



BLOCKED ACCOUNT CONTROL AGREEMENT

34285

This Blocked Account Control Agreement (this "Agreement") is dated as of April 20, 2016, and entered into by and among PLENARY PROPERTIES LONG BEACH LLC ("Company"), THE CITY OF LONG BEACH (together with any successors or assigns, "Lender") and U.S. BANK NATIONAL ASSOCIATION ("Depositary Bank").

1. **Deposit Account.** Pursuant to certain agreements between Company and Lender, Company has granted to Lender a security interest in all rights of Company with respect to accounts number 247182019 and 247182020 (such accounts, together with all substitutions and replacements therefor, the "Deposit Account") located at Depositary Bank and subject to the terms of the Deposit Agreements (as hereinafter defined). The terms and conditions of this Blocked Account Control Agreement (this "Agreement") are in addition to any deposit account agreements and other related agreements that Company has with Depositary Bank, including without limitation all agreements concerning banking products and services, treasury management documentation, account booklets containing the terms and conditions of the Deposit Account, signature cards, fee schedules, disclosures, specification sheets and change of terms notices (collectively, the "Deposit Agreements"). The provisions of this Agreement shall supersede the provisions of the Deposit Agreements only to the extent the provisions herein are inconsistent with the Deposit Agreements, and in all other respects, the Deposit Agreements shall remain in full force and effect. All items deposited into the Deposit Account shall be processed according to the provisions of the Deposit Agreements, as amended by this Agreement.

2. **Security Interest.** Company has granted to Lender a security interest in, among other property, the Deposit Account and all credits or proceeds thereto and all monies, checks and other instruments held or deposited therein (all of which shall be included in the definition of the "Deposit Account"). Company represents and warrants that it has the legal right to pledge the Deposit Account to Lender, that the funds in the Deposit Account are not held for the benefit a third party, and that that there are no perfected liens or encumbrances with respect to the Deposit Account. Company covenants with Lender that it shall not enter into any acknowledgment or agreement that gives any other person or entity except Lender control over, or any other security interest, lien or title in, the Deposit Account.

3. **Control.** In order to provide Lender with control over the Deposit Account, Company agrees that Depositary Bank shall comply with any and all orders, notices, requests and other instructions originated by Lender directing disposition of the funds in the Deposit Account without any further consent from Company, even if such instructions are contrary to any of Company's instructions or demands or result in Depositary Bank dishonoring items which may be presented for payment. Company agrees that instructions from Lender may include the giving of stop payment orders for any items presented to the Deposit Account, instructions to transfer funds to or for the benefit of Lender or any other person or entity, and instructions to close the Deposit Account.

4. **Access to Deposit Account.** The Deposit Account shall be under the control of Lender; provided, that unless and until Depositary Bank receives Lender's written notice that Company's access to the funds in the Deposit Account is terminated, Depositary Bank shall honor Company's instructions, notices and directions with respect to the transfer or withdrawal of funds from the Deposit Account, including paying or transferring the funds to Company or any other person or entity.

Upon receipt of a written notice from Lender instructing Depositary Bank to terminate Company's access to funds in the Deposit Account, Depositary Bank shall transfer all funds (subject to Depositary Bank's funds availability policy) in the Deposit Account to a designated account in accordance with Lender's written instructions. Lender shall promptly contact Depositary Bank to confirm Depositary Bank's receipt of Lender's written instructions. Any written notice sent pursuant to this Section 4(b) and confirmed to have been received after Depositary Bank's business hours shall not be deemed sent until the next business day. Depositary Bank shall have a reasonable time to act on Lenders' written notice.

5. **Subordination by Depositary Bank.** Company and Depositary Bank acknowledge notice of and recognize Lender's continuing security interest in the Deposit Account and in all items deposited in the Deposit Account and in the proceeds thereof. Depositary Bank hereby subordinates any statutory or contractual right or claim of offset or lien resulting from any transaction which involves the Deposit Account if Section 4(a) is checked above or upon confirmation of Depositary Bank's receipt of Lender's notice under Section 4(b). Notwithstanding the preceding sentence, nothing herein constitutes a waiver of, and Depositary Bank expressly reserves all of its present and future rights with respect to: (i) fees and expenses ("Fees") related to the Deposit Account; (ii) any checks, ACH entries, wire transfers, merchant card transactions, or other paper or electronic items which were deposited or credited to the Deposit Account that are returned, reversed, refunded, adjusted or charged back for insufficient funds or for any other reason ("Returned Items"); (iii) obligations and liabilities connected with the Deposit Account that arise out of any treasury management services provided by Depositary Bank, its subsidiaries or affiliates, including but not limited to, ACH, merchant card, zero balance account, sweeps, controlled disbursement or payroll ("Overdrafts"). Depositary Bank may charge the Deposit Account or other accounts of Company maintained at Depositary Bank to cover Fees, Returned Items or Overdrafts. If there are insufficient funds in the Deposit Account or any of Company's other accounts to cover the Fees, Returned Items and Overdrafts, Company agrees to immediately reimburse Depositary Bank for the amount of such shortfall. If Company fails to pay the amount demanded by Depositary Bank, Lender agrees to reimburse Depositary Bank within three (3) business days of demand thereof by Depositary Bank for any Returned Items and Overdrafts to the extent Lender received payment in respect thereof pursuant to section 4.

6. **Indemnity.** Company agrees to defend, indemnify and hold Depositary Bank and its directors, officers, employees, attorneys, successors and assigns (collectively "Depositary Bank") harmless from and against any and all claims, losses, liabilities, costs, damages and expenses, including, without limitation, reasonable legal and accounting fees (collectively, "Claims"), arising out of or in any way related to this Agreement, excepting only liability arising out of Depositary Bank's gross negligence or willful misconduct. Without regard to Company's indemnification obligations to Depositary Bank, Lender agrees to: (i) reimburse Depositary Bank for any Returned Items and Overdrafts (the proceeds of which were received by Lender) and (ii) defend, indemnify and hold Depositary Bank harmless from and against any and all Claims arising out of Depositary Bank's compliance with Lender's instructions. Lender's obligations to Depositary Bank hereunder shall in no way operate to release Company from its obligations to Lender and shall not impair any rights or remedies of Lender to collect any such amounts from Company. IN NO EVENT WILL DEPOSITARY BANK BE LIABLE FOR ANY INDIRECT DAMAGES, LOST PROFITS, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHICH ARISE OUT OF OR IN CONNECTION WITH THE SERVICES CONTEMPLATED BY THIS AGREEMENT EVEN IF DEPOSITARY BANK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

7. **Depositary's Bank's Responsibility.** The duties of Depositary Bank are strictly limited to those set forth in this Agreement and Depositary Bank is not acting as a fiduciary for any party hereto. Depositary Bank shall be protected in relying on any form of instruction, notice, or other communication purporting to be from an authorized representative of Lender which Depositary Bank, in good faith, believes to be genuine and what it purports to be. Depositary Bank shall have no duty to inquire as to the genuineness, validity, or enforceability of any such instruction, notice or communication even if Company notifies Depositary Bank that Lender is not legally entitled to

originate any such instruction, notice or communication. The Deposit Account and all actions and undertakings by Depositary Bank shall be subject to all rules and regulations relating to the Deposit Account and to applicable law. If requested by Lender, Company authorizes Depositary Bank to provide to Lender a copy of the Deposit Account statement.

8. **Termination.** This Agreement shall not be terminable by Company so long as any obligations of Company to Lender are outstanding and unpaid. This Agreement may be terminated by Depositary Bank upon thirty (30) days prior written notice to all parties; provided, however, that Depositary Bank may terminate this Agreement immediately in the event Lender fails to make payments to Depositary Bank in accordance with section 5 above. This Agreement may be terminated by Lender in a writing sent to Depositary Bank in which Lender releases Depositary Bank from any further obligation to comply with instructions originated by Lender with respect to the Deposit Account. Any available funds remaining in the Deposit Account upon termination or deposited in thereafter shall be transferred in accordance with the provisions of section 4 above after deduction for any amounts otherwise reimbursable to Depositary Bank as provided hereunder. Termination shall not affect the rights and obligations of any party hereto with respect to any period prior to such termination.

9. **Legal Process and Insolvency.** In the event Depositary Bank receives any form of legal process concerning the Deposit Account, including, without limitation, court orders, levies, garnishments, attachments, and writs of execution, or in the event Depositary Bank learns of any insolvency proceeding concerning Company, including, without limitation, bankruptcy, receivership, and assignment for the benefit of creditors, Depositary Bank will respond to such legal process or knowledge of insolvency in the normal course or as required by law.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties agree that the State of California is the "bank's jurisdiction" for purposes of the Uniform Commercial Code.

11. **Notices.** Except as otherwise provided in this Agreement, all notices and other communications required under this Agreement shall be in writing and may be personally served or sent by facsimile, overnight courier, or registered/certified United States Mail, and shall be deemed given when delivered in person, or received by facsimile, courier or United States Mail at the address specified below. Any party may change its address for notices hereunder by notice to all other parties given in accordance with this section 11.

Company: Plenary Properties Long Beach LLC
10100 Santa Monica Blvd., Suite 410
Los Angeles, California 90067
Attention: Stuart Marks
Email: stuart.marks@plenarygroup.com
Telephone No.: (424) 278-2175

Lender: Patrick H. West
Office of the City Manager
City of Long Beach
333 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
Telephone No.: (562) 570-6916
Fax No.: (562) 570-7650

with a copy to:

Charles Parkin
Office of the City Attorney

City of Long Beach
333 W. Ocean Blvd., 11th Floor
Long Beach, California 90802
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

Depository Bank: U.S. Bank National Association
633 W. 5th Street, 24th Floor
Los Angeles, CA 90071
Attention: Georgina Thomas
Email: georgina.thomas@usbank.com
Telephone: (213) 615-6001
Facsimile: (213) 615-6199


12. **Miscellaneous.** This Agreement shall bind and benefit the parties and their respective successors and assigns. This Agreement may be amended only with the prior written consent of all parties hereto. None of the terms of this Agreement may be waived except as Depository Bank may consent thereto in writing. No delay on the part of Depository Bank in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude other or further exercise thereof or the exercise of any right, power or privilege. The rights and remedies specified herein are cumulative and are not exclusive of any rights or remedies which Depository Bank would otherwise have.

13. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

14. **Jury Trial Waiver.** COMPANY, LENDER AND DEPOSITARY BANK HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR SERVICES RENDERED IN CONNECTION WITH THIS AGREEMENT.

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PLENARY PROPERTIES LONG BEACH LLC

By: 
Name: Paul Dunstan
Title: President

By: _____
Name: Stuart Marks
Title: Senior Vice President

APPROVED AS TO FORM
Charles Parkin, City Attorney

By: _____
Name: _____
Title: _____

THE CITY OF LONG BEACH

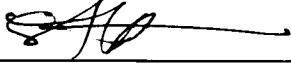
By: _____
Name: Patrick West
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Depositary Bank

By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

By: _____
Name: Paul Dunstan
Title: President

By:  _____
Name: Stuart Marks
Title: Senior Vice President

APPROVED AS TO FORM
Charles Parkin, City Attorney

By: _____
Name: _____
Title: _____

THE CITY OF LONG BEACH

By: _____
Name: Patrick West
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION
DEPOSITARY BANK

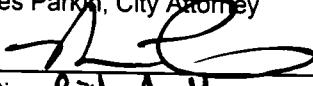
By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

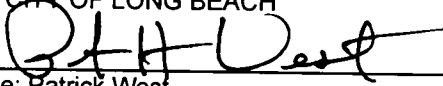
By: _____
Name: Paul Dunstan
Title: President

By: _____
Name: Stuart Marks
Title: Senior Vice President

APPROVED AS TO FORM
Charles Parkin, City Attorney

By:  _____
Name: Rich Anthony
Title: Deputy

THE CITY OF LONG BEACH

By:  _____
Name: Patrick West
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Depository Bank

By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

By: _____
Name: Paul Dunstan
Title: President

By: _____
Name: Stuart Marks
Title: Senior Vice President

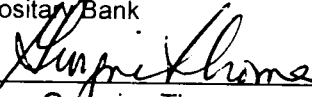
APPROVED AS TO FORM
Charles Parkin, City Attorney

By: _____
Name: _____
Title: _____

THE CITY OF LONG BEACH

By: _____
Name: Patrick West
Title: City Manager

U.S. BANK NATIONAL ASSOCIATION,
as Depository Bank

By: 
Name: Georgina Thomas
Title: ~~Assistant~~ Vice President