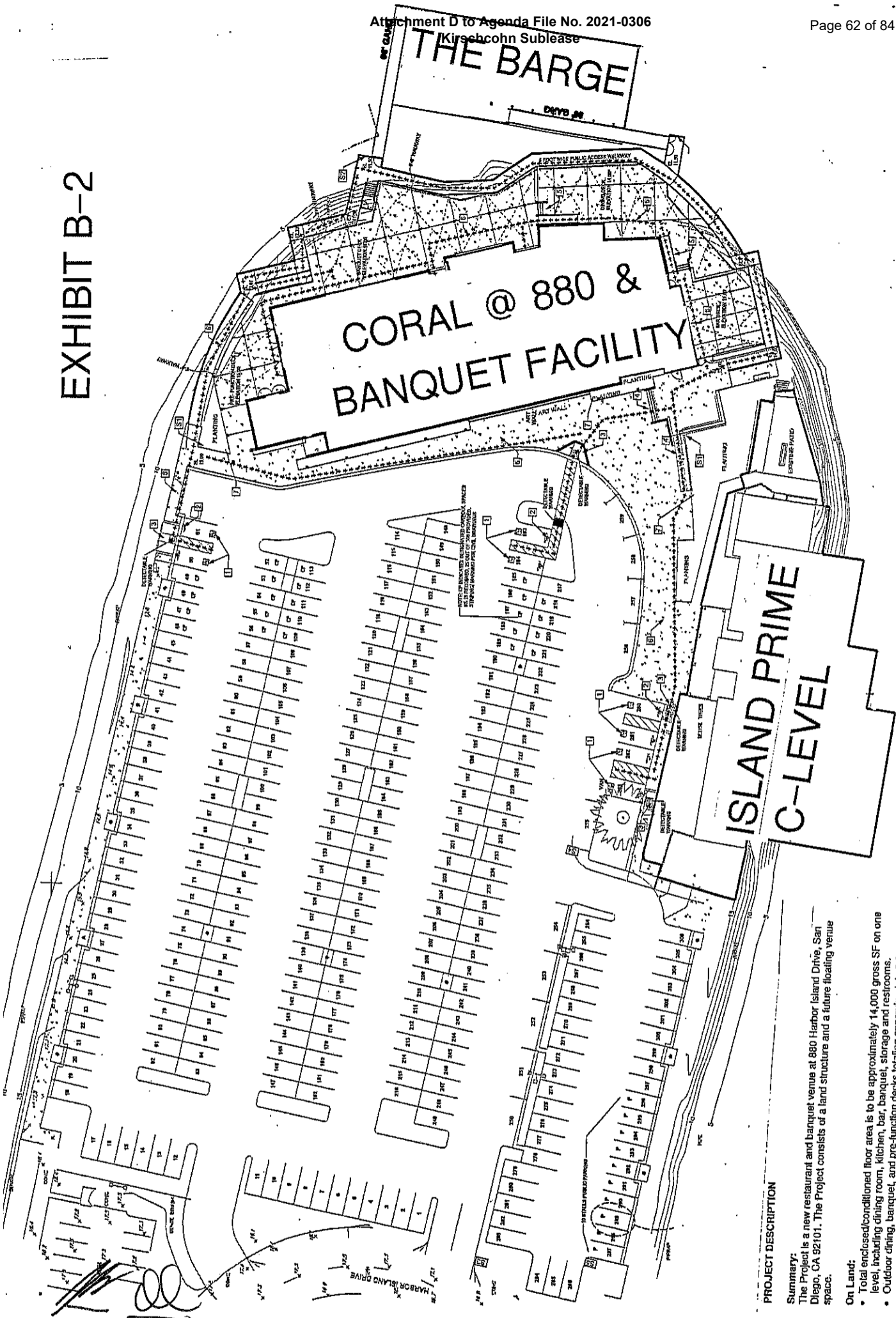
PROJECT DESCRIPTION

Summary:  
The Project is a new restaurant and banquet venue at 880 Harbor Island Drive, San Diego, CA 92101. The Project consists of a land structure and a future floating venue space.

- On Land:**
- Total enclosed/conditioned floor area is to be approximately 14,000 gross SF on one level, including dining room, kitchen, bar, banquet, storage and restrooms.
  - Outdoor dining, banquet and pre-function decks totaling approximately 9,800 SF.
- On Water, Consisting of:**
- Steel hull barge.
  - Enclosed floor area estimated to be 1,300 SF on one level, including galley / prep kitchen, restrooms.
  - Outdoor bar, dining and decks of approximately 3,600 SF.

Harbor Island Restaurant & Banquet 880 Harbor Island Drive San Diego, California 92101

EXHIBIT B-2



PROJECT DESCRIPTION

Summary:

The Project is a new restaurant and banquet venue at 880 Harbor Island Drive, San Diego, CA 92101. The Project consists of a land structure and a future floating venue space.

On Land:

- Total enclosed/conditioned floor area is to be approximately 14,000 gross SF on one level, including dining room, kitchen, bar, banquet, storage and restrooms.
- Outdoor dining, banquet, and pre-function decks totaling approximately 9,600 SF.

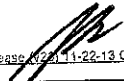

On Water, Consisting of:

- Steel hull barge.
- Enclosed floor area estimated to be 1,300 SF on one level, including galley / prep kitchen, restrooms.
- Outdoor bar, dining and decks of approximately 3,600 SF.

Harbor Island Restaurant & Banquet 880 Harbor Island Drive San Diego, California 92101

**EXHIBIT "C"**  
**WORK LETTER**

Exhibit C

Form Sublease (11-22-13 CLEAN) (Form Sublease (11-21-with-CRG-comments).doc  
Landlord  Tenant 

## EXHIBIT "C" WORK LETTER

This Exhibit "C" Work Letter ("Work Letter") sets forth the respective rights, duties, and obligations of Landlord and Tenant in connection with the build-out of the New Restaurant under that certain Standard Form Retail Lease to which this Work Letter is attached. Landlord's responsibilities under this Work Letter generally consist of the removal of the existing barge, and the design and construction of the New Restaurant and the tenant improvement build-out of the New Restaurant, including completing all utility connections necessary for the FF&E and Tenant's Signage (as such terms are defined below) of Tenant (the "Landlord's Work") in accordance with the approved Design Development Documents (as defined below). Landlord's Work shall also include any public art installed by Landlord in the Project and all monument and directional signage (the "Project Signage"), but specifically excluding Tenant's exterior Building-mounted signage and interior signage (the "Tenant's Signage"), which will be part of Tenant's FF&E Work (as defined below). Tenant and Landlord shall mutually agree on the Project Signage and the Tenant's Signage, consistent with the terms of the Lease. Tenant's responsibilities under this Work Letter (the "FF&E Work") generally consist of the purchase and installation (but excluding the utility connections which are part of Landlord's Work) of the furniture, fixtures, and equipment as further described in Attachment 1 (the "FF&E"), necessary to ready the New Restaurant for Tenant's Permitted Use, and the fabrication and installation of Tenant's Signage, all in accordance with, and subject to, the terms, provisions, and conditions of this Work Letter. Tenant shall be solely responsible for the cost of the FF&E Work, subject to the FF&E Allowance (as defined below).

1. Definitions. All terms used in this Work Letter which are not specifically defined herein shall have the meanings ascribed to them in the Lease to which this Work Letter is attached. This Work Letter is incorporated within such Lease and references in this Work Letter to "this Lease" will mean the Lease to which this Work Letter is attached as an Exhibit.

2. Construction Representatives. Landlord appoints Landlord's Representative (identified below) to act for Landlord and Tenant appoints Tenant's Representative (identified below) to act for Tenant in all matters covered by this Work Letter. All inquiries, requests, instructions, authorizations, and other communications with respect to the matters covered by this Work Letter will be made to Landlord's Representative or Tenant's Representative, as the case may be. Tenant will not make any inquiries of or requests to, and will not give any instructions or authorizations to, any other employee or agent of Landlord, including Landlord's architect, engineers, and contractors or any of their agents or employees, with regard to matters covered by this Work Letter and any such instruction or authorization will, at Landlord's election, be of no force or effect. Either party may change its designated Representative under this Work Letter at any time upon three-business days' prior written notice to the other party.

- |                                   |   |
|-----------------------------------|---|
| 2.1. Tenant's Representative:     | David Cohn  |
| 2.2. Landlord's Representative:   | Dan Feldman   |
| 2.3. Tenant Improvement Designer: | Jon Starr   |
| 2.4. Landlord's Contractor:       | Swinerton Builders or such other general contractor selected by Landlord. |
| 2.5. Tenant's Contractor:         | TBD—subject to Landlord's reasonable approval.                            |

3. Landlord's Work. Following execution of this Lease by Landlord and Tenant, Landlord shall cause the Landlord's Work to be completed pursuant to plans and specifications prepared by the Tenant Improvement Designer in general accordance with the Design Development Documents (collectively, the "Working Drawings").

3.1. Tenant acknowledges and agrees that it has approved that certain schematic plan for the Landlord's Work attached hereto as Attachment No. 1, which Landlord has previously submitted to the Master Landlord for its conceptual approval. Attachment No. 1 will, in turn, be used by Landlord, with input from Tenant, to cause the preparation of design development documents by the Tenant Improvement Designer consistent therewith, which will be submitted to the Master Landlord for approval in accordance with the provisions of the Master Lease (the "Design Development Documents"). Tenant shall cooperate with Landlord and Master Landlord to accommodate any revisions



to the proposed Design Development Documents required by Master Landlord pursuant to Master Landlord's rights under the Master Lease. Once approved by Master Landlord, Landlord shall use the Design Development Documents to cause the preparation of the Working Drawing and to then complete the Landlord's Work.

3.2. The Landlord's Work shall be completed by Landlord's Contractor in a first class and workmanlike manner in accordance with the approved Working Drawings and in compliance with all applicable laws, codes, ordinances, and other governmental requirements then applicable to the New Restaurant.

4. Modifications/Approvals.

4.1. Tenant may request changes in the Landlord's Work following preparation of the Working Drawings or during construction, only by written request from Tenant's Representative to Landlord's Representative on a form reasonably approved by Landlord. All such changes shall be subject to Landlord's and, if required, Master Landlord's prior written approval in accordance with this Paragraph 4. Prior to commencing any such change, Landlord shall prepare and deliver to Tenant, for Tenant's approval, a change order (the "Change Order") setting forth the estimated additional time required to perform the change and the total cost of such change, which will include associated architectural, engineering, and construction contractor's fees, delay costs (including rent which would be payable, but for such delay), additional coordination costs, and Landlord's estimated internal overhead/supervisory costs in implementing the Change Order (such overhead/supervisory costs not to exceed ten percent of the amount of the Change Order). If Tenant fails to approve such Change Order within three business days after delivery by Landlord, Tenant shall be deemed to have withdrawn the proposed Change Order and Landlord shall not proceed to perform the subject change. Upon Landlord's receipt of Tenant's approval of a Change Order, Landlord's Contractor shall proceed to perform the change provided that Landlord receives Tenant's payment for such excess cost (as reflected in the Change Order or the back-up documents therefor) concurrently with Tenant's written approval of the subject Change Order or such Change Order will be deemed disapproved. The cost of preparing any such Change Order, whether or not such change is ultimately approved, will be Tenant's responsibility and shall be treated as Additional Rent, due upon presentation of an invoice therefor.

4.2. Landlord may, among other reasons, withhold its approval of any Tenant-requested revision or change pursuant to Paragraph 4.1, above, if such revision or change would require work which: (i) exceeds or affects the structural integrity of the New Restaurant or any part of the utility installations or HVAC systems serving the New Restaurant, (ii) is not approved (if such approval is required) by Master Landlord or the holder of any deed of trust encumbering the Project at the time the work is proposed or is to be undertaken, despite Landlord's commercially reasonable efforts to obtain such approval, (iii) violates any agreement which affects the Project or which binds Landlord, (iv) Landlord reasonably believes will increase the cost of operation or maintenance of any of the systems serving the Project, (v) Landlord reasonably believes will reduce the market value of the Project, (vi) does not conform to applicable building codes or is not approved by any governmental authority with jurisdiction over the Project, (vii) does not conform to (or exceed in quality) Landlord's improvement specifications, or (viii) Landlord reasonably believes will result in a delay in the completion of Landlord's Work.

5. Bearing of Costs. Except as provided in Paragraph 4, above, Landlord shall be responsible for bearing all costs and expenses (including without limitation, hard costs and soft costs) of its completion of the Landlord's Work as identified on the Working Drawings.

6. Effect of Delay on Lease Term. In the event Landlord's Work is not Substantially Completed by the estimated Lease Commencement Date specified in the Lease, the Lease shall not be affected or modified and shall remain in full force and effect and Landlord shall not be liable for any damage suffered or incurred on account of any delay in completion.

7. Initial Commencement of Lease Term. The Lease Commencement Date and the Rent Commencement Date shall be the dates identified as such in the Principal Lease Provisions of this Lease; except that the Rent Commencement Date shall be accelerated one day for each day that Substantial Completion of Landlord's Work would have occurred but for Tenant Delays (as defined below).

8. Tenant Delays. Each of the following events shall constitute a "Tenant Delay": (i) delays resulting from any direction by Tenant that Landlord suspend work or otherwise hold up construction of any portion of the Landlord's Work because of a possible change to be initiated by Tenant or for any other reason directed by Tenant, (ii) delays due to the failure of Tenant to pay when due any amount payable pursuant to this Lease or this Work Letter, (iii) delays which result directly or indirectly from Tenant's requested changes in the approved Working Drawings or Landlord's Work, (iv) delays arising out of the performance of the FF&E Work, or (v) any other action or inaction of Tenant that directly or indirectly delays Landlord in completing Landlord's Work. Tenant shall pay any actual and documented costs or expenses incurred by Landlord as a result of any Tenant Delays, including without limitation, any increases in costs or expenses for labor or materials.

9. Construction of FF&E Work. The FF&E Work shall be completed by Tenant's Contractor in a first class and workmanlike manner in accordance with the Landlord-approved plans and in compliance with all applicable laws, codes, ordinances, and other governmental requirements then applicable to the New Restaurant. In no event shall Tenant be permitted to perform the FF&E Work prior to providing all information reasonably requested by Landlord relating to the FF&E Work. Failure by Tenant to provide any information reasonably requested by Landlord, including but not limited to evidence of Tenant's and Tenant's Contractor's compliance with all of the insurance requirements hereof, shall constitute a default under this Lease in the event Tenant proceeds with the FF&E Work. Violations of Landlord's rules, regulations, and requirements as established by Landlord shall constitute a default under this Lease if not corrected by Tenant and/or Tenant's Contractor within 24 hours of notice, either written or oral, by Landlord to Tenant. Landlord shall have the right to post a notice of non-responsibility at a prominent location within the New Restaurant. Notwithstanding anything to the contrary contained herein, provided Tenant has complied with all of the provisions of this Paragraph, Landlord agrees to allow Tenant's Contractor (and subcontractors) early access to the New

Handwritten signatures in black ink, consisting of a stylized signature on the left and a more cursive signature on the right.

Restaurant for purposes of coordinating the FF&E Work and commencing long lead time items or items which must be installed prior to completion of the Landlord's Work in order to avoid unnecessary cost or expense. Any such work will be subject to all of the provisions of this Work Letter including, specifically, and without limitation, this Paragraph (and the subparagraphs hereof) and Paragraph 13, below. It shall be the responsibility of Tenant to enforce the following requirements of Tenant's Contractor, and all subcontractors of Tenant's Contractor, at every level:

9.1. Tenant's Contractor shall perform the FF&E Work in a manner and at times that do not impede or delay Landlord's Contractor. Any delays in the completion of work by the Landlord or Landlord's Contractor, or the commencement of the rental and any damage to any work caused by Tenant's Contractor shall be at the sole cost and expense of Tenant.

9.2. Tenant's Contractor shall be responsible for the repair, replacement, and clean-up of any damage by it to other contractor's work, specifically including access ways to the New Restaurant that may be concurrently used by others. Fire lanes and sidewalks may not be blocked or obstructed at any time.

9.3. Tenant and Tenant's Contractor are responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction as far as the performance of the FF&E Work is concerned and for all applicable safety regulations established by Landlord, OSHA, Cal-OSHA, or other regulatory agencies, and Tenant further agrees to indemnify, defend, and save and hold Landlord and Master Landlord and their employees, officers, directors, commissioners, shareholders, partners, members, and managers, harmless for claims arising from the FF&E Work. Prior to commencement of construction, Tenant shall submit to Landlord evidence of insurance as required by this Lease (including, if applicable, course of construction coverage) and evidence of insurance for Tenant's Contractor reasonably satisfactory to Landlord.

9.4. Tenant's Contractor shall not post signs on any part of the Project nor on the New Restaurant, without Landlord's prior written approval.

9.5. No romex wiring or asbestos containing materials shall be allowed, nor shall water lines be placed in slabs, unless approved by Landlord prior to installation.

10. Cost of FF&E Work; FF&E Allowance. Tenant shall be responsible for bearing all costs and expenses of completing the FF&E Work, except that Landlord will provide Tenant with an allowance (to be applied solely against the FF&E Work, as described in Paragraph 10.1, below) of up to \$1,215,000.00. The amount to be paid by Landlord pursuant to the preceding sentence is referred to herein as the "FF&E Allowance". All costs and expenses of The FF&E Work in excess of the FF&E Allowance shall be Tenant's sole responsibility and expense and shall be payable in a manner which avoids the filing of any mechanic's or materialman's liens against any portion of the New Restaurant or the Project. Any portion of the FF&E Allowance which is not expended shall belong to Landlord, and no portion of such FF&E Allowance will be used for any expenses other than as provided in Paragraph 10.1, below.

10.1. The FF&E Allowance may be applied by Tenant only against all reasonable costs incurred by Tenant in connection with the purchase and installation of the furniture, fixtures, and equipment necessary to ready the New Restaurant for Tenant's Permitted Use and the Tenant's Signage.

10.2. The FF&E Allowance may not be applied towards (i) the cost of any of Tenant's work other than the FF&E Work, (ii) any payments to Tenant or its affiliates, or (iii) soft costs such as costs of space planning, architectural work, costs of the preparation of plans, permits, blueprints, and reimbursables, all of which items will be Tenant's sole responsibility and expense. In addition, none of the FF&E Allowance may be applied toward construction management costs.

10.3. The FF&E Allowance shall be funded by Landlord in accordance with Paragraph 11, below.

11. Funding of FF&E Allowance. The FF&E Allowance shall be funded to Tenant for the items described in Paragraph 10, above, in accordance with the following procedure and requirements:

11.1 Not more frequently than once every calendar month, Tenant shall submit to Landlord invoices for work for which Tenant is seeking reimbursement along with a request for disbursement showing the total amounts expended by Tenant and/or due for FF&E Work for which disbursement is requested (the "Request"). Each Request shall be accompanied by such additional back-up information as Landlord or its lender may reasonably request in connection with the Request and the FF&E Work covered thereby.

11.2. With each Request (other than the final Request described in Paragraph 11.4, below, Tenant shall provide Landlord with a list of all contractors, subcontractors and material suppliers involved in the FF&E Work, along with an Unconditional Waiver and Release Upon Progress Payment from Contractor and each material suppliers and subcontractors. Submittal of a Request by Tenant shall constitute Tenant's implied representation and warranty that the FF&E Work is proceeding in accordance with the requirements of this Work Letter and that there are no mechanic's or materialmen's liens currently filed against (or threatened against) the Premises. Notwithstanding the foregoing, or anything herein to the contrary, in no event will Landlord have any obligation to pay any amount included in a Request while any lien or stop notice exists relative to the FF&E Work.

11.3. If Landlord receives a valid Request (including all documentation delineated in this Paragraph 11) from Tenant, that it does not dispute in good faith, on or before the tenth day of a calendar month, Owner shall make payment to Tenant on or before the final day of such calendar month—Requests received later than the tenth day of a calendar month will be processed by Landlord within 30 days of receipt. The payment of any amount included in a Request does not constitute approval or acceptance by Landlord, nor a waiver of any claim of Landlord. Notwithstanding the foregoing, Landlord shall retain ten percent of the amount of each Request that would otherwise be required to be paid pursuant hereto (the "Retainage") until the Final Payment (as defined below) is made.

Handwritten signatures in black ink, consisting of two distinct marks: a stylized signature on the left and a more cursive signature on the right.

11.4. Once the FF&E Work is fully and finally completed in a lien-free manner and Tenant has commenced operations of its restaurant activities to the public in the New Restaurant, Tenant may submit a Request relative to the Retainage and any other portion of the FF&E Allowance which has not yet been funded and for which Tenant has outstanding invoices as to which the FF&E Allowance applies (the "Final Payment"), which Request relative to the Final Payment must be accompanied by an Unconditional Waiver and Release Upon Final Payment from Contractor and each material suppliers and subcontractors involved in the FF&E Work. Submittal of such Request by Tenant shall constitute Tenant's implied representations and warranties that (i) other than the portions of the cost of the FF&E Work represented by the Retainage, the FF&E Work has been fully paid for and no person has any right or claim to file any mechanic's or materialman's lien relative thereto, (ii) Tenant has expended or incurred obligations relative to the FF&E Work equal to or in excess of the Allowance, (iii) the FF&E Work was completed in accordance with the requirements of this Work Letter and the New Restaurant can now be lawfully operated as a restaurant, and (iv) Tenant has fully paid all Excess FF&E Work Costs. In no event shall Tenant submit a Request relative to the Final Payment unless and until such representations and warranties are accurate and Tenant has commenced its restaurant operations in the New Restaurant and Landlord shall have no obligation to fund the amount set forth in the Request relating to the Retainage until all such representations and warranties are true. Concurrently with Tenant's delivery of the Request relative to the Final Payment, Tenant shall provide Landlord with copies of all warranties and guarantees in connection with the performance of the FF&E Work along with a written assignment satisfactory to Landlord of all such warranty and guaranty rights under the contract with Tenant's Contractor, as well as such other documentation and information relative to the FF&E Work and the subject Request as Landlord or its lender may reasonably request.

11.5. Within 30 days after Tenant's submission of the Request relative to the Final Payment, and provided Landlord does not dispute any element of such Request in good faith, Landlord shall pay the Final Payment to Tenant.

12. Excess FF&E Cost. If Tenant at any time determines that the cost of the FF&E Work is likely to exceed the amount of the FF&E Allowance (the actual excess of such cost over the amount of the FF&E Allowance is hereinafter referred to as the "Excess FF&E Work Cost"), Tenant shall promptly notify Landlord of such anticipated excess and the basis for Tenant's determination. Tenant shall be solely responsible for the Excess FF&E Work Cost and will, within 30 days of making any payment toward the Excess FF&E Work Cost to a third party, deliver a copy of the paid invoice for such payment to Landlord. The unamortized portion of such Excess FF&E Work Cost (for which invoices were provided to Landlord pursuant to the foregoing), is subject to recovery pursuant to Paragraph 23.4.2 of the Lease upon termination of the Lease during the first five years of the Term as more particularly provided in such Paragraph 23.4.2.

13. Coordination of Construction. Tenant covenants and agrees that Tenant and Tenant's Contractor shall not destroy or in any way damage any portion of the New Restaurant or the Project. Further, Tenant covenants and agrees that Tenant and Tenant's Contractor shall coordinate the FF&E Work with any construction schedule for any work being performed by or on behalf of Landlord, and that the performance of the FF&E Work shall not interfere with Landlord's construction activities. If there be such interference or conflict, notice thereof shall be given to Tenant, and immediately after receipt of such notice the Tenant agrees to cease or cause to be terminated such interference or conflict. Tenant further covenants and agrees that Tenant and Tenant's Contractor shall comply with all reasonable rules and regulations promulgated by Landlord, or its agent, and all directives of Landlord governing construction or installation activities, including but not limited to, permissible hours for construction or installation activities, storage of equipment and responsibility for cleaning of work areas. If Tenant or Tenant's Contractor shall fail to comply with the provisions of this Paragraph any costs incurred by Landlord as a result of such failure shall be at Tenant's sole and exclusive expense, payable upon demand.

14. Limitation on Liability. Landlord and Master Landlord, and their employees, officers, directors, commissioners, shareholders, partners, members, and managers, shall not be liable for any loss, cost, damage, or expense incurred or claimed by Tenant or any other person or party on account of the construction or installation of the FF&E Work or any other improvements to the New Restaurant made by Tenant. Tenant hereby acknowledges and agrees that the compliance of the FF&E Work and any plans therefore, with all applicable governmental laws, codes, and regulations shall be solely Tenant's responsibility. Landlord and Master Landlord assume no liability or responsibility resulting from the failure of the Tenant to comply with all applicable governmental laws, codes, and regulations or for any defect in any of the FF&E Work made by Tenant. Tenant further agrees to indemnify, defend, and hold harmless Landlord and Master Landlord from any loss, cost, damage or expense incurred, claimed, asserted, or arising in connection with any of the foregoing.

15. Miscellaneous. This Work Letter (like the Lease to which it is attached and incorporated into) may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document. It constitutes both a part of the Lease and a separate binding contract between Landlord and Tenant.

LANDLORD:

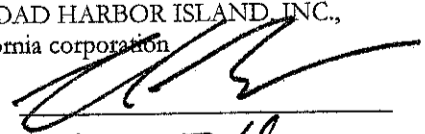
SUNROAD HARBOR ISLAND, INC.,  
a California corporation

By:

Name:

Title:

Dated:

  
Uri Feldman  
Executive Vice President  
Nov 25, 2013

TENANT:

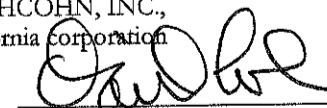
KIRSCHCOHN, INC.,  
a California corporation

By:

Name:

Title:

Dated:

  
DAVID COHN  
PRESIDENT  
NOVEMBER 22, 2013

## SCHEDULE 1

### DESCRIPTION OF FF&E

**FF&E shall be defined as fixtures, furnishings, and equipment installed in the New Restaurant in order to ready the Premises for Tenant's Permitted Use, which are of the type typically found in a new restaurant including, but not limited to, the following:**

1. Furniture - such as tables, chairs, reception desk or podium, service stations, benches, umbrellas, and booths
2. Dishes and smallwares – such as glassware, meal service items, plates, eating utensils, cooking utensils
3. Liquor, Soda and Coffee Equipment – such as liquor/wine/beer storage/coffee/supply/service/dispensing or display items, soda machines/lines/equipment
4. Art – such as paintings, sculptures, drawings, photos, decorations
5. Voice and Data – such as telephone wiring /equipment, computer wiring / equipment
6. Heaters – such as propane/natural gas/electric area/space heaters
7. Music – such as wiring, speakers, amplifiers/receivers, players, recorders, microphones
8. Window Covering – such as window film, screens, louvers, drapes, blinds
9. Office Fit-out – such as desks, file cabinets, chairs, whiteboards, copy machines, printers
10. Kitchen Equipment – hoods and hood related filters/dampers/skirts/supports/hangers/lights/fire suppression systems, refrigerators, freezers, refrigeration condensers/racks, walk-ins, ranges, drainboards, die-walls, sinks, faucets, drop-ins, benches, floor trough, hand sink, soap dispenser, towel dispenser, food preparation tables, tables, service counters, display cases, back bar items, dishwashing equipment, fryers, racks, microwaves, stainless steel wall sheathing/paneling, kitchen/bar cabinets, ice maker/storage, kitchen shelving, installation kits, water filters, anything kitchen/bar equipment related as shown on the George Orness Food Service design drawings
11. IT / POS – such as servers, UPS systems, 7/24 cooling for servers, cash registers, credit card machines
12. Tenant's Signage



EXHIBIT "D"

DEFINITION OF PLE

1. The term "Participating Lease Earnings" or "PLE", as used in this Lease, shall mean the "Gross Sales" attributable to the Premises, less the "Restaurants Expenses" attributable to the Premises (as those terms are defined below).

2. The term "Gross Sales" shall mean and refer to the aggregate gross revenue (whether paid by cash, credit card, gift certificate/gift card, or otherwise) from (a) total food, beverage, and merchandise sales and all other revenue generated from the Premises, and (b) parking and valet services generated from the Common Areas and the Premises, excluding:

2.1. Gratuities and voluntary tips retained by employees rather than Tenant.

2.2. Service charges added to a customer's bill or statement that are paid to employees in lieu of gratuities. (For purposes of illustration only, if a service charge is 20% and only 15% from the 20% is paid to the applicable Restaurant's staff as a gratuity, the other 5% shall be retained by Tenant and included in Gross Sales.)

2.3. An amount equal to all credits, refunds, allowances, discounts, rebates, or exchanges (to the extent such amounts are not deducted from Restaurants Expenses--*i.e.*, no such item will be both deducted from Gross Sales and also from Restaurants Expenses), when such credits, refunds, allowances, discounts, rebates, or exchanges are normal or typical to a restaurant operation including, without limitation, any discounts or rebates derived from the "most favored nation" status for purchases, consulting, and other similar items with other restaurants and businesses of Tenant or its affiliates.

2.4. All sums and credits received in settlement of claims for loss or damage to merchandise.

2.5. All sales taxes, so-called luxury taxes, excise taxes, gross receipt taxes, or other similar taxes.

2.6. Any income from the sale of furnishings, fixtures, or equipment or the bulk sale of stock-in-trade; but only to the extent (i) such items are replaced by Tenant or (ii) such items were paid for by Tenant out of Tenant's own funds and such expense was not treated as a Restaurant Expense.

2.7. Any income from the sale to Tenant's employees or affiliates of meals, uniforms, T-shirts, hats, etc., not to exceed one percent of Gross Sales in any calendar year.

2.8. Complimentary meals and promotional items not to exceed one percent of Gross Sales in any calendar year.

2.9. Merchandise returned to sources or the exchange of merchandise between restaurants and other operations of Tenant and Tenant's affiliates where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which

has been made at, in, on, or from the Premises, or for the purpose of depriving Landlord of the benefit of a sale which otherwise would have been made at, in, on, or from the Premises.

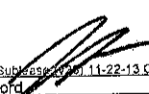
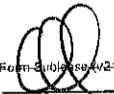
- 2.10. Any amounts received from condemnation or insurance proceeds.
- 2.11. The amount of the discount on sales at discounted rates.
- 2.12. The amount of items which would be sales, but which are in the form of donations, to political, religious, charitable, or nonprofit organizations.
- 2.13. Any bad debts arising out of sales made on credit.
- 2.14. Receipts from public telephones or vending machines installed solely for use by Tenant's employees, to the extent the installation of the same is permitted under this Lease.
- 2.15. Gift certificates or like vouchers which are redeemable at all of the Cohn Restaurant Group restaurants (rather than just one or both of the Restaurants) until such time as the same shall have been converted into a sale by redemption at one of the Restaurants.
- 2.16. Sales for which payment is received in the form of gift certificates or like vouchers that are only redeemable at one or both of the Restaurants (but not at any other Cohn Restaurant Group restaurant)—it being understood that the receipts from sales of such gift certificates or like vouchers (other than as described in Section 2.17, below) will be part of Gross Sales when purchased—regardless of whether they are redeemed.
- 2.17. 25% of the face amount of Costco gift cards used at either of the Restaurants (with the remaining 75% being included in Gross Sales, but only when such gift cards are used at one of the Restaurants).

3. The term "Restaurant Expenses" shall mean and refer to the following expenses, but only to the extent (i) actually incurred by Tenant (except for the Imputed Management Fee (as defined below)), (ii) commercially reasonable, and (iii) directly and exclusively for the benefit of the Restaurants. Attached Exhibits "E" (including Tenant's Chart of Accounts), attached hereto, further illustrate the types of items to be included as Restaurant Expenses, but are not intended to modify the provisions hereof or supersede any contrary provision hereof.

3.1. All wages, compensation, and other benefits of all employees of the Restaurants; provided, however, the payment of such wages, compensation, and benefits shall not include any payments by Tenant to any of Tenant's affiliates (which term shall mean any member of the Cohn Restaurant Group or other entity which owns, is owned by, or is under common control with, Tenant) unless such payments have been approved in writing by Landlord, in its reasonable discretion.

3.2. All costs for utilities, fuel, janitorial services, cleaning, pest control, and HVAC maintenance and repair.

3.3. All costs for information technology, internet and phone services and equipment.

  
Form Sublease (Rev. 11-22-13) CLEAN.doc Form Sublease (Rev. 21-11-21) with CRG comments.doc  
Landlord \_\_\_\_\_ Tenant 

- 3.4. All costs for laundry, linen and uniforms.
- 3.5. All professional fees and subscription costs.
- 3.6. All office expenses including supplies, courier, postage, and other delivery services.
- 3.7. All expenses related to parking and valet parking services for the Restaurants' customers and employees.
- 3.8. All truck and auto expenses.
- 3.9. All costs for entertainment and music for the benefit of Restaurant patrons.
- 3.10. All costs for florals and decorations.
- 3.11. All costs for security.
- 3.12. All costs for trash services including composting, recycling, grease & oil disposal.
- 3.13. All printing and graphic design (including website and online).
- 3.14. All pre-opening expenses.
- 3.15. All food and beverage waste.
- 3.16. All costs of products sold through the Restaurants, including food, beverages, and other products, the cost of consumable supplies and materials, and equipment rental costs.
- 3.17. All costs for licenses and permits required of Tenant in connection with the management and operation of the Restaurants, including, without limitation, the Liquor License.
- 3.18. An imputed management fee equal to five percent of Gross Sales, whether or not actually paid (the "Imputed Management Fee").
- 3.19. All Gross Revenue Rent due under this Lease, and all Operating Expenses.
- 3.20. The Master Lease Rentals.
- 3.21. All taxes, assessments, and charges of every kind imposed by any governmental authority having jurisdiction over the Premises; provided, however, (i) any fines, fees, assessments, or other penalties levied or assessed against the Restaurants or the Premises as a result of Tenant's failure to pay any tax, assessment, or other governmental charge and/or file any tax or informational returns when due, and (ii) any inheritance, estate, franchise, corporation, income, or profit taxes imposed on Tenant shall not be a Restaurant Expense but shall be payable by Tenant at its sole cost and expense.
- 3.22. The costs and expenses of any point of sale, billing, or audit system services directly and exclusively used for the Restaurants.

Exhibit D – Page 3

3.23. Charges and fees imposed for transaction expenses, including credit and debit cards and other bank fees.

3.24. Online and other reservation system fees including commissions paid to outside entities for group bookings.

3.25. All expenditures for repairs and maintenance of the Restaurants, FF&E and systems, including but not limited to mechanical, electrical and plumbing.

3.26. Amortization of all expenditures for operating equipment, furnishings, and Alterations (but excluding therefrom any such items purchased for the New Restaurant as part of the initial preparation of the New Restaurant for its operation as a restaurant or during the first year of its operations), and any interest payments made in connection with financing the same (which shall not include interest payments for any financing secured by a lien against the Restaurants or the Premises). Amortization is computed on a straight-line basis over five years or such longer period, up to a maximum of ten years, as may be customary for such item in the restaurant industry.

3.27. Premiums for insurance maintained for the Premises pursuant to this Lease and other types of insurance that are commercially reasonable for a restaurant and banquet facility including Employee Practices Liability Insurance.

3.28. Tenant's accounting and outside consulting fees for the Restaurants and legal fees incurred solely in connection with the operation of the Restaurants (as opposed to Tenant's business or other restaurants) and not relative to any matter arising out of the gross negligence or intentional misconduct of Tenant or any of the Tenant Parties.

3.29. Expenses related to Tenant's maintenance crew's activities relative to the Restaurants, but only to the extent reasonably attributable to services provided to the Restaurants.

3.30. Expenses incurred by Tenant under the Lease to indemnify Landlord or any of the Landlord parties provided such indemnification obligation is not the result of the negligence or intentional misconduct of any executive or managerial/supervisory employee of Tenant.

3.31. Expenses incurred by Tenant under the Lease which, pursuant to the express provisions of the Lease, are to be treated as Restaurant Expenses and which are not otherwise listed as Restaurant Expenses under this Section 3.

3.32. All expenses incurred by Tenant related to Tenant's compliance with laws, unless due to the negligence or intentional misconduct of any executive or managerial/supervisory employee of Tenant.

3.33. All expenses incurred by Tenant related to restoration of the Premises upon Condemnation in excess of the Award attributable to restoration costs.

3.34. All reimbursements actually paid to Landlord by Tenant for the inspection and testing of the Premises for Prohibited Substances and the removal or remediation of mold within the

Exhibit D -- Page 4



Premises unless due to the negligence or intentional misconduct of any executive or managerial/supervisory employee of Tenant.

3.35. All expenses incurred by Tenant related to advertising and marketing of the Restaurants, including guest relations comps.

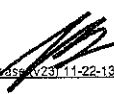
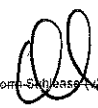
If following the date of this Lease new or additional types of expenses other than those identified in the categories above (i) are actually incurred by Tenant in connection with the operation of the Restaurants, (ii) are similar to the above-described types of expenses included as Restaurant Expenses and are not of a type which is to be excluded from the term Restaurant Expenses pursuant to the foregoing provisions, (iii) are commercially reasonable and customarily incurred by similar restaurant operators, and (iv) are consented to by Landlord, which consent shall not be unreasonably withheld, as appropriate types of expenses to be included as Restaurant Expenses, then Landlord and Tenant shall amend this Section 3 to add such agreed-upon type of expense to the list of expenses which are to be considered permitted Restaurant Expenses hereunder.

To the extent that expenses are incurred in conjunction with other restaurants managed, owned, or operated by Tenant or its affiliates, Restaurant Expenses shall include only the fair and allocable share thereof. Notwithstanding anything to the contrary in this Lease, Restaurant Expenses shall not include (i) any overhead, back-office, general and administrative (G&A), or other general expenses or costs of Tenant or Tenant's affiliates' operations which are not for the exclusive benefit of the Restaurants, including, without limitation, salaries to the Key Individual, (ii) costs that exceed the rates at which (after application of any discounts or rebates received by Tenant or its affiliates) expenses would be incurred after application of the "most favored nation" status Tenant is obligated to maintain pursuant to Paragraph 8.5 of this Lease, and (iii) any amounts incurred in connection with agreements between Tenant and its affiliates unless such amounts are comparable to the amounts that Tenant would incur if such item or expense were obtained from an unrelated party and such agreement has been reasonably approved by Landlord as being an ordinary and customary expense. Any expense which would fit in more than one of the foregoing categories of Restaurant Expenses will only be counted once.

4. At the end of each calendar year during the Term relative to which the PLE is to be examined for purposes of determining the PLE Baseline or the Annual Average PLE, Landlord and Tenant shall follow the following procedure to adjust the PLE, and the PLE as adjusted pursuant to this Section 4 will constitute the PLE notwithstanding anything in this Exhibit to the contrary, but only for purposes of Paragraph 8.6 this Lease and PLE will not be adjusted for any other purpose.

4.1. On or before January 31<sup>st</sup> of each calendar year (beginning with the first calendar year which is to be used in the determination of the initial PLE Baseline), if either Landlord or Tenant believes that one or more PLE Adjustment Events (as defined below) have occurred during the preceding calendar year which have resulted in the PLE for such prior year being either higher or lower than what would normally have been anticipated, such party shall deliver written notice (an "Adjustment Notice") to the other party detailing such PLE Adjustment Events and the adjustment to PLE attributable to such PLE Adjustment Events (detailed and broken down on an individual PLE-Adjustment-Event-by-PLE-Adjustment-Events basis) for such prior calendar year proposed by such party (e.g., if a party believes that due to a particular PLE Adjustment Event the PLE achieved by Tenant for a particular month was \$50,000 lower than it would have otherwise been, but for such PLE Adjustment Event, and that by virtue of a different PLE Adjustment Event the PLE achieved by Tenant for such month was actually \$10,000

Exhibit D -- Page 5

  
Form Sublease (v23) 11-22-13 CLEAN.doc Form Sublease (v21 with CRG comments).doc  
Landlord \_\_\_\_\_ Tenant 

higher than it would have otherwise been, but for such PLE Adjustment Event, then such written notice shall detail each such adjustment and not the net or total adjustment proposed).

(i) If neither party delivers such an Adjustment Notice to the other party prior to the applicable January 31<sup>st</sup>, then the PLE will be calculated for such preceding calendar year in accordance with Sections 1 through 3 of this Exhibit "D" without adjustment. If, however, either or both of Landlord and Tenant delivers such an Adjustment Notice to the other party prior to the applicable January 31<sup>st</sup>, then between the date such Adjustment Notice(s) is(are) delivered until March 31<sup>st</sup> of such calendar year, Landlord and Tenant will in good faith attempt to agree upon the appropriate adjustments to PLE to reflect the effect of such PLE Adjustment Events.

(ii) If the parties have been unable to agree upon the appropriate adjustments to PLE by such March 31<sup>st</sup> date, then either party shall have the right to submit such dispute to arbitration in accordance with the provisions of Paragraph 45.7 of this Lease, by delivering written demand for arbitration ("Demand for Arbitration") to the other party within 30 days of such March 31<sup>st</sup> date (*i.e.*, by April 30<sup>th</sup>). Notwithstanding the reference to Paragraph 45.7, at the commencement of such arbitration the arbitrator shall request that each of Landlord and Tenant deliver to the arbitrator such party's proposal for the appropriate total adjustments to PLE for the preceding calendar year, along with such back-up documentation relating thereto as such party deems appropriate), and the arbitrator's sole authority shall be to select which of such two proposals is more appropriate (or if either party fails to submit its proposal within the timeframe established by the arbitrator—which will be no less than ten business days—then the arbitrator's sole authority will be to accept the sole submitted proposal). The arbitrator shall have no authority to select any other amount as the appropriate adjustment to PLE, and the ruling of the arbitrator shall be binding on both Landlord and Tenant. If, notwithstanding the delivery by either party of an Adjustment Notice and the failure of the parties to agree upon the appropriate adjustments to PLE by the applicable March 31<sup>st</sup> date, neither party delivers a Demand for Arbitration to the other party prior to the applicable April 30<sup>th</sup> date, then the PLE will be calculated for such preceding calendar year in accordance with Sections 1 through 3 of this Exhibit "D" without adjustment.

(iii) Once the PLE has been determined for a calendar year, whether by virtue of (i) neither party submitting an Adjustment Notice to the other party prior to the applicable January 31<sup>st</sup> date, (ii) the agreement of the parties prior to March 31<sup>st</sup> of the applicable year upon the appropriate adjustments to PLE following delivery of an Adjustment Notice(s), (iii) the failure of either party to deliver a Demand for Arbitration to the other party following delivery of an Adjustment Notice(s) and prior to the applicable March 31<sup>st</sup> date, or (iv) the determination of the arbitrator, as provided above, such PLE amount shall be the "Annual PLE" for such preceding year.

(iv) For purposes hereof, the term "PLE Adjustment Event" shall mean and refer to (i) a Permitted Closure, and (ii) other material and unusual events which skew the PLE results for a particular calendar year from what would be anticipated for a normal year; which unusual events could be either (a) positive (such as, by way of example, (A) if the America's Cup trials were to be held in San Diego resulting in an unexpected, one time, significant increase in income for the period of such America's Cup trials, or (B) the determination by the parties to defer a material expenditure which significantly decreases Restaurant Expenses for such calendar year), or (C) a significant positive change in the overall economy of the region, or (b) negative (such as, by way of example, (1) a closure of the San Diego Convention Center permanently or for a period of time resulting in a material decrease in convention business in San Diego generally, or (2) the occurrence of a sewage spill in the area of the Restaurants which results in a significant

Exhibit D – Page 6

drop-off in customers at the Restaurants, but Tenant elects not to treat such event as a Permitted Closure, or (3) a significant negative change in the overall economy of the region, or (4) the determination by the parties to undertake a major, and unusual, expenditure—or to pay an expense which would more appropriately be included in a different calendar year's PLE [in which event an adjustment would be made to such other calendar year's PLE as well]—which significantly increases Restaurant Expenses). It is the parties' intention that the term PLE Adjustment Event will only relate to significant events and not to general changes, positive or negative, in the economy, eating or pricing trends, or the cost of operating the Restaurants, or to increases or decreases in competition. Notwithstanding the foregoing, each party agrees to reasonably consider any request by the other party to adjust the manner in which this Exhibit "D" is administered, the way PLE is calculated, events causing permanent impacts on PLE, or the types of items which should be included as PLE Adjustment Events which the requesting party in good faith believes is necessary to cause the Performance Covenant to operate in the manner intended by the parties; however any such decision whether to agree upon any such request will be in the sole, good faith discretion of the respondent.

Exhibit D – Page 7

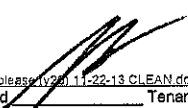

   
Form Sublease (V20) 11-22-13 CLEAN.doc Form Sublease (V2) with GRC comments).doc  
Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

EXHIBIT "E"

FORM OF TENANT'S INCOME STATEMENT AND CHART OF ACCOUNTS

650 RESTAURANTS  
QUARTERLY STATEMENT

	QUARTER TO DATE				YEAR TO DATE			
	PRIOR YEAR	%	ACTUAL	%	PRIOR YEAR	%	ACTUAL	%
ISLAND PRIME SALES:								
FOOD								
BEER								
WINE								
LIQUOR								
N/A BEVERAGE								
MISCELLANEOUS								
TOTAL ISLAND PRIME SALES	.00		.00		.00		.00	
CATERING SALES:								
FOOD								
BEER								
WINE								
LIQUOR								
N/A BEVERAGE								
TOTAL CATERING SALES	.00		.00		.00		.00	
C-LEVEL SALES:								
FOOD								
BEER								
WINE								
LIQUOR								
N/A BEVERAGES								
TOTAL C-LEVEL SALES	.00		.00		.00		.00	
PT. LOMA ROOM:								
FOOD								
BEER								
WINE								
LIQUOR								
N/A BEVERAGE								
TOTAL PT LOMA SALES	.00		.00		.00		.00	
TOTAL SALES:								
TOTAL FOOD SALES	.00		.00		.00		.00	
TOTAL BEER SALES	.00		.00		.00		.00	
TOTAL WINE SALES	.00		.00		.00		.00	
TOTAL LIQUOR SALES	.00		.00		.00		.00	
TOTAL N/A BEVERAGE SALES	.00		.00		.00		.00	
TOTAL MISCELLANEOUS SALES	.00		.00		.00		.00	
TOTAL SALES	.00		.00		.00		.00	

This financial statement has been prepared for internal use only.  
Information on this statement is confidential.

Exhibit E – Page 1

Form: Sublease (4/05) 11/22-13 CLEAN.doc Form: Sublease (4/24-with-GRG-comments).doc  
Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

88) RESTAURANTS  
QUARTERLY STATEMENT

	QUARTER TO DATE				YEAR TO DATE			
	PRIOR YEAR	%	ACTUAL	%	PRIOR YEAR	%	ACTUAL	%
<b>COST OF SALES:</b>								
<b>FOOD:</b>								
MEAT								
SEAFOOD								
POULTRY								
PRODUCE								
DAIRY								
BAKERY								
PREPARED FOODS								
STAPLE/DRY GOODS								
TOTAL FOOD COSTS	.00		.00		.00		.00	
<b>BEER</b>								
<b>WINE</b>								
<b>LIQUOR</b>								
<b>MIXES &amp; GARNISH</b>								
TOTAL LIQUOR COSTS	.00		.00		.00		.00	
<b>NON-BEVERAGE</b>								
<b>MISCELLANEOUS</b>								
TOTAL COST OF SALES	.00		.00		.00		.00	
<b>GROSS MARGIN:</b>								
FOOD	.00		.00		.00		.00	
BEER	.00		.00		.00		.00	
WINE	.00		.00		.00		.00	
LIQUOR	.00		.00		.00		.00	
NON-BEVERAGE	.00		.00		.00		.00	
MERCHANDISE	.00		.00		.00		.00	
TOTAL GROSS MARGIN	.00		.00		.00		.00	
<b>OTHER INCOME:</b>								
<b>GRATUITY</b>								
<b>FACILITY FEE</b>								
<b>SERVICE CHARGE</b>								
TOTAL OTHER INCOME	.00		.00		.00		.00	
TOTAL G.M. & OTHER INCOME	1.00		1.00		1.00		1.00	

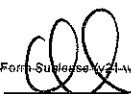
Exhibit E – Page 2

Form Sublease (v22) 11-22-13 CLEAN.doc Form Sublease (v21) with GRG comments).doc  
Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

880 RESTAURANTS  
QUARTERLY STATEMENT

	QUARTER TO DATE				YEAR TO DATE			
	PRIOR YEAR	%	ACTUAL	\$	PRIOR YEAR	%	ACTUAL	\$
<b>CONTROLLABLE EXPENSES:</b>								
PAYROLL F.O.H. - CATERING								
PAYROLL F.O.H. - RESTAURANT								
PAYROLL H.O.H. - CATERING								
PAYROLL H.O.H. - RESTAURANT								
PAYROLL - STEWARDING								
PAYROLL - BAKERY								
PAYROLL - SUPERVISION								
PAYROLL - BONUSES								
PAYROLL GRATUITY POOL								
PAYROLL HEALTH INSURANCE								
PAYROLL TAXES								
PAYROLL W.C. INSURANCE								
401K EXPENSE								
EMPLOYEE MEALS								
MANAGER MEALS								
EMPLOYEE RELATIONS								
<b>TOTAL EMPLOYEE EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>BANK CHARGES</b>								
CASH OVER/SHORT								
CREDIT CARD FEES								
CUSTOMER CHAR. CHECKS/RETURNS								
DUES & SUBSCRIPTIONS								
OFFICE EXPENSE								
PARKING								
POSTAGE								
<b>TOTAL ADMINISTRATIVE EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>CHINA, SILVER, GLASSWARE</b>								
CLEANING SUPPLIES								
COMPLIMENTARY MEALS								
CUSTOMER RETURNS								
DISH MACHINE SUPPLIES								
ENTERTAINMENT/MUSIC								
EQUIPMENT RENTAL								
FACILITY CREDIT								
FLORAL & DECORATIONS								
FUEL EXPENSE								
JANITORIAL								
KITCHEN SMALLWARES								
MEALS EXPENSE								
LAUNDRY & LINEN								
PAPER GOODS								
PAPER GOODS TO-GO								
PEST CONTROL								
RAM - P.O.S.								
RAM - RESTAURANT UNDER \$1000								
SECURITY EXPENSE								
SHOPPER PROGRAM								
FOY SMALLWARES								
IT EXPENSE								
TRASH REMOVAL								
UNIFORMS								
Valet SERVICE								
WASTE - FOOD & BEVERAGE								
<b>TOTAL FACILITIES EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>UTILITIES</b>								
GAS								
ELECTRIC								
INTERNET								
TELECOMMUNICATIONS								
<b>TOTAL UTILITIES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>ADVERTISING &amp; PROMOTIONAL</b>								
ADVERTISING								
GRAPHIC PRODUCTION								
IN-STORE DISCOUNTS								
ONLINE RESERVATIONS								
PRINTING								
PROMOTIONAL ITEMS								
SPECIAL EVENTS								
WEBSITE EXPENSE								
<b>TOTAL CONTROLLABLE EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	

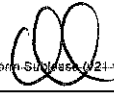
Exhibit E - Page 3

Fom Sublease (v23) 11-22-13 CLEAN.doc Form Sublease with GRG comments.doc  
Landlord \_\_\_\_\_ Tenant 

180 RESTAURANTS  
QUARTERLY STATEMENT

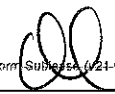
	QUARTER TO DATE				YEAR TO DATE			
	PRIOR YEAR	%	ACTUAL	%	PRIOR YEAR	%	ACTUAL	%
TOTAL MARKETING EXPENSES	.00		.00		.00		.02	
TOTAL OPERATING EXPENSES	.00		.00		.00		.00	
RESTAURANT CONTRIBUTION	.00		.00		.00		.00	

Exhibit E -- Page 4

Form Sublease (v23) 11-22-13 CLEAN.doc Form Sublease (v21-with-CRC-comments).doc  
Landlord \_\_\_\_\_ Tenant 

RESTAURANTS QUARTERLY STATEMENT								
	QUARTER TO DATE				YEAR TO DATE			
	PROR YEAR	%	ACTUAL	%	PROR YEAR	%	ACTUAL	%
<b>RENT EXPENSES</b>								
MASTER LEASE RENT @ 3% FOOD								
MASTER LEASE RENT @ 5% ALCOHOL								
GROSS REVENUE RENT @ 2%								
MINIMUM MONTHLY RENT								
PERFORMANCE RENT								
<b>TOTAL RENT EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>OTHER EXPENSES</b>								
ACCOUNTING								
CONSULTING								
CONTRIBUTIONS								
KC MANAGEMENT FEE @ 3%								
DECOR EXPENSE								
INSURANCE GENERAL								
LEGAL EXPENSE								
MISCELLANEOUS								
PRE-OPENING EXPENSE								
RAM OVER \$100.00								
RESEARCH & DEVELOPMENT								
PERMITS & LICENSES								
TRAVEL & EDUCATION								
TRUCK/AUTO EXPENSE								
<b>TOTAL OTHER EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
<b>TOTAL FIXED EXPENSES</b>	<u>.00</u>		<u>.00</u>		<u>.00</u>		<u>.00</u>	
INTEREST EXPENSE								
DEPRECIATION & AMORTIZATION								
FED. & STATE TAXES								
<b>NET PROFIT</b>	<u>1.00</u>		<u>1.00</u>		<u>1.00</u>		<u>1.00</u>	

Exhibit E – Page 5

Form Sublease (2011-22-13 CLEAN.dwg Form Sublease (24-with CRG comments).dwc  
Landlord \_\_\_\_\_ Tenant 



**EXHIBIT "F"**  
**FORM OF TENANT'S PLE STATEMENT**

ISLAND PRIME // NEW RESTAURANT

COMPUTATION OF PARTICIPATING LEASE EARNINGS (PLE)

	<u>QUARTER</u>	<u>YEAR-TO-DATE</u>
NET INCOME - per Statement of Operations		
<b>PLE ADJUSTMENTS</b>		
<b>ADD:</b>		
Minimum rent		
Performance rent		
<b>EXPENSES ELIMINATED:</b>		
Depreciation		
Amortization		
Interest expense		
Income tax expense		
<b>DEDUCT:</b>		
Amortization of equipment purchased after first year of operations - straight line - 5 years		
Interest expense - attributable to financing equipment purchased after first year of operations (non lien financing)		
<hr/>		
<b>PARTICIPATING LEASE EARNINGS</b>		
Performance Rent Percentage	50%	50%
<hr/>		
<b>PERFORMANCE RENT</b>		
<b>DEDUCT:</b>		
Minimum Rent Paid	(            )	(            )
Performance Rent Credit	(            )	(            )
<hr/>		
<b>BALANCE DUE</b>		
<hr/>		
<b>PERFORMANCE RENT CREDIT CARRYFORWARD</b>		
<hr/>		

Exhibit F

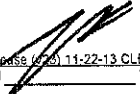
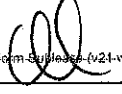
EXHIBIT "G"

MODIFICATIONS TO PREVIOUS ISLAND PRIME SUBLEASE

If Landlord and Tenant enter into the New Island Prime Lease for the Island Prime Restaurant pursuant to the provisions of this Lease, the New Island Prime Lease shall differ from the Previous Island Prime Sublease in the following respects:

1. The term of the New Island Prime Lease shall be extended such that the expiration date of the term thereof shall be that date which is the 25<sup>th</sup> anniversary of the Lease Commencement Date hereunder.
2. Landlord will not be required to perform any work to the Island Prime Restaurant premises and Tenant will not receive any tenant improvement allowance.
3. Operating Expenses will be prorated between the Island Prime Restaurant premises and the New Restaurant premises on the basis of their respective rentable square footages—determined in accordance with the BOMA standards for freestanding retail buildings—with no cap.
4. The representation in the First Amendment to the Existing Sublease that if the Existing Sublease is terminated without a SNDA the Port is willing to negotiate a new direct lease with Cohn for 30 days if Cohn has been operating successfully shall be deleted.
5. [Intentionally Deleted].
6. Tenant will not get to extend the payment of the first three months of rent.
7. Landlord will not make any representations and/or warranties (nor have any obligations) concerning the condition of the Premises or its compliance with applicable laws.
8. CAMS will be paid monthly, not quarterly.
9. The provision requiring Landlord to pay for replacement of certain building systems (e.g., HVAC, electrical, plumbing, fire sprinkler system, etc.), if the cost to repair an item is more than 50% of the replacement cost, will be deleted.
10. Paragraphs 51, 52, 54, 55, 59, 61, and 62 of the Lease (as set forth in the Addendum to Lease and, in some cases, modified by the First Amendment to the Lease) shall be deleted.

Exhibit G

Form Sublease (v.21) 11-22-13 CLEAN.doc Form Sublease (v.21-with-GRG-comments).doc  
Landlord  Tenant 

**EXHIBIT "H"**  
**INITIAL RULES AND REGULATIONS**

Exhibit H

Form Sublease (v2) 11-22-13 CLEAN.doc Form Sublease (v2) with CRC comments.doc  
Landlord \_\_\_\_\_ Tenant \_\_\_\_\_

**RULES AND REGULATIONS**

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises, in Landlord's sole discretion. No awnings or other projection shall be attached to the outside walls of the Premises without the prior written consent of Landlord.

2. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those quantities necessary for the operation or maintenance of restaurant equipment, including patio heaters and outdoor fireplaces, subject to any express provisions of Tenant's Lease to the contrary. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance. Tenant shall not bring into or keep in or about the Premises any live birds or animals (other than as required by applicable law, e.g., service animals).

3. Landlord reserves the right from time to time, in Landlord's sole discretion, to install, replace or change any signs in, on or about the Common Areas (except for Tenant's signs which are expressly permitted by the Lease). Any such signs shall not block the visibility of Tenant's signs or the entrance to the Premises.

4. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Premises except for outdoor speakers for music in the patio areas.

5. The Premises shall not be used for lodging or for manufacturing of any kind.

6. The loading and unloading of delivery vehicles will not unreasonably interfere with traffic flow within the Project. All goods will be promptly moved into the Premises and not left in the parking or loading areas overnight.

7. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by Landlord, and Tenant also shall provide Landlord with the name of a designated responsible principal or employee to represent Tenant in all matters pertaining to such fire or security regulations. Tenant shall cooperate fully with Landlord in all matters concerning fire and other emergency procedures.

8. The requirements of Tenant will be attended to only upon the appropriate application to Landlord or Landlord's designated representative by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

9. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations.

10. If there is a conflict between the Lease and these Rules and Regulations, the Lease shall control.

11. Landlord reserves the right to make such other reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Project and for the preservation of good order therein. Tenant agrees to abide by all the Rules and Regulations and any additional rules and regulations which are adopted. Notwithstanding the foregoing, no additional Rules and Regulations or modification of current Rules and Regulations shall increase Tenant's obligations or reduce Landlord's obligations under the Lease.

12. Tenant shall be responsible for the reasonable observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees or guests.

