

Ground Landlord Estoppel

Bank of America  
5 Park Plaza, Fifth Floor  
Irvine, CA 92614

29263

RE: Lease dated June 30, 2000 (the Lease") by and between the City of Long Beach, a municipal corporation ("Landlord") and John Hancock Life Insurance Company, a Massachusetts corporation ("Tenant")

Ladies and Gentlemen:

The undersigned Landlord understands that Bank of America, N.A, as Buyer's lender ("Lender"), intends to encumber the Premises in making a loan to AC-Catalina Landing LLC, or its assignee ("Buyer"), which intends to acquire from Tenant, all of Tenant's right, title and interest under the Lease, including, but not limited to, Tenant's leasehold estate in the real property leased under the Lease (the "Premises"). The undersigned Landlord does hereby certify to Buyer and Tenant, and to Buyer's lender, if applicable, as follows:

1. A true and correct copy of the Lease is attached hereto as Exhibit "A."
2. During the term of the Lease, all buildings, structures and improvements (collectively, the "Improvements") now existing or hereafter constructed on the Premises shall remain vested in Tenant, or its assignees.
3. The Lease is in full force and effect and has not been modified, supplemented, or amended, except by the Clarification Letter dated April 29, 2002, and the letter regarding Catalina Landing Ground Lease dated May 23, 2002, true and correct copies of which are attached to this Estoppel Certificate as Exhibit "B". The Lease, as clarified by the Clarification Letter, constitutes the entire agreement between the Landlord and the Tenant relating to the Premises and there are no other promises, agreements, understanding, or commitments (oral or in writing) between Landlord and Tenant relating to the Premises other than the Agreement dated May 1, 2002, between Landlord and Tenant as clarified by the letter re Section 5 of the Fee Agreement dated April 30, 2002, copies of which are attached to this Estoppel Certificate as Exhibit "C" (collectively, the "Dredging Agreement"). The Clarification Letter and the Dredging Agreement are in full force and have not been modified, supplemented or amended.
4. There are no defaults under the Lease or events which, with notice or the passage of time, or both, would constitute a default in the performance of Tenant's obligations under the Lease. Landlord has not given Tenant written notice of any dispute between Landlord and Tenant or that Landlord considers Tenant in default under the Lease. The Landlord is not in default in the performance of its obligations under the Lease.
5. Tenant has not paid a security or other deposit with respect to the Lease.

6. The effective date of the Lease is April 29, 2002, and the term of the Lease and the payment of rent commenced as of that date. All conditions to the commencement of the term of the Lease as set forth in the Lease, have either been satisfied or waived and there are no other conditions precedent to the effectiveness of the Lease.

7. Monthly rent is paid under the Lease in advance. Tenant has fully paid the monthly rent for the month of May, 2002 in the amount of \$81,000, which payment was due on May 1, 2002.

8. The Lease is scheduled to expire on April 28, 2068.

9. Landlord owns good and marketable fee title to the Premises, and no other person or entity has any interest in the Premises and Landlord has not assigned all or a portion of its interest in the Lease to any person or entity.

10. Landlord has not permitted a mortgage or deed of trust to be recorded against Landlord's fee interest in the land demised by the Lease or its reversionary interest in the improvements.

11. No consent of the Landlord to the assignment of the Lease by Tenant to Buyer is required. Landlord consents to the assignment of the Dredging Agreement by Tenant to Buyer.

Landlord acknowledges that Lender is relying upon the representations made in this Estoppel Certificate in making a loan, and does hereby consent to the Lender's Deed of Trust to encumber the Premises. Landlord further acknowledges that Buyer is relying upon the representations made in the Estoppel Certificate in acquiring the Premises. This Estoppel Certificate shall be binding upon and inure to the benefit of the successors and assigns of Landlord, Tenant, Buyer, and if applicable, Buyer's lender.

Very truly yours,

CITY OF LONG BEACH,  
a municipal corporation

By: *Gerald R. Miller*

Print Name: Gerald R. Miller

Print Title: ASSISTANT CITY MANAGER

Dated: May 29, 2002

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

The foregoing is hereby approved as to form  
this 28<sup>th</sup> day of May, 2002

By: *Joshua [Signature]*, City Attorney

*Deputy*

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

LEASE

This LEASE is made this 30TH day of JUNE, 2000,  
between the **CITY OF LONG BEACH**, a municipal corporation and trust  
grantee of the State of California of certain tide and submerged  
lands within said City ("**Landlord**" or "**Lessor**") and **JOHN HANCOCK**  
**LIFE INSURANCE COMPANY**, a Massachusetts corporation ("**Tenant**" or  
"**Lessee**").

ARTICLE I

Recitals

1.1 Preliminary Statement: Landlord is the owner of  
certain tide and submerged lands conveyed to it by the State of  
California, which lands were granted and are held upon certain  
trusts and conditions set forth in Chapter 676, Statutes of 1911,  
Chapter 102, Statutes of 1925, Chapter 158, Statutes of 1935,  
Chapter 29, Statutes of 1956, First Extraordinary Session, Chapter  
1560, Statutes of 1959, and Chapter 138, Statutes of 1964, First  
Extraordinary Session.

1.2 Definitions: As used in this Lease, the following  
words and phrases shall have the following meanings:

1.2.1 PREMISES: The real property and  
improvements thereon and the water area within the boat basin  
as shown on the attached drawing marked Exhibit "A" and  
referred to as Parcels 1 and 2 more fully described in Exhibit  
"A-1" together with the non-exclusive easements described in  
Exhibit "A-1" as parcels 3 and 4.

1.2.2 CITY MANAGER: The City Manager of the City  
of Long Beach.

Exhibit "A"

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1.2.3 LANDLORD'S ORIGINAL ADDRESS:  
c/o City Manager, City Hall - 13th Floor  
333 West Ocean Boulevard  
Long Beach, California 90802  
FAX: (562) 570-6583

1.2.4 TENANT'S ORIGINAL ADDRESS:  
300 Golden Shore  
Long Beach, CA 90802  
FAX: (562) 495-2270

1.3 Exhibits:

Exhibit "A"	Drawing of Premises
Exhibit "A-1"	Legal Description of Premises and non-exclusive easements.

All of the above-described exhibits are attached to this Lease and incorporated by reference.

ARTICLE II

Premises, Term, Option and Appurtenant Rights  
and Duties

2.1 Premises: Landlord leases to Tenant and Tenant leases from Landlord effective upon the Commencement Date (as defined in Paragraph 2.2 the Premises and all buildings and improvements made by Landlord located thereon subject to the terms, covenants, and conditions contained in this Lease. There are excepted and reserved from the Premises all minerals and mineral rights of every kind or nature lying below the surfaces of said areas. Landlord shall not exercise any right of surface entry on the Premises nor any right to use the subsurfaces of the land and water areas described within one hundred (100) feet below ground level or water surface level of said Premises for the purpose of mineral exploration or development. This Lease shall confer no

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1 rights in Tenant or its successors in interest to the subsurfaces  
2 of the land and water areas described more than one hundred (100)  
3 feet below ground level, or water surface level, other than the  
4 right to drive piles to a depth greater than one hundred (100)  
5 feet.

6 Landlord acknowledges that certain floats, docks,  
7 and ramps located within Premises are the property of Tenant.  
8 Notwithstanding the provisions of Paragraphs 4.3 and 5.12, title to  
9 any floats, docks, and ramps owned or purchased by Tenant shall  
10 remain vested in Tenant upon and after the termination of this  
11 Lease (whether by lapse of time or otherwise). Tenant agrees that  
12 Landlord may occasionally use said floats, docks, and ramps with  
13 vessels owned or controlled by it, and temporarily moor such  
14 vessels there without cost or expense to Landlord provided that  
15 such occasional use does not interfere with the use thereof by  
16 Tenant or its sublessees, and further provided that Landlord is  
17 fully liable in damages to Tenant for any injuries to persons or  
18 damage to property caused by such vessels on such occasions.

19 Tenant shall not use or allow the Premises to be  
20 used for the furnishing of wharfage, dock, warehouse, or other  
21 terminal facilities to a common carrier by water which is subject  
22 to the United States Shipping Act of 1916, as amended.

23 2.2 Term and Commencement Date: The term shall be for  
24 sixty-six (66) years unless sooner terminated. The commencement  
25 date ("Commencement Date") shall be the first day upon which an  
26 executed copy of this Lease shall be in effect under Paragraph  
27 11.20. Such date will be confirmed in writing by Landlord and  
28 Tenant.

ARTICLE III

Rent

3.1 Lease Year: The words "lease year" as used herein shall mean a calendar year commencing January 1 and ending December 31. Any portion of the term occurring at the beginning or end thereof which is less than a calendar year shall be deemed and called a "partial lease year". The first lease year shall be that calendar year commencing January 1, 2001.

3.2 Rent: For each lease year and partial lease year from and after the Commencement Date, Tenant shall pay to Landlord rent in the amounts set forth in Paragraph 3.2.2 below.

3.2.1 PAYMENT OF RENT: The rent for each lease year and partial lease year during the term shall be payable monthly in advance in equal installments. For a partial lease year, at the end of the term, the rent payable by Tenant shall be an amount equal to 1/365th of the rent for the last lease year multiplied by the number of days of said partial lease year.

3.2.2 RENT AND ADJUSTMENT OF RENT: Annual rent for the partial lease year 2000 shall be a pro rata portion (determined per diem based on the 366-day leap year) of the \$972,000 annual rent. For lease years 2001 through and including 2009, annual rent shall be \$972,000 per year. For lease years 2010 through and including 2014, annual rent shall be \$1,166,400 per year. In the year 2015, the annual rent shall be adjusted to be equal to the greater of: (a) 11% of the average gross annual rents and gross parking revenues for the previous two years or (b) \$1,166,400. Once the ground

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1 rents have been adjusted by this formula, the ground rents  
2 shall be adjusted every five years thereafter based upon the  
3 increase or decrease in the Consumer Price Index for all items  
4 for the area that includes Long Beach, California, issued by  
5 the Bureau of Labor Statistics of the United States Department  
6 of Labor (hereinafter "CPI") during the five-year period  
7 between the date of the previous rent adjustment and the date  
8 the newly adjusted annual rent is to start (provided that, in  
9 no event shall the newly adjusted annual rent be increased by  
10 more than 16% of the annual average gross rent payable in the  
11 immediately preceding five-year period; and provided further,  
12 that the newly adjusted annual rent shall be \$1,166,400 if 11%  
13 of gross annual rents and gross parking revenue for the lease  
14 year immediately preceding the rent adjustment was less than  
15 \$1,166,400). If the CPI calculations or procedures are  
16 changed by the Bureau of Labor Statistics, the parties agree  
17 to use the nearest equivalent to the CPI as may be available  
18 for the purpose. For purposes of determining gross annual  
19 rents, Tenant shall lease office space on a "full service  
20 gross" basis. "Gross annual rents" shall mean rents actually  
21 collected and attributable to the project, including any  
22 rental of marina space, for the subject years but excluding  
23 (i) any separately stated expense reimbursements above the  
24 "base year expenses" contained in the full service gross  
25 lease, and (ii) gross parking revenues.

26 "Full service gross" means the rental rate which includes  
27 base year expenses.

28 "Base year expenses" means all operating expenses and

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1 real estate taxes in the first year and as adjusted  
2 periodically through subtenant leases.

3 At the inception of a five-year rent adjustment period,  
4 Tenant shall continue to pay rent at the old rate until the  
5 new rate is determined, subject to retroactive adjustment once  
6 the new rent is determined. No interest shall be charged on  
7 retroactive adjustment amounts if paid within 14 days after  
8 the new rate is determined.

9 At the ground rent adjustments referred to above, Tenant  
10 shall make all documents and data available to Landlord for  
11 audit upon which it based or derived the mentioned gross  
12 annual rents and gross annual parking revenues.

13  
14 ARTICLE IV

15 The Premises

16 4.1 Subsurface Conditions: Tenant acknowledges that  
17 neither Landlord nor any of Landlord's officers, agents, or  
18 employees have made, nor does Landlord make herewith, any  
19 representation, warranty, or guaranty, either express or implied,  
20 concerning the surface or subsurface soil conditions of the  
21 Premises. Tenant shall have the sole responsibility for  
22 determining the surface or subsurface conditions of the Premises.  
23 Tenant takes said Premises and all improvements thereon "as is" and  
24 "with all faults".

25 4.2 Mechanics Liens: Subject to Tenant's right to  
26 contest the same as hereinafter provided, Tenant shall pay as soon  
27 as due all mechanics', laborers', materialmans', contractors',  
28 subcontractors' or other similar charges or liens on the Premises.



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1 Nothing contained herein shall in any respect make Tenant the agent  
2 of Landlord or authorize Tenant to do any act or to make any  
3 contract encumbering or in any manner affecting the title or rights  
4 of the Landlord in or to the Premises. If any such mechanics' or  
5 other similar liens shall at any time be filed against Landlord's  
6 interest in the Premises, Tenant shall cause the same to be  
7 discharged of record within thirty (30) days after the date of  
8 filing the same or otherwise free the Premises from such claim or  
9 lien and any action brought to foreclose such lien, or Tenant shall  
10 promptly furnish to Landlord a bond in an amount equal to one  
11 hundred twenty-five percent (125%) of such claim and issued by a  
12 surety company satisfactory to Landlord, securing Landlord against  
13 payment of such lien and against any and all loss or damage  
14 whatsoever in any way arising from the failure of Tenant to  
15 discharge such lien. Tenant may in good faith contest any of such  
16 liens provided it does so with due diligence and further provided  
17 that Tenant shall fully pay and immediately discharge the amount of  
18 any final judgment granted against Landlord and Tenant or either of  
19 them in any litigation involving the enforcement of such liens or  
20 the validity thereof. In the event Tenant fails or refuses to  
21 discharge of record any such uncontested lien within said thirty  
22 (30) day period or to pay and satisfy any such judgment as provided  
23 above, Landlord, following twenty (20) days written notice to  
24 Tenant of Landlord's intent, may, but shall not be obliged to, pay  
25 the amount thereof inclusive of any interest thereon or any court  
26 costs assessed against Landlord and/or Tenant in litigation. Any  
27 amounts so paid by Landlord and all reasonable attorneys' fees and  
28 other expenses of Landlord together with interest thereon at the

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1 rate provided in Paragraph 5.4 from the date of payment shall be  
2 deemed additional rent and be paid by Tenant to Landlord on demand.  
3 4.3 Tenant's Property: Any building, structure or other  
4 improvement constructed or placed on the Premises by Tenant shall  
5 be and remain the property of Tenant during the term. Except as  
6 provided in Paragraph 2.1, upon the termination of this Lease,  
7 whether by lapse of time or otherwise, all such buildings,  
8 structures, and improvements shall be and become the property of  
9 Landlord free and clear of all liens, charges or encumbrances of  
10 any nature whatsoever.

11  
12 ARTICLE V

13 Use of Premises and Tenant's Covenants

14 5.1 Permitted Uses: Tenant shall not use or allow  
15 Premises to be used for any purpose other than the following  
16 permitted uses except with the prior written approval of Landlord.

17 5.1.1 A passenger terminal, offices and related  
18 facilities including catering kitchen, fast-food outlet, and  
19 retail sales outlet, for the business of providing cruises to  
20 and from Catalina Island, cruises within Long Beach and Los  
21 Angeles Harbors and San Pedro Bay, and other water-borne  
22 transportation of passengers as required by the public and all  
23 other uses incidental to such business.

24 5.1.2 The development and operation of office  
25 buildings with parking and other usual tenant services;  
26 provided, however, that Tenant shall, on a continual basis  
27 during the term or sooner termination of this Lease, use its  
28 every commercially reasonable efforts to sublease the office

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1 space within any such office building to "qualified tenants"  
2 who are defined as those persons, firms, entities,  
3 governmental agencies engaged in businesses, industries and  
4 activities the conduct of which in said office space will have  
5 or may be reasonably expected to have a direct beneficial  
6 effect upon the development, promotion, furtherance or  
7 accommodation of international commerce, transportation,  
8 shipping or navigation. Further to this requirement, Tenant  
9 shall (for the previous calendar year or partial year)  
10 annually furnish Landlord, by January 30<sup>th</sup> of each year, during  
11 the term of this lease (The "Office Lease Statement"), a  
12 detailed list of sub-tenants upon the Premises, the terms of  
13 each such sub-lease, and a description of how each such sub-  
14 tenant is a "qualified tenant" , if applicable. Tenant shall  
15 in each such annual report give a detailed narrative statement  
16 affirmatively demonstrating that it has met the requirements  
17 of this Paragraph as to its "commercially reasonable efforts."  
18 Landlord and Tenant each acknowledge and agree that in  
19 accordance with Haggerty v. City of Oakland, 161 Cal App 2d  
20 407, the office space shall not be limited solely for use by  
21 those sublessees, concessionaires, and licensees whose  
22 businesses are marine or maritime oriented and that other  
23 businesses shall be allowed to sublet office space when the  
24 same cannot be sublet to qualified businesses subject to the  
25 other requirements of this Paragraph 5.1.2. Any such other  
26 use shall be deemed to be incidental to the main purpose of  
27 the office buildings.

28 5.1.3 A parking structure providing off-street

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1 parking for the general public, for patrons of the cruise  
2 business, and for occupants of the office buildings and their  
3 customers and patrons.

4 5.1.4 A coffee shop for the convenience of cruise  
5 patrons and Tenant's sublessees and their customers and  
6 patrons.

7 5.1.5 A restaurant and cocktail lounge.

8 5.1.6 Berthing and mooring facilities, constructed  
9 and operated to a standard at least equal to that of the City  
10 of Long Beach Downtown Marina, for use by Tenant's and  
11 Tenant's sublessee's or permittee's vessels. Such use shall be  
12 limited as set out in Paragraph 2.1.

13 5.1.7 Tenant may maintain facilities used as a  
14 marina for use by Tenant and Tenant's sublessees and/or  
15 permittees. Such use shall be limited as set out in Paragraph  
16 2.1.

17 5.1.8 Such usual and customary office support  
18 businesses (e.g. mail services and copy services) as are found  
19 in office building complexes of comparable quality in Los  
20 Angeles and Orange counties.

21 5.2 Utilities and Services: Tenant shall be responsible  
22 for prompt payment for all utilities and related services furnished  
23 to the Premises during the term including, without limitation,  
24 water, gas, electricity, telephone service, trash collection, sewer  
25 charges, and for all connection charges, Tenant may arrange for its  
26 sublessees to pay directly for such services.

27 5.3 Rent Payments: Tenant covenants to perform promptly  
28 all of its obligations under this Lease and to pay when due all

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1 rent, charges, costs and other sums which by the terms of this  
2 Lease are to be paid by Tenant. All such payments to Landlord  
3 shall be made at Landlord's original address or at such other place  
4 as may be designated in writing by Landlord. Any delinquent  
5 payment due Landlord shall bear interest at the rate provided in  
6 Paragraph 5.4.

7           5.4 Interest: Whenever this Lease provides for the  
8 payment of interest on a sum due either party from the other, the  
9 rate of interest shall be the maximum interest rate allowed by law,  
10 where no interest rate is otherwise stated, on the date the sum  
11 becomes due and payable.

12           5.5 Condition of Premises: Tenant covenants to keep the  
13 Premises reasonably neat and clean, and to keep all improvements  
14 constructed thereon in good order, repair, condition, reasonable  
15 wear and tear and damage by casualty and governmental authority  
16 excepted.

17           5.6 Alterations: Tenant shall first obtain Landlord's  
18 prior written consent for any structural improvements upon or  
19 modifications to the structural portions of the Premises or any  
20 improvements or modifications to the exterior of any building or  
21 structure thereon. To obtain that consent, Tenant shall submit to  
22 the City Manager reasonably detailed plans and specifications for  
23 such alteration, together with a statement of Tenant's reasons for  
24 the alteration and the contemplated use of areas after the  
25 alterations are completed. Landlord reserves the right within  
26 thirty (30) days after the submission of the plans, specifications,  
27 and statement to disapprove such proposed alteration. If Landlord  
28 neither approves nor disapproves in writing the proposed alteration

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1 within the thirty (30) day period, the proposed alteration shall be  
2 deemed approved subject to the provisions of Paragraph 5.7.

3 Landlord's approval is not required for non-structural  
4 subtenant alterations or improvements within a building which do  
5 not alter the exterior elevation of the building; provided Tenant  
6 must nevertheless comply with all building permit requirements and  
7 other laws and regulations applicable thereto.

8 5.7 Compliance with Laws: Tenant covenants to make all  
9 repairs, alterations, additions, or replacements to the Premises  
10 and the improvements constructed thereon and all equipment,  
11 facilities, signs and fixtures thereon, required by law because of  
12 Tenant's use thereof; to keep the Premises and improvements  
13 constructed thereon equipped with all safety appliances so required  
14 because of such use; to procure or to require its sublessees to  
15 procure any licenses and permits required for any such use; to  
16 comply with all laws, ordinances, orders and regulations of all  
17 governmental authorities having jurisdiction over the Premises and  
18 the business activities thereon; and to obtain all permits and  
19 consents required by law, order or regulation of all governmental  
20 agencies having jurisdiction. Landlord will cooperate with and  
21 assist Tenant in obtaining such permits; provided, however, this  
22 covenant shall not be deemed or construed as a waiver of any right  
23 or obligation of Landlord acting in its governmental capacity.

24 5.8 Indemnification: Tenant agrees to defend, hold  
25 harmless, and indemnify Landlord, the Board of Harbor Commissioners  
26 (individually and collectively), and their officers and employees  
27 from all injury, loss, claims, causes of action, demands or damages  
28 to any person or property while on the Premises or in connection

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1 with the operations conducted by Tenant or its servants, agents or  
2 employees pursuant to the terms of this lease or loss, injury,  
3 damages, claims or causes of action to or of any person or property  
4 anywhere occasioned by the wrongful omission, neglect or fault of  
5 Tenant, its servants, agents, employees, contractors or invitees  
6 (excluding acts by the Landlord and its agents), which loss, claim,  
7 cause of action or damage occurred on or after the Commencement  
8 Date of the term of this Lease.

9 This indemnification provision supplements and in no way  
10 limits the scope of the indemnifications set out in Paragraph 5.9  
11 below. The indemnity obligation of Lessee under this Paragraph  
12 shall survive the expiration or termination, for any reason, of  
13 this Lease.

14 5.9 Use of Hazardous Material.

15 5.9.1 Use of Hazardous Material. Tenant shall not cause  
16 or permit any Hazardous Material, as defined in Paragraph  
17 5.9.5, to be generated, brought onto, used, stored, dispensed  
18 or disposed of in the regular course of business on or about  
19 the Premises by Tenant or its agents, employees, contractors,  
20 subtenants, or invitees, except for limited quantities of  
21 standard office and janitorial supplies containing chemicals  
22 categorized as Hazardous Material and except for batteries or  
23 petroleum products used in vehicles or vessels and/or stored  
24 on site for use in such vehicles or vessels. Tenant shall:

25 (a) Use, store, dispense, and dispose of all such  
26 Hazardous Material in strict compliance with all  
27 applicable statutes, ordinances, and regulations in  
28 effect during the Lease Term that relate to public

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1 health and safety and protection of the environment  
2 ("Environmental Laws"), including those  
3 Environmental Laws identified in Paragraph 5.9.5;  
4 and

5 (b) Comply at all times during the Lease Term with all  
6 Environmental Laws.

7 5.9.2 Notice of Release or Investigation. If, during  
8 the Lease Term (including any extensions), Tenant becomes  
9 aware of (a) any actual or threatened release of any Hazardous  
10 Material on, under, or about the Premises or (b) any inquiry,  
11 investigation, proceeding, or claim by any government agency  
12 or other person regarding the presence of Hazardous Material  
13 on, under, or about the Premises, Tenant shall give Landlord  
14 written notice of the release or investigation within five (5)  
15 days after learning of it and shall simultaneously furnish to  
16 Landlord copies of any claims, notices of violation, reports,  
17 or other writings received by Tenant that concern the release  
18 or investigation.

19 5.9.3 Indemnification. Tenant shall, at Tenant's sole  
20 expense and with counsel reasonably acceptable to Landlord,  
21 indemnify, defend, and hold harmless Landlord and Landlord's  
22 shareholders, directors, officers, employees, partners,  
23 affiliates, and agents with respect to all losses arising out  
24 of or resulting from the disruption and release of any  
25 Hazardous Material in or about the Premises, or the violation  
26 of any Environmental Law, by Tenant or Tenant's agents,  
27 contractors, or invitees. This indemnification includes:

28 (a) Losses attributable to diminution in the value of



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- the Premises;
- (b) Loss or restriction of use of rentable space on the Premises;
- (c) Adverse effect on the marketing on or of the Premises; and
- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation.

This indemnification shall survive the expiration or termination of this Lease.

5.9.4 Remediation Obligations. If the presence of any Hazardous Material brought onto the Premises by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Material. Tenant shall first obtain Landlord's approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in Paragraph 5.9.3.

5.9.5. Definition of "Hazardous Material." As used in this Paragraph 5.9, the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is

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1 or becomes regulated by the United States, the State of  
2 California, or any local government authority having  
3 jurisdiction over the Premises. Hazardous Material includes:

4 (a) Any "hazardous substance," as that term is defined  
5 in the Comprehensive Environmental Response,  
6 Compensation, and Liability Act of 1980 (CERCLA)  
7 (42 United States Code Sections 9601-9675);

8 (b) "Hazardous waste," as that term is defined in the  
9 Resource Conservation and of Recovery Act of 1976  
10 (RCRA) (42 United States Code Sections 6901-6992k);

11 (c) Any pollutant, contaminant, or hazardous,  
12 dangerous, or toxic chemical, material, or  
13 substance, within the meaning of any other  
14 applicable federal, state, or local law,  
15 regulation, ordinance, or requirement (including  
16 consent decrees and administrative orders imposing  
17 liability or standards of conduct concerning any  
18 hazardous, dangerous, or toxic waste, substance, or  
19 material, now or hereafter in effect);

20 (d) Petroleum products;

21 (e) Radioactive material, including any source, special  
22 nuclear, or byproduct material as defined in 42  
23 United States Code Sections 2011-2297g-4;

24 (f) Asbestos in any form or condition; and

25 (g) Polychlorinated biphenyls (PCBs) and substances or  
26 compounds containing PCBs.

27 5.10 Insurance: Concurrent with the effective date of  
28 this Lease and in partial performance of Tenant's obligations

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1 hereunder, Tenant shall procure and maintain the following  
2 insurance coverages at Tenant's expense for the duration of this  
3 Lease and any extensions, renewals, or holding over thereof, from  
4 insurance companies admitted to write insurance in the State of  
5 California or from legally authorized non-admitted insurers having  
6 a minimum rating of or equivalent to A:VIII by A.M. Best Company.

7 a. Commercial general liability insurance (equivalent in coverage  
8 scope to ISO form CG 00 01 11 85 or 11 88) in an amount not  
9 less than Two Million Dollars per occurrence (\$2,000,000).  
10 Such insurance shall include but is not limited to broad form  
11 contractual liability, products and completed operations  
12 liability, independent contractors liability, sudden and  
13 accidental pollution and cleanup liability, and, if applicable,  
14 garagekeepers liability and liquor liability, in an amount not  
15 less than Two Million Dollars (\$2,000,000) per occurrence. The  
16 City of Long Beach, and its officials, employees, and agents  
17 shall be added as additional insureds by endorsement  
18 (equivalent in coverage scope to ISO form CG 20 26 11 85).  
19 This insurance shall contain no limitations on the scope of  
20 protection afforded to the City, and its officials, employees,  
21 and agents, and shall provide cross-liability protection.

22 b. Protection and indemnity insurance including, as may be  
23 applicable to Tenant's or any subtenant's operations, injury to  
24 passengers, damage to piers, docks, wharves, and pilings and  
25 property on piers, docks, and wharves, wreck removal, towers  
26 and collision liability, sudden and accidental pollution  
27 liability, and nonowned watercraft liability in an amount not  
28 less than Five Million Dollars (\$5,000,000) per vessel operated

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1 from the Premises. The policy shall be endorsed to name the  
2 City of Long Beach, and its officials, employees, and agents as  
3 additional insureds and name Tenant, and Tenant's officers,  
4 directors, employees, and/or agents as additional insureds if  
5 such insurance is provided by a subtenant. This insurance  
6 shall contain no limitations on the scope of protection  
7 afforded to the City and its officials, employees, and agents,  
8 and shall provide cross-liability protection.

9 c. Commercial automobile liability insurance (equivalent in scope  
10 to ISO form CA 00 01 06 92) covering Auto Symbol 1 ("Any Auto")  
11 in an amount not less than Five Hundred Thousand Dollars  
12 (\$500,000) combined single limit per accident for bodily injury  
13 and property damage.

14 d. If Tenant engages in marina management operations. marina  
15 operators legal liability insurance endorsed to provide for  
16 damage to docks, piers, and wharves including collision in an  
17 amount not less than Two Million Dollars (\$2,000,000). The  
18 policy shall be endorsed to the City of Long Beach, and their  
19 officials, employees, and agents as additional insureds and  
20 shall provide cross liability protection.

21 e. "All Risk" property insurance including debris removal and  
22 builder's risk protection during the course of construction,  
23 covering the full replacement value of Tenant's improvements  
24 constructed on or about the Premises. Earthquake and flood  
25 coverage shall be included if available from responsible  
26 insurers at reasonable cost and if required by Tenant's Lender.

27 f. "All Risk" property insurance covering the full replacement  
28 value of Tenant's personal property and equipment on or about

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1 the Premises.  
2 g. Business interruption insurance providing that the rent due  
3 Landlord shall be paid for a period of up to twelve (12) months  
4 if the Premises are destroyed or rendered inaccessible.  
5 h. Workers' compensation insurance as required the State of  
6 California and employer's liability insurance in an amount not  
7 less than One Million Dollars (\$1,000,000) per accident. Such  
8 coverage shall be endorsed, as applicable, to include United  
9 States Longshoremen and Harbor Workers' Act and Jones' Act  
10 coverage.

11 5.10.1 All insurance required hereunder shall be separately  
12 endorsed to require thirty (30) days' prior written notice of  
13 cancellation, nonrenewal, or change of coverage and to provide  
14 that coverage shall be primary and not contributing to any other  
15 insurance or self-insurance maintained by the City of Long  
16 Beach, or its officials, employees and agents.

17 5.10.2 With respect to damage to property, Tenant and  
18 Landlord hereby waive all rights of subrogation, one against the  
19 other, but only to the extent that collectible commercial  
20 insurance is available for said damage.

21 5.10.3 Any self-insurance program, self-insured retention  
22 or deductible must be approved separately in writing by Landlord  
23 Risk Manager or designee and shall protect the City of Long  
24 Beach, and its officials, employees, and agents in the same  
25 manner and to the same extent as they would have been protected  
26 had the policy or policies not contained such retention or  
27 deductible provisions.

28 5.10.4 Prior to the Commencement Date of this Lease,

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1 Tenant shall deliver to Landlord certificates of insurance and  
2 the required endorsements evidencing the coverage required by  
3 this Lease for approval as to sufficiency and form. The  
4 certificates and endorsements for each insurance policy shall  
5 contain the original signatures of persons authorized by that  
6 insurer to bind coverage on its behalf. Tenant shall provide  
7 Landlord with copies of certificates of insurance and  
8 endorsements for renewal policies at least thirty (30) days  
9 prior to policy expiration. Landlord reserves the right to  
10 require complete certified copies of all said policies at any  
11 time.

12 5.10.5 Not more frequently than every three (3) years, if  
13 in the opinion of Landlord or designee, the amount of the  
14 foregoing insurance coverage is not adequate, Tenant shall  
15 increase the insurance coverage as reasonably required by  
16 Landlord.

17 5.10.6 Such insurance as required herein shall not be  
18 deemed to limit Tenant's liability relating to performance under  
19 this Lease. The procuring of insurance shall not be construed  
20 as a limitation on liability or as full performance of the  
21 indemnification and hold harmless provisions of this Lease.

22 5.10.7 Any modification or waiver of the insurance  
23 requirements herein shall be made only with the written approval  
24 of Landlord or designee.

25 5.11 Taxes: This Lease may create a possessory interest  
26 subject to property taxation and Tenant may be liable for the  
27 payment of property taxes levied on such possessory interest.  
28 Tenant covenants to pay or cause to be paid, prior to delinquency,

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1 all taxes, assessments and other governmental and district charges  
2 that may be levied or assessed upon buildings, improvements or  
3 property located on the Premises, to the extent of the possessory  
4 interests created by this Lease and/or to the extent owed by  
5 Tenant. Satisfactory evidence of such payments shall be delivered  
6 to Landlord upon demand therefor.

7           5.12 Surrender: Except as otherwise provided in this  
8 Lease, at the termination of this Lease (whether by lapse of time  
9 or otherwise), Tenant covenants to peaceably yield up and surrender  
10 the Premises, including all improvements constructed by Tenant  
11 thereon in conformity with the provisions of this Lease, said  
12 Premises, and improvements, to be in good order, repair and  
13 condition, reasonable wear and tear, damage by casualty and action  
14 by governmental authority or Force Majeure excepted.

15           5.13 Limitation of Landlord's Liability: Tenant  
16 acknowledges that unfavorable swell or water conditions (including  
17 debris from the Los Angeles River) may occur at times within its  
18 Premises and in the adjacent area of the Los Angeles River which  
19 such conditions include debris which has flowed down that river.  
20 Tenant waives all claims for injury or damage which may be  
21 sustained by persons, Tenant's property or the property of Tenant's  
22 employees, invitees, customers, sublessees, or any other person in  
23 or about the Premises as a result of any such condition.

24           5.14 Rights of Way and Access to Premises. Landlord's  
25 authorized representatives shall have the right of access to the  
26 Premises for the installation, relocation, removal, operations,  
27 maintenance, and repair of sewers, pipelines, conduits and  
28 structures owned and maintained by Landlord as of the Commencement

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1 Date of the term and for the purpose of determining whether or not  
2 Tenant is complying with the terms and conditions of this Lease.  
3 The rights reserved to Landlord under this Paragraph shall be  
4 exercised at reasonable times and shall not violate reasonable  
5 security restrictions required by any subleases. There shall be no  
6 obligation on Landlord to make inspections nor any liability on  
7 Landlord for failure to make such inspection.

8 ARTICLE VI

9 Landlord's Title; Landlord's Covenants.

10 6.1 Landlord's Title: This Lease and any improvements to  
11 be made or constructed on the Premises by Tenant shall be subject  
12 and subordinate to the trusts and conditions set forth in the  
13 statutes referred to in Paragraph 1.1 and the limitations imposed  
14 by the Constitution of the State of California. Landlord warrants  
15 it has the right and legal capacity and authority to enter into and  
16 perform its obligations under this Lease.

17 6.2 Quiet Enjoyment: Landlord covenants and agrees that  
18 Tenant, subject to the terms and provisions of this Lease, on  
19 payment of the rent and observing, keeping and performing all of  
20 Tenant's covenants, shall lawfully, peaceably and quietly have,  
21 hold, occupy and enjoy the Premises and any appurtenant rights  
22 granted to Tenant under this Lease without hindrance or rejection  
23 by any person.

24 ARTICLE VII

25 Assignments and Subleases.

26 7.1 Assumption: Simultaneously with an assignment, the  
27 assignee shall execute an agreement running to Landlord assuming  
28 Tenant's obligations under this Lease. Tenant shall remain fully



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1 obligated under this Lease notwithstanding any assignment or  
2 sublease or any indulgence granted by Landlord to Tenant or to any  
3 assignee or sublessee unless released in writing by Landlord.

4 7.2 Limitations on Assignment.

5 7.2.1 Except as provided in Paragraph 7.2.5.2 or Article  
6 VIII, Lessee may not assign this Lease or any interest herein  
7 without first obtaining the written consent of Lessor, which  
8 consent shall not be unreasonably withheld or delayed. Such  
9 approval shall be conclusively deemed given if Lessee has not  
10 received notice of objection from Lessor within 30 days after  
11 written request for consent has been given to Lessor.

12 7.2.2 Assignment Invalid. Any transfer or assignment to  
13 which Lessor's consent is required by this Lease shall be void  
14 and shall confer no right or occupancy upon the assignee unless  
15 and until such consent of Lessor is obtained.

16 7.2.3 Complete Release. Except as otherwise expressly set  
17 forth herein, the assigning party shall be fully and completely  
18 released from all liability for the performance of all of the  
19 covenants to be performed by Lessee under this Lease. Lessor's  
20 approval or consent to any such assignment or transfer shall not  
21 be a waiver of any right to object to further or future  
22 assignments, but the consent to each such successive assignment  
23 must be first obtained in writing from Lessor.

24 7.2.4 Subletting. Subject to the terms of this Lease  
25 including but not limited to Section 7.3 Lessee shall be  
26 entitled, without the prior written consent of Lessor, to sublet  
27 the whole or any portion of the Leased Premises or the improve-  
28 ments constructed thereon. Lessee shall, at all times, remain

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1 liable for the performance of all of the covenants on its part  
2 to be so performed, notwithstanding any subletting. If the term  
3 of this Lease shall end while any such sublease is in effect,  
4 Lessor may, at its option, for a period of ninety (90) days  
5 thereafter, either terminate the said sublease or succeed to all  
6 of the rights of Lessee thereunder; provided that Landlord shall  
7 recognize and accept the attornment of any subtenant desiring to  
8 complete its sublease term.

9 7.2.5 Assignment Procedures and Requirements.

10 7.2.5.1 Any assignment may only be approved by Landlord  
11 after the following procedure:

12 Except as otherwise permitted by this Paragraph 7.2  
13 and Paragraph 8.1, Lessee may not assign this Lease or any  
14 interest herein without first obtaining the written consent  
15 of Lessor as provided in Section 7.2.1. Any assignee shall  
16 assume and agree to perform the obligations of Lessee under  
17 this Lease. Promptly following any permitted assignment,  
18 Lessee shall deliver to Lessor a copy of such assignment,  
19 together with a statement setting forth the following  
20 information:

- 21 a. Name and Address for Notices. The name and address of the  
22 assignee for the purpose of notices to be given.  
23 b. Type of Entity. Whether the assignee is an individual, a  
24 corporation, a partnership, limited liability company or  
25 a joint venture, and if such assignee is a corporation,  
26 the names of such corporation's principal officers and of  
27 its directors and State of incorporation, and if such  
28 assignee is a partnership or joint venture, the names and

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1 addresses of the general partners of such partnership or  
2 venture.

3 7.2.5.2 Assignments Not Subject to Approval. The pro-  
4 visions of this Article VII shall not be applicable to the  
5 following types of assignments and transfers, which shall be  
6 permitted without the prior consent of Lessor.

7 (a) Death or Incapacity. Assignments resulting from the  
8 death or mental or physical incapacity of an  
9 individual, managing partner or president of the  
10 corporation or limited liability company provided,  
11 however, that any person replacing an individual who  
12 departs because of physical or mental disability shall  
13 have education and experience comparable to that of the  
14 person replaced.

15 (b) Family Transfer. A transfer or assignment for the  
16 benefit of a spouse, children, grandchildren or other  
17 family members so long as management competence can be  
18 demonstrated.

19 (c) Affiliated Corporation. A transfer to an "Affiliated  
20 Corporation" as hereinafter defined. An "Affiliated  
21 Corporation" shall be (i) any corporation which owns,  
22 either directly or indirectly, fifty-one percent (51%)  
23 or more of the outstanding capital stock of the  
24 assigning corporation; or (ii) any corporation, fifty-  
25 one percent (51%) or more of the outstanding capital  
26 stock of which is owned, either directly or indirectly,  
27 by the assigning corporation; or (iii) any corporation,  
28 fifty-one percent (51%) or more of the outstanding

1 capital stock of which is owns, either directly or  
2 indirectly, by a shareholder or group of shareholders  
3 who also owns, either directly or indirectly, at least  
4 fifty-one percent (51%) of the outstanding capital  
5 stock of the assigning corporation.

6 (d) IRS Transfer. A transfer of stock resulting from or in  
7 connection with a reorganization as contemplated by the  
8 provisions of the Internal Revenue Code of 1954, as  
9 amended, or otherwise, in which the ownership interests  
10 of a corporation are assigned directly or by operation  
11 of law to a person or persons, firm or corporation  
12 which acquires the control of the voting capital stock  
13 of such corporation or all or substantially all of the  
14 assets of such corporation.

15 (e) Public Entity. A transfer of stock in a publicly held  
16 corporation or of the beneficial interest in any  
17 publicly held partnership or real estate investment  
18 trust.

19 (f) Partner or Member. A transfer by a limited partner or  
20 member or joint venturer to a partnership, limited  
21 liability company or joint venture in which the  
22 assignor is a partner, member or venturer.

23 (g) Partnership or Corporation. If Lessee is a  
24 partnership, limited liability company, joint venture  
25 or corporation, any assignment of less than twenty-  
26 five percent (25%) of the partnership, limited  
27 liability company or joint venture interest or  
28 outstanding capital stock of such an entity.

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1 (h) Assignment by Initial Tenant. Any assignment by the  
2 Initial Tenant (as defined below). Upon such an  
3 assignment by it pursuant to this Paragraph 7.2.5.2 and  
4 an assumption by the assignee of any and all liability  
5 of the Tenant under this Lease thereafter arising, the  
6 Initial Tenant shall be released and relieved of any  
7 and all liability thereafter arising under the Lease.  
8 "Initial Tenant" means John Hancock Life Insurance  
9 Company.

10 (i) Transfer to Lender. Any transfer under Article VIII.

11 7.2.5.3 Approval of Assignments. Lessor agrees that it  
12 shall consent to an assignment to an entity which, at the  
13 time of such assignment, is of such financial standing and  
14 responsibility as to give reasonable assurance that, (i) the  
15 Premises will be operated in a first class condition, (ii)  
16 the payment of all rent and other amounts reserved in this  
17 Lease will be made in compliance with all the terms,  
18 covenants, provisions and conditions of this Lease and (iii)  
19 the assignee has the business experience and financial  
20 resources to fund the required reserve account. In  
21 requesting an approval by Lessor of assignment pursuant to  
22 Paragraph 7.2, Lessee shall provide the following information  
23 to Lessor with respect to proposed assignments of this Lease.

24 (a) Name. Name and address of the assignee.

25 (b) Description. Description of the Premises to be  
26 assigned.

27 (c) Relevant Management Experience. The extent and nature  
28 of any experience of the proposed assignee in managing

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1 waterfront specialty retail centers.

2 (d) Financial Information. Lessor's inability to secure  
3 information to assess the financial condition of the  
4 assignee shall be grounds for denial.

5 (e) Officers. The identity, background and experience of  
6 all officers and directors of assignee, at executive  
7 vice president level and above and senior operational  
8 officer relating to the Premises, if a corporation or  
9 general partners of a partnership or sole proprietor of  
10 a proprietorship (Principals).

11 (f) Additional Information. In addition to the above, the  
12 assignor shall provide all the information required by  
13 the Lessor, including but not limited to the following:

14 1. Criminal record of the subtenant, assignee or  
15 any of the principals.

16 2. Nature and extent of litigation to which the  
17 assignee or any Principal is a party or has been a  
18 party in the last five years.

19 3. Any course of conduct which a prudent person would  
20 deem materially detrimental to the Project or to the  
21 intended use of the Premises by assignee.

22 4. Financial references.

23 5. Source of project financing.

24 6. Identification of non-performing loans by principals  
25 and/or corporation.

26 7. Amount of recourse debt.

27 (g) Informational Purposes. For informational purposes only:

28 1. Number of anticipated employees of the assignee.

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1           2.    At the time of submission of the request, the terms  
2                   and conditions of the assignment.

3           3.    With respect to all assignments a copy thereof after  
4                   execution by all parties thereto.

5           7.2.5.4 Confidentiality. If requested by Lessee at the  
6           time of submission of the information described above, Lessor  
7           shall keep such information and the identity of the proposed  
8           assignee confidential until approved and Lessor shall execute  
9           a confidentiality statement so providing to the extent Lessor  
10           is Permitted by law to do so.

11           7.2.5.5 Rejection by Lessor. Lessor reserves the right  
12           to reject any proposed assignee where the matters specified  
13           above indicate that the presence of assignee would adversely  
14           affect the financial and operational viability of the  
15           Project. Lessor shall either approve or disapprove any  
16           proposed assignee within thirty (30) days after receipt by  
17           Lessor of a request to do so provided that all information is  
18           provided in a timely manner. Failure of Lessor to act within  
19           said thirty (30) days shall constitute approval. If Lessor  
20           does not approve any proposed assignee, Lessor shall state in  
21           writing the reasons for such disapproval. Lessee shall have  
22           the right to challenge the validity of such disapproval. No  
23           damages shall be payable to Lessee in any action arising from  
24           such disapproval unless Lessor shall have acted unreasonably  
25           or in bad faith or with actual malice.

26           7.2.6 No Release. Notwithstanding any assignment by  
27           Lessee permitted by Paragraph 7.2 with Lessor's consent, and  
28           notwithstanding any assignment by a partner or joint venturer

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1 of Lessee permitted by Paragraph 7.2.5.2 with Lessor's  
2 consent or made without Lessor's consent pursuant to  
3 Paragraph 7.2.1., the assigning party shall remain fully  
4 liable for the performance all of the covenants to be  
5 performed by Lessee under this lease prior to the effective  
6 date of such assignment, but shall be released from liability  
7 with respect to the performance of such covenants to be  
8 performed after such date. Lessor's approval of or consent  
9 to any such assignment or transfer shall not be a waiver of  
10 any right to object to further or future assignments, and  
11 Lessor's consent to each such successive assignment must be  
12 first obtained in writing from Lessor unless otherwise  
13 permitted by this Lease without Lessor's prior consent.

14 7.2.7 Lessor Acknowledgment: Lessee acknowledges and  
15 agrees that a default under Paragraph 7.2 or any subparagraph  
16 thereof shall be conclusively deemed to be a default not  
17 susceptible of being cured by Lessee. A leasehold mortgagee  
18 may cure such default if within 30 days of written notice of  
19 such a default, it diligently proceeds to foreclose on such  
20 mortgage and cure such default.

21 7.3 Subleases: The provisions of Paragraph 7.2 shall not  
22 prevent Tenant from entering into subleases, concessions, or  
23 licenses for the operation of any portion of the businesses  
24 authorized by Paragraph 7.2.4. subject to the requirements of  
25 Paragraph 5.1.2.

26 Landlord covenants that in the event of the termination of  
27 this Lease and the replacement thereof with a New Lease (as  
28 hereinafter defined) with the most senior Lender as tenant, the



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1 subleases which have theretofore been approved by the most senior  
2 Lender shall not terminate as a result of the termination of the  
3 Lease and the replacement thereof with the aforesaid New Lease, but  
4 shall continue as valid subleases under the New Lease.

5  
6 ARTICLE VIII

7 Leasehold Financing; Rights of Lender

8 8.1 Assignment for Security: The provisions of Paragraph  
9 7.2 shall not prevent or hinder Tenant after the Commencement Date  
10 of this Lease from assigning Tenant's interest under this Lease  
11 ("Leasehold Estate") to a Lender as security for a loan without  
12 Landlord's consent, the proceeds of which shall be used to provide  
13 funds for the purchase of the leasehold estate, and/or the  
14 renovation or construction of improvements on the Premises. Tenant  
15 may perform any and all acts and execute any and all instruments  
16 necessary or proper to consummate any loan transaction and perfect  
17 the security therefor to be given the Lender. The term "Lender" as  
18 used herein shall mean the beneficiary, mortgagee, secured party,  
19 or other holder of a promissory note or other written obligation  
20 which is secured by any deed of trust, mortgage or other written  
21 security agreement affecting the Premises ("Leasehold Mortgage").  
22 Tenant shall deliver to Landlord a copy of the promissory note, deed  
23 of trust, or security agreement executed by Tenant in connection  
24 with any Leasehold Mortgage within twenty (20) days from the date  
25 of execution thereof by Tenant.

26 8.2 Lender's Rights: With respect to any Lender who shall  
27 have delivered to Landlord a written notice stating its name,  
28 address and a general description of the Leasehold Mortgage it holds

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1 on the Premises, the following provisions shall apply:

2           8.2.1 Landlord, when giving notice to Tenant with respect  
3 to any default or termination under the provisions of this Lease,  
4 shall also serve a copy of such notice upon any Lender, and no  
5 such notice to Tenant shall be effective unless a copy of such  
6 notice is so served upon the Lender. Upon the occurrence of any  
7 "event of default" (as defined in Paragraph 10.2 below), Landlord  
8 shall deliver to each and every Lender a notice (a "Default  
9 Notice") stating the nature of the event of default and the date  
10 of its occurrence. Landlord may not exercise any of its remedies  
11 (including, without limitation, termination of this lease)  
12 available upon the occurrence of any event of default by Tenant  
13 until the "Lenders' Cure Period" (as defined in Paragraph 8.2.5  
14 below) has expired.

15           8.2.2 Any Lender may do any act or thing required of  
16 Tenant hereunder and all such acts or things done and performed  
17 shall be accepted by Landlord and be as effective to prevent a  
18 forfeiture of Tenant's rights hereunder as if done or performed  
19 by Tenant, including the right to commence an action against the  
20 Tenant for the appointment of a receiver and to obtain possession  
21 of the Premises under and in accordance with the Leasehold  
22 Mortgage.

23           8.2.3 Any Lender may acquire and succeed to the interest  
24 of Tenant hereunder without Landlord's consent by foreclosure of  
25 the Leasehold Mortgage or by a deed or assignment in lieu of  
26 foreclosure and may transfer the Premises to a bona fide  
27 purchaser; provided, however, any such bona fide purchaser shall  
28 execute an agreement running to Landlord assuming Tenant's

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1 obligations under this Lease. Notwithstanding anything to the  
2 contrary contained herein, the written consent of Landlord shall  
3 not be required in the case of:

4 a. A transfer of the Leasehold Estate relating thereto in  
5 a foreclosure sale of the trust deed or assignment, a  
6 judicial foreclosure, or a deed in lieu of foreclosure;  
7 or

8 b. A subsequent transfer of the Premises or of possession  
9 of the Premises by a Lender who is a purchaser at such  
10 foreclosure sale or as a result of a deed or assignment  
11 in lieu of foreclosure or judicial foreclosure, to a  
12 transferee, provided the transferee agrees in writing  
13 to assume and perform all the obligations under this  
14 Lease.

15 In the event of a transfer under a. or b. above, the  
16 Lender shall forthwith give notice to the Landlord in writing of  
17 any such transfer setting forth the name and address or fax  
18 number of the transferee and the effective date of such transfer,  
19 together with a copy of the document by which such transfer was  
20 made. Landlord's consent requirement under Paragraph 7.2 shall  
21 not apply to such transfer. Any transferee under the provisions  
22 of this Paragraph shall perform the full obligations of the  
23 Tenant under this Lease, and as a condition to the completion of  
24 this transfer must cure, remedy or correct any event of default  
25 existing at the time of such transfer if the same is reasonably  
26 susceptible of being cured by the transferee at that time.

27 8.2.4 If there is an event of default by Tenant pursuant  
28 to Paragraph 10.1.1, Lender shall have a period of thirty (30)

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1 days (the Monetary Cure Period), after receipt from Landlord of  
2 a written notice that such event of default has occurred, in  
3 which to cure the event of default. If after any such payment  
4 by a Lender, Tenant pays the same or any part thereof to  
5 Landlord, the Landlord shall promptly refund said payment to such  
6 Lender.

7 8.2.5 In the event of any event of default which cannot  
8 be cured by the payment of money, the default shall be cured:

9 a. If a Lender cures, remedies or corrects a default in a  
10 manner reasonably satisfactory to Landlord within a  
11 period of thirty (30) days (the "Non-Monetary Cure  
12 Period"; a Monetary Cure Period and a Non-Monetary Cure  
13 Period may each sometimes be referred to herein as a  
14 "Lender's Cure Period" after the later to occur of (i)  
15 receipt from Landlord of a written notice that such an  
16 event of default has occurred or (ii) the expiration of  
17 any cure period available to Tenant under this Lease  
18 for such default; provided, however, if the curing of  
19 such default requires activity over a longer period of  
20 time, such default may be cured, if within said Non-  
21 Monetary Cure Period, a Lender commences and thereafter  
22 diligently continues to perform whatever may be  
23 required to cure the particular default in a manner  
24 reasonably satisfactory to Landlord; or

25 b. If during Lenders' Cure Period", the Lender notifies  
26 Landlord of its intent to commence foreclosure, and  
27 within sixty (60) days after the mailing of a Default  
28 Notice by Lender, said Lender, (i) actually commences

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1 foreclosure proceedings plus the thirty-five (35) day  
2 period referred to in the next sentence and prosecutes  
3 the same thereafter with reasonable diligence, the  
4 Lender's Cure Period shall be extended by the time  
5 necessary to complete such foreclosure proceedings; or  
6 (ii) if said Lender is prevented from commencing or  
7 continuing foreclosure by any order, judgment, or  
8 decree of any court or regulatory body of competent  
9 jurisdiction, and said Lender diligently seeks release  
10 from or reversal of said order, judgment or decree, the  
11 Lender's Cure Period shall be extended by the time  
12 necessary to obtain the release from or reversal of  
13 said order, judgment or decree and thereafter to  
14 complete such foreclosure proceedings plus the thirty-  
15 five (35) day period referred to in the next sentence.  
16 Within thirty-five (35) days after such foreclosure  
17 sale and the vesting of title free of redemption in the  
18 purchaser thereat (whether or not such purchaser is the  
19 Lender), said purchaser shall, as a condition to the  
20 completion of such transfer, cure, remedy, or correct  
21 the default, or commence and thereafter diligently  
22 pursue the performance of the thing or work required to  
23 be done to cure, correct, and remedy said default, in  
24 a manner satisfactory to Landlord. If said event of  
25 default is a default by Tenant which Lender is not  
26 capable of curing on a commercially reasonable basis,  
27 Landlord may not terminate this Lease so long as a  
28 Lender is continuing to pay rent due under this Lease

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1 and is diligently proceeding to cure all defaults by  
2 Tenant which such Lender is capable of curing on a  
3 commercially reasonable basis. In addition, Landlord  
4 shall waive any defaults of Tenant which no Lender is  
5 capable of curing on a commercially reasonable basis if  
6 and when a Lender assumes Tenant's rights and  
7 obligations under this Lease subsequent to foreclosure  
8 of its security interest in Tenant's leasehold estate  
9 or pursuant to receipt of an assignment of Tenant's  
10 rights in the leasehold estate in lieu of such  
11 foreclosure.

12 c. If a Lender obtains title to Tenant's leasehold estate  
13 pursuant to foreclosure of its security on Tenant's  
14 leasehold estate or through an assignment of Tenant's  
15 leasehold estate in lieu of such foreclosure, such  
16 Lender's liability to Landlord shall be limited to  
17 Tenant's obligations under the Lease incurred during  
18 the period while such Lender is in possession of the  
19 Premises or is the owner of the leasehold estate; such  
20 Lender shall have no liability to Landlord for any  
21 obligations of Tenant incurred after a transfer of the  
22 leasehold estate from such Lender to a third party. In  
23 any event, Landlord's recourse against any Lender who  
24 becomes the owner of the leasehold estate shall be  
25 limited to such Lender's interest in the leasehold  
26 estate. Notwithstanding the foregoing, Tenant shall  
27 remain liable to Landlord for all rent or additional  
28 rent which may become due during the period of time

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1 that a Lender shall be the owner of the leasehold  
2 estate; provided, however, that from and after the date  
3 a Lender shall be the owner of the leasehold estate,  
4 Landlord waives any and all right to collect or receive  
5 from such Lender any sums pursuant to Section 10.2 of  
6 the Lease.

7 8.3 Estoppel Certificate: Landlord shall, from time to  
8 time, upon not less than fifteen (15) days' prior written request  
9 by Tenant or Tenant's Lender, execute, acknowledge and deliver to  
10 Tenant or Tenant's Lender a statement in writing certifying to  
11 Tenant's Lender or an independent third party that this Lease is  
12 unmodified and in full force and effect and that Landlord has no  
13 knowledge of any uncured defaults of Tenant under this Lease (or,  
14 if there have been any modifications that the same is in full force  
15 and effect as modified and stating the modifications and, if there  
16 are any defaults, setting them forth in reasonable detail), the  
17 Commencement Date and the dates to which the rent and other charges  
18 have been paid. Any such statement delivered pursuant to this  
19 Paragraph 8.3 may be relied upon by any prospective lender or any  
20 prospective purchaser of or from Tenant or Tenant's Lender.

21 8.4 New Lease. If (a) either (i) Tenant's interest under the  
22 Lease shall be sold, assigned (other than for security purposes) or  
23 otherwise transferred pursuant to the exercise of any right, power  
24 or remedy by a Lender or pursuant to judicial proceedings, and  
25 satisfactory provision for indemnification of Landlord against any  
26 adverse claims arising out of or with respect to this Lease shall  
27 have been made, or (ii) this Lease shall be rejected under the  
28 powers reserved to Tenant and its trustee in bankruptcy under the

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1 Federal Bankruptcy Code or similar state or federal legislation, (b)  
2 no rent shall then be due and payable to Landlord, (c) the Lender  
3 or any other purchaser of Tenant's interest hereunder shall have  
4 arranged for the correction of any default susceptible of being  
5 corrected by the tenant under the "New Lease" (defined below"), and  
6 (d) this Lease shall have been terminated pursuant to the terms  
7 hereof by reason of a default, then Landlord, within ninety (90)  
8 days after receiving written request therefor and upon payment to  
9 Landlord of all of Landlord's expenses, including, without  
10 limitation, reasonable attorneys' fees and expenses incident  
11 thereto, will execute and deliver a new lease of the Premises to the  
12 Lender or its nominee, purchaser, assignee or transferee, as the  
13 case may be, for the remainder of the term of this Lease (a "New  
14 Lease"), and, except for charges or encumbrances caused or suffered  
15 by Tenant, with the same terms as are contained herein.  
16 Concurrently with execution of such New Lease, notwithstanding  
17 anything to the contrary contained in Paragraph 4.9 or 5.12 of this  
18 Lease, Landlord acknowledges ownership, during the New Lease, of the  
19 improvements on the Premises to the new tenant under the New Lease  
20 together with a bill of sale conveying any personal property related  
21 to the improvements and other appropriate instruments of conveyance.  
22 Upon the execution and delivery of such New Lease, Landlord, at the  
23 expense of the tenant under the New Lease, shall take such steps as  
24 shall be necessary to cancel and discharge this Lease of record and  
25 remove Tenant from the Premises.

26           8.5 Termination of Lease. Notwithstanding anything to the  
27 contrary contained in this Lease, any attempted exercise by Tenant  
28 of a right granted by this Lease or at law or in equity to terminate



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1 this Lease shall be void without Tenant first obtaining the written  
2 consent of the most senior Lender, if any. Landlord acknowledges  
3 that if Tenant has any right to terminate this Lease, such senior  
4 Lender shall have the sole and exclusive right to exercise such  
5 election to terminate this Lease during the period that such Lender  
6 has a security interest or lien pursuant to a deed of trust in the  
7 Tenant's leasehold estate. Nothing contained in this Paragraph 8.5  
8 shall be deemed to limit in any way Landlord's rights to terminate  
9 this Lease for any default or breach by Tenant, subject to prior  
10 notice to Lender and Lender's right to cure hereunder.

11 ARTICLE IX

12 Casualty and Eminent Domain

13 9.1 Restoration: If during the term the Premises or any  
14 improvements on the Premises are totally or partially destroyed,  
15 this Lease shall not terminate except as specifically provided in  
16 this Article IX and Tenant shall promptly and diligently restore  
17 such improvements to substantially the same condition as they were  
18 in immediately before such destruction, provided (i) the restoration  
19 can be made under existing laws and (ii) the insurance proceeds  
20 payable to Tenant as a result of the destruction under the insurance  
21 maintained by Tenant in accordance with Paragraph 5.10, are  
22 sufficient to reimburse Tenant for at least 90% of the cost of such  
23 restoration. If the existing laws do not permit the restoration,  
24 Tenant, with the consent of its Lender may elect to terminate the  
25 Lease by giving notice to Landlord. If the improvements are restored  
26 within an eighteen month period, such restoration shall be deemed  
27 to be prompt and diligent for purposes of this Paragraph 9.1.  
28 Landlord shall accept the most senior Lender's determination of

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1 whether the insurance proceeds payable to Tenant are sufficient to  
2 reimburse Tenant for the entire cost of such restoration. Any  
3 insurance proceeds payable to Tenant may, in accordance with the  
4 deed of trust in favor of the most senior Lender, be payable to a  
5 trustee to be selected by the most senior Lender and reasonably  
6 acceptable to Landlord and Tenant. Such trustee shall disburse the  
7 funds for the restoration of the improvements in accordance with the  
8 terms of this Paragraph 9.1; provided, however, that any funds not  
9 necessary for restoration may be disbursed in accordance with the  
10 applicable leasehold deed of trust. If the insurance proceeds are  
11 not sufficient to reimburse Tenant 90% of the amount necessary to  
12 restore the Premises and all of Tenant's amount necessary to restore  
13 the Premises and all of Tenant's improvements thereon, Tenant may  
14 deliver to Landlord and each Lender written notice of its election  
15 to terminate this Lease. Upon receipt of such notice, the most  
16 senior Lender shall have thirty (30) days to elect to keep the Lease  
17 in full force and effect by delivering to Landlord and Tenant  
18 written notice of its election to assume all of Teant's obligations  
19 under the Lease. If Tenant elects to terminate this Lease and the  
20 most senior Lender does not elect to assume all of Tenant's  
21 obligations under the Lease all as provided above, this Lease shall  
22 automatically terminate on the thirty-first day after Tenant  
23 delivered its notice to Lender and Landlord and neither party under  
24 this Lease shall have any further obligations or liabilities to one  
25 another under this Lease. If the most senior Lender does elect to  
26 assume all of Tenant's obligations under this Lease, Tenant shall  
27 within ten (10) days of such election execute an assignment of this  
28 Lease to the most senior Lender, the most senior Lender shall

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1 execute an assumption of this Lease and Landlord shall approve the  
2 same in writing.

3 9.1.1 Any excess insurance proceeds remaining after such  
4 restoration shall belong to Tenant.

5 9.1.2 Tenant shall notify Landlord of the date of  
6 commencement of the restoration twenty (20) days prior thereto  
7 to enable Landlord to post and record notices of  
8 nonresponsibility. Tenant shall accomplish restoration in a  
9 manner that will cause the least inconvenience, annoyance and  
10 disruption at the Premises. On completion of any restoration,  
11 Tenant shall record a notice of completion in the Office of the  
12 County Recorder of Los Angeles County. Tenant waives the  
13 provisions of Civil Code Section 1932(2) and Civil Code Section  
14 1933(4) with respect to any destruction of the Premises.

15 9.2 Total Taking: If, after the Commencement Date, the  
16 whole of the Premises or other improvements to be made by Tenant  
17 shall be taken by right of eminent domain or otherwise for any  
18 public or quasi public use, then, when possession shall be taken  
19 by the condemner, or the Tenant is deprived of its practical use of  
20 the Premises and other improvements, whichever date is earlier, this  
21 Lease and all rights of Landlord and Tenant hereunder, shall  
22 terminate and rent and all other payments required of Tenant for the  
23 remainder of the term hereof shall be cancelled. In the event of  
24 a partial taking, as a result of which the remaining portion of the  
25 Premises or any other improvements on the Premises cannot be  
26 restored to an economically operable facility of a comparable kind  
27 and quality to the facility existing prior to the taking with the  
28 condemnation awards received by Tenant (as the same may be

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1 determined in the reasonable discretion of the most senior Lender,  
2 if any, or in the discretion of Tenant if no Lender then exists),  
3 then this Lease at Tenant's option shall terminate as of the time  
4 when possession of the Premises shall be partially taken by the  
5 condemner or when Tenant is deprived of the practical use thereof,  
6 whichever date is earlier.

7           9.3 Partial Taking: If, after the Commencement Date, a  
8 portion of the Premises or any other improvements shall be taken by  
9 right of eminent domain or otherwise for any public or quasi public  
10 use and the remaining portion of the Premises and improvements can  
11 be restored by Tenant to an economically operable facility of  
12 comparable kind and quality to the facility existing prior to the  
13 taking (in the discretion of the most senior Lender, if any, or in  
14 the discretion of Tenant if no Lender then exists), then this Lease  
15 shall not be affected and Tenant shall retain the remaining portion  
16 of the Premises and other improvements thereon; provided, however,  
17 the rent shall be reduced by an amount agreed upon by the parties.  
18 If the parties are unable to agree on the reduced rent for each of  
19 the periods referred to in Paragraph 3.2.2, the amount for each of  
20 said periods shall be fixed by arbitration. Landlord shall give  
21 notice to Tenant of the appointment of a real estate appraiser with  
22 at least five (5) years' full-time commercial appraisal experience  
23 in the area in which the Premises are located who shall appraise and  
24 set the reduced rent for each of the periods referred to in  
25 Paragraph 3.2.2. If Tenant does not appoint an appraiser within ten  
26 (10) days thereafter to perform the same task, the single appraiser  
27 appointed shall be the sole appraiser and shall set the reduced  
28 rent. If two appraisers are appointed, they shall select, within

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1 ten (10) days after the appointment of the second appraiser, a third  
2 appraiser with the same minimum qualifications. If the two cannot  
3 agree upon a third, he shall be appointed by any judge of the  
4 Superior Court of the County of Los Angeles upon application  
5 therefor by either party, upon ten (10) days written notice to the  
6 other. Each party shall bear one-half ( $\frac{1}{2}$ ) of the cost of appointing  
7 the third appraiser and of paying the third appraiser's fee. Within  
8 sixty (60) days after the selection of the third appraiser, a  
9 majority of them shall set the reduced rent for each of the periods  
10 referred to in Paragraph 3.2.2. If a majority of the appraisers are  
11 unable to set the reduced rent for said periods within the sixty  
12 (60) day period, then the three (3) appraisals shall be averaged.  
13 After the reduced rent has been set, the appraisers shall notify the  
14 parties, who shall immediately execute an amendment to this Lease  
15 stating the new rent payable by Tenant to Landlord for the balance  
16 of the term.

17 9.4 Condemnation: If there is either a total or partial  
18 taking by right of eminent domain, Landlord shall receive from the  
19 award the value of Landlord's residual interest in the land and/or  
20 water taken by the condemnor and all other compensation and damages  
21 awarded in connection therewith shall belong to Tenant and shall be  
22 paid to a trustee to be selected by the most senior Lender, if any,  
23 subject to landlord's and Tenant's reasonable approval, and subject  
24 to the terms of the Deed of Trust benefitting the most Lender, if  
25 any. Landlord and Tenant hereby consent to the most senior Lender's  
26 participation in an condemnation proceedings. If there is a  
27 temporary taking for a period less than the remaining term of this  
28 Lease, Tenant (or the most senior Lender, if any) shall be entitled

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1 to receive all compensation and damages awarded in connection  
2 therewith.

3 ARTICLE X

4 Default

5 10.1 Tenant's Default: The provisions of this Article X  
6 set forth the sole and exclusive remedies for Lessor and Lessee upon  
7 default by the other.

8 10.2 Lessee's Default: The occurrence of any of the following  
9 shall constitute a default by Lessee:

10 a. Failure to pay when due Rent or other amounts due  
11 Lessor hereunder, if the failure continues for ten (10)  
12 days after notice thereof has been given to Lessee and  
13 Lessee's Lender (a "Monetary Default").

14 b. Failure to comply with any of the other covenants or  
15 conditions of this Lease, unless, within thirty (30)  
16 days after notice thereof has been given to Lessee and  
17 Lessee's Lender, the cure of such default has been  
18 commenced and thereafter diligently pursued (a "Non-  
19 Monetary Default").

20 10.3 Lessor's Remedies. Subject to the provisions of  
21 Paragraph 8.2 hereof, if any default by Lessee shall continue  
22 uncured, following notice of default as required by this Lease,  
23 and not be cured within the time required by this Lease, then  
24 Lessor shall have the following as its exclusive remedies:

25 a. Termination. Subject to the provisions of Paragraph 9  
26 hereof, in the event of a monetary default only, Lessor  
27 may, at Lessor's election, terminate this Lease by giving  
28 60 days notice of termination to Lessee and Lender. Unless

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1 the Monetary Default is cured within such 60 day period,  
2 this Lease shall be terminated (subject to the rights of  
3 Lessee's Lender, as set forth herein) and the same shall  
4 expire as fully and completely as if the day of such  
5 notice were the date herein specifically fixed for the  
6 expiration of the Lease term, and all of Lessee's rights  
7 in the Premises and in all improvements situated thereon  
8 shall terminate.

9 b. Recovery of Rent. Lessor shall be entitled to the amount  
10 of the rent which had been earned before termination, plus  
11 late charges and interest as provided by the express terms  
12 of this Lease. The proceeds of any reletting or attornment  
13 shall be applied, when received, first to any amounts then  
14 due and unpaid by Lessee under this Lease, to the extent  
15 that such proceeds for the period covered do not exceed  
16 the amount due from and charged to Lessee for the same  
17 period, and the balance to Lessee.

18 c. Lessor's Damages. Lessor shall be entitled, at Lessor's  
19 election, to recover from Lessee in compensation for all  
20 damages suffered by Lessor as a result of Lessee's  
21 default, the worth at the time of the award (computed in  
22 accordance with Paragraph (b) of Section 1951.2 of the  
23 California Civil Code) of the damages Lessor proves that  
24 it would sustain as a result of the rent it could obtain  
25 for the Premises for the remainder of the Lease Term being  
26 less than the Rent then unpaid for the balance of the  
27 Lease Term.

28 d. Lessor's Right to Cure. Lessor, at any time after the

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1 expiration of the applicable time to cure a default,  
2 notice of which has previously been given to Lessee, shall  
3 be entitled (but not obligated) to make any payment  
4 required of Lessee under this Lease and/or to perform any  
5 covenants and comply with any condition imposed on Lessee  
6 under this Lease. If, by reason of any such uncured  
7 default by Lessee, Lessor incurs any reasonable expense or  
8 pays any reasonable sum, or performs any act reasonably  
9 requiring Lessor to incur any expense or to pay any sum,  
10 including the actual fees and expenses paid or incurred by  
11 Lessor in order to prepare and post or deliver any notice  
12 permitted or required by the provisions of this Lease or  
13 otherwise permitted or contemplated by law, then the  
14 amount so paid or incurred by Lessor shall be immediately  
15 due and payable to Lessor by Lessee as additional rent.  
16 Such amounts shall bear interest at the Citibank prime  
17 interest rate in effect on the date of payment by Lessee,  
18 but not in excess of the maximum rate permitted by law,  
19 from the date of such demand until paid in full.

20 e. Landlord shall have the right to have a receiver appointed  
21 to collect rent and conduct Tenant's business while and  
22 event of default is outstanding. Neither the filing of a  
23 petition for the appointment of a receiver nor the  
24 appointment thereof shall constitute an election by  
25 Landlord to terminate this Lease.

26 10.4. Default by Lessor: Lessor shall be in default of its  
27 obligations under this Lease if it fails to perform the same  
28 within any expressly specified period of time or, if no period



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1 of time is expressly specified, within a reasonable time, but in  
2 no event more than thirty (30) days after written notice by  
3 Lessee to Lessor specifying wherein Lessor has failed to perform  
4 such obligations. However, if the nature of Lessor's default is  
5 such that more than forty-five (45) days are required for its  
6 cure, Lessor shall not be in default if Lessor commences such  
7 cure within such thirty (30) day period and thereafter diligently  
8 prosecutes the same to completion. In the event of any such  
9 default by Lessor, Lessee may pursue any remedy now or hereafter  
10 available to Lessee under the laws and judicial decisions of the  
11 State of California.

12  
13 ARTICLE XI

14 Miscellaneous Provisions

15 11.1 Notice: Any notice, demand, request, consent, approval  
16 or communication that either party desires or is required to give  
17 to the other party shall be in writing addressed to the other party  
18 at the addresses or fax numbers set forth in Paragraphs 1.2.3 and  
19 1.2.4 or such other address as may have been specified by notifying  
20 the other party of the change of address. Notice shall be deemed  
21 served on the second business day following the day of mailing if  
22 mailed with the United States Postal Service, by certified mail,  
23 return receipt requested. Notice by facsimile shall be deemed  
24 effective upon receipt. All payments required under this Lease  
25 shall be deemed sufficiently paid if made by check collected on  
26 first presentation.

27 11.2 Consent and Approval: Except as otherwise specifically  
28 provided herein, Landlord's consent or approval of any act by Tenant

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1 requiring Landlord's consent or approval shall not be unreasonably  
2 withheld or delayed by Landlord and if given shall not be deemed to  
3 waive or render unnecessary Landlord's consent to, or approval of,  
4 any subsequent act by Tenant.

5           11.3 Time of Essence: Time is of the essence of each  
6 provision of this Lease.

7           11.4 Covenants and Conditions: All provisions hereof  
8 expressed as either covenants or conditions on the part of Tenant  
9 or Landlord to be performed or observed shall be deemed to be both  
10 covenants and conditions.

11           11.5 Successors: This Lease shall be binding on and inure  
12 to the benefit of the parties and their successors except as may  
13 otherwise be provided herein.

14           11.6 California Law and Waiver of Jury Trial: This Lease  
15 shall be construed and interpreted in accordance with the laws of  
16 the State of California. Tenant covenants and agrees to submit to  
17 the personal jurisdiction of any state court in the State of  
18 California for any dispute, claim or matter arising out of or  
19 related to this Lease. Landlord and Tenant hereby waive trial by  
20 jury in any action, proceeding or cross-claim brought by either of  
21 the parties hereto against the other on any matters whatsoever  
22 rising out of or in any way connected with this Lease, the  
23 relationship of Landlord and Tenant, or Tenant's use or occupancy  
24 of the Premises. If either party seeks recourse in equity of to  
25 enforce any of its rights under this Lease, the other party agrees  
26 to waive any defense which it might otherwise have that the first  
27 party has an adequate remedy at law.

28           11.7 Integrated Agreement: This Lease contains or refers

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City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 to all of the agreements of the parties and cannot be amended or  
2 modified except by written agreements. Landlord and Tenant shall  
3 not execute any amendment, modification or termination of this Lease  
4 without delivering to each Lender then holding a security interest  
5 in the Leasehold Estate (and their legal counsel) thirty (30) days'  
6 prior written notice of such proposed amendment, modification or  
7 termination. Such notice shall contain the following language at  
8 the top of such notice in all capital letters: 'WARNING: THIS NOTICE  
9 REQUIRES A RESPONSE WITHIN THIRTY (30) DAYS OR THERE MAY BE  
10 IMPAIRMENT OF A GROUND LEASE WHICH IS SECURITY FOR LOAN NO. \_\_\_\_\_.'

11       11.8 Interpretation: The captions and the Table of Contents  
12 of this Lease shall have no effect on its interpretation. When  
13 required by the context of this Lease, the singular shall include  
14 the plural.

15       11.9 Severability: The unenforceability, invalidity or  
16 illegality of any provision shall not render the other provisions  
17 unenforceable, invalid or illegal.

18       11.10 Attorney Fees: If either party becomes a party to any  
19 litigation concerning this Lease, by reason of any act or omission  
20 of the other party or its authorized representatives, and not by an  
21 act or omission of the party that becomes a party to that litigation  
22 or any act or omission of its authorized representatives, the party  
23 that causes the other party to become involved in the litigation  
24 shall be liable to that party for reasonable attorneys' fees and  
25 court costs incurred by it in the litigation. If either party  
26 commences an action against the other party arising out of or in  
27 connection with this Lease, the prevailing party shall be entitled  
28 to request the court for an award of reasonable attorneys' fees and

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1 costs of suit from the losing party.

2       11.11 Force Majeure: In any case where either party hereto  
3 is required to do any act, any inability of that party to perform  
4 the act, or any delays in its performance of the act, caused by or  
5 resulting from Acts of God, war, civil commotion, fire, flood,  
6 earthquake or other casualty, strikes or other extraordinary labor  
7 difficulties, shortages of labor or materials or fuel or equipment  
8 in the ordinary course of trade, government regulations or any other  
9 cause not reasonably within that party's control and not due to that  
10 party's fault or neglect, shall be excused and such failure to  
11 perform, or such delay in performance, shall not be a default by  
12 that party within the meaning of this Lease. Financial inability  
13 of either party, or changes in market conditions, shall not be  
14 considered to be a circumstance or cause beyond the reasonable  
15 control of that party.

16       11.12 Nondiscrimination: In the performance of this Lease,  
17 Tenant shall not discriminate against any employee of or applicant  
18 for employment because of race, color, religion, ancestry, sex,  
19 sexual orientation, AIDS, HIV status, age, disability, handicap,  
20 Vietnam Era veteran status or national origin. Tenant will take  
21 affirmative action to ensure that applicants are employed, and that  
22 employees are treated during employment without regard to their  
23 race, color, religion, sex, sexual orientation, AIDS, HIV status,  
24 age, disability, handicap, Vietnam Era veteran status, ancestry, or  
25 national origin. Such action shall include, but not be limited to,  
26 the following: employment, upgrading, demotion or transfer;  
27 recruitment or recruitment advertising; layoff or termination; rates  
28 of pay or other forms of compensation, and selection for training,

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1 including apprenticeship. Tenant shall post in conspicuous places,  
2 available to employees and applicants for employment, notices  
3 setting forth the provisions of this Paragraph 11.12. Tenant shall  
4 in all solicitations or advertisements for employees state that all  
5 qualified applicants will receive consideration for employment  
6 without regard to these bases.

7           11.13    Municipal Authority: Landlord warrants that the  
8 execution and delivery of this Lease by Landlord and the  
9 consummation of the transactions contemplated herein have been duly  
10 authorized and approved by all requisite action of the City of Long  
11 Beach, and this Lease has been duly executed and delivered by  
12 Landlord and constitutes a valid and binding obligation on Landlord.

13           11.14    Joint Effort: The parties agree that this Lease has  
14 been drafted through the joint efforts of the parties and that it  
15 is not to be construed against either party as the drafter.

16           11.15    No Joint Venture or Partnership: Nothing in this  
17 agreement shall be construed as creating either a partnership or  
18 joint venture between the parties hereto.

19           11.16    No Relocation Benefits: Lessee agrees that nothing  
20 contained in this Lease shall create any right in Lessee for any  
21 relocation payment or assistance pursuant to the provisions of Title  
22 1, Division 7, Chapter 16 of the California Government Code, or  
23 pursuant to any other law of the State of California, from Lessor  
24 on the expiration or sooner termination of this Lease except if  
25 resulting from a condemnation or under threat of condemnation.

26           11.17    Marina Dredging and Navigability: Landlord shall at  
27 its own expense and for the benefit of Tenant and subtenants and  
28 permittees dredge and maintain the navigability of the marina so as

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1 to permit reasonable access and egress to and use of marina  
2 facilities during all tidal conditions for the purposes contemplated  
3 under the Lease. This work is to be done periodically as needed.

4 11.18 Non-Merger: There shall be no merger of this Lease nor  
5 of the leasehold estate created by this Lease, with the fee estate  
6 in the Premises or with the interest or estate of any Lender by  
7 reason of the fact that this Lease or the leasehold estate created  
8 by this Lease or any interest in this Lease or any such leasehold  
9 estate may be held, directly or indirectly, by or for the account  
10 of any person or persons who shall own the Premises, or any interest  
11 therein, or shall hold any Leasehold mortgage. No such merger shall  
12 occur unless and until all persons at the time holding the estate  
13 or interests to be merged shall in a written instrument effecting  
14 such merger and shall duly record the same.

15 11.19 Memorandum of Lease. Landlord and Tenant shall  
16 execute and record a Memorandum of Lease in a form reasonably  
17 acceptable to Landlord and Tenant and the most senior Lender, if  
18 any. All recording costs, documentary transfer taxes, taxes  
19 assessed, and fees shall be paid by Tenant.

20 11.20 Upon the Commencement Date, that certain unrecorded  
21 Lease, dated May 6, 1981, between Landlord and Crowley Development  
22 Corporation, as amended by a First Amendment to Lease and a Second  
23 Amendment to Ground Lease (collectively "Prior Lease") shall  
24 terminate without any further action by Landlord or Tenant, but  
25 Tenant shall retain ownership, subject to Paragraph 4.3 of this  
26 Lease, of the existing buildings, structures, and other improvements  
27 located on the Premises. Notwithstanding that this Lease has been  
28 signed on behalf of Landlord and Tenant and that a fully signed copy

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1 fully signed copy has been delivered to Tenant by Landlord, the  
2 first day on which this Lease shall be in effect and the Prior Lease  
3 terminated shall be the date on which Landlord receives Tenant's  
4 written notice accepting Landlord's delivery of this Lease  
5 ("Tenant's Notice"). In no event shall this Lease be deemed to be  
6 in effect and the Prior Lease terminated unless and until Landlord  
7 receives Tenant's Notice.


8        11.21 Counterparts. This Lease may be executed in several  
9 duplicate counterparts, each of which shall be deemed an original  
10 of this Lease for all purposes.

11        11.22 Adult Entertainment. Lessee shall not, whether or not  
12 the Premises are zoned for such an activity, allow any "adult  
13 entertainment business" to operate on the Premises as such a  
14 business is defined by Section 21.15.110 of the Long Beach Municipal  
15 Code.

16        WITNESS the execution hereof under seal the day and year first  
17 above written.

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**CITY OF LONG BEACH**, a municipal corporation

By   
City Manager

**"LANDLORD OR LESSOR"**

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JOHN HANCOCK LIFE INSURANCE COMPANY,  
a Massachusetts corporation

By *John M. Nagle*  
ITS Senior Investment Officer

By *[Signature]*  
ITS SE. INVEST. OFFICER

"TENANT OR LESSEE"

Approved as to form this 8<sup>th</sup> day of September,

2000.

ROBERT E. SHANNON, City Attorney

By *Richard Landes*  
Principal Deputy

Robert E. Shannon  
City Attorney of Long Beach  
303 West Ocean Boulevard  
Long Beach, California 90802-4554  
Telephone (562) 594-5200

JMS:pw  
9/08/00  
C5\CATHANCOCK. SEPT00



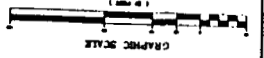
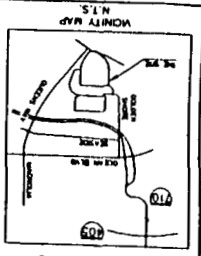
EXHIBIT A

DATE	12/11/18
BY	[Signature]
TITLE	CONVEYANCE
PROJECT	Long Beach, CA (Catalina Landing)
PREPARED BY	310-360 Catalina Shores

ROSELL SURVEYING & MAPPING  
 10231 Sistrup Avenue, Suite 201  
 Fountain Valley, CA 92708  
 714-378-8845

SYMBOL	DESCRIPTION
(Symbol)	BOUNDARY
(Symbol)	ADJACENT PROPERTY
(Symbol)	EXISTING ROAD
(Symbol)	PROPOSED ROAD
(Symbol)	EXISTING UTILITY
(Symbol)	PROPOSED UTILITY
(Symbol)	EXISTING CONSTRUCTION
(Symbol)	PROPOSED CONSTRUCTION

SYMBOL	DESCRIPTION
(Symbol)	EXISTING CONSTRUCTION
(Symbol)	PROPOSED CONSTRUCTION
(Symbol)	EXISTING ROAD
(Symbol)	PROPOSED ROAD
(Symbol)	EXISTING UTILITY
(Symbol)	PROPOSED UTILITY
(Symbol)	EXISTING ADJACENT PROPERTY
(Symbol)	PROPOSED ADJACENT PROPERTY



ATTACHED UNDER THIS SURVEY  
 HAYES & MATTHEWS, INC.  
 714-678-7185  
 10101 WILSON AVENUE, SUITE 200  
 FOUNTAIN VALLEY, CA 92708

**LEGAL DESCRIPTION OF PARCEL 1**  
 PARCEL 1 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 2**  
 PARCEL 2 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 3**  
 PARCEL 3 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 4**  
 PARCEL 4 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 5**  
 PARCEL 5 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 6**  
 PARCEL 6 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 7**  
 PARCEL 7 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 8**  
 PARCEL 8 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 9**  
 PARCEL 9 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

**LEGAL DESCRIPTION OF PARCEL 10**  
 PARCEL 10 consists of a certain parcel of land situated in the County of Orange, State of California, bounded as follows: ...

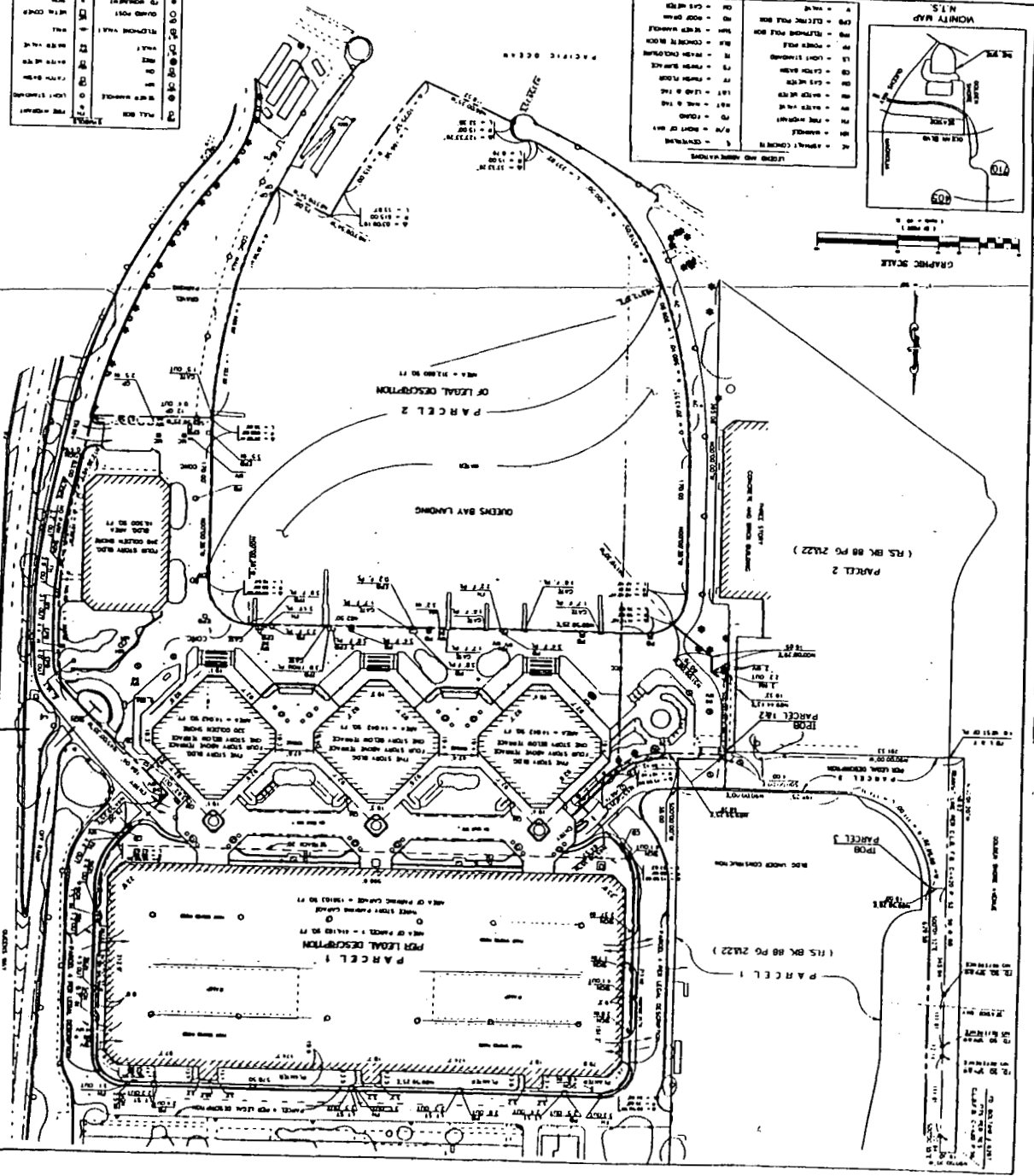


EXHIBIT A

LAND 1001  
 CATALINA LANDING NO. 220 (P. 8/2018)

[Signature]

Legal Description  
310 to 340 GOLDEN SHORE  
LONG BEACH, CALIFORNIA

THE REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF THE ARTIFICIALLY CREATED LAND WITHIN THE TIDELANDS AND SUBMERGED LANDS CONVEYED TO THE CITY OF LONG BEACH BY THE STATE OF CALIFORNIA UNDER AN ACT OF MAY 1, 1911, CHAPTER 676, PAGE 1304, AS AMENDED, AS SHOWN ON CITY ENGINEERS FILE MAP NO. B-1774, SHEETS 1 THROUGH 4, DATED JUNE 9, 1959 ON FILE WITH THE CITY OF LONG BEACH, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 86 PAGES 21 AND 22 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 0 DEGREES 01 MINUTES 08 SECONDS WEST 4.00 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 25 SECONDS EAST 68.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 107.50 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 84.43 FEET; THENCE NORTH 44 DEGREES 59 MINUTES 25 SECONDS EAST 44.67 FEET; THENCE NORTH 45 DEGREES 00 MINUTES 35 SECONDS WEST 64.57 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 80.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 62.83 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 35 SECONDS WEST 215.66 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 35.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 54.98 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 25 SECONDS EAST 578.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 35.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 54.98 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES 35 SECONDS EAST 202.16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 80.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 62.83 FEET; THENCE SOUTH 44 DEGREES 59 MINUTES 25 SECONDS WEST 79.00 FEET; THENCE SOUTH 45 DEGREES 00 MINUTES 35 SECONDS EAST 184.04 FEET TO A POINT ON A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 745.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 83 DEGREES

16 MINUTES 28 SECONDS EAST; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19 DEGREES 20 MINUTES 21 SECONDS AN ARC LENGTH OF 251.46 FEET; THENCE SOUTH 12 DEGREES 36 MINUTES 49 SECONDS WEST 83.00 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 25 SECONDS WEST 143.58 FEET, MORE OR LESS, TO A POINT ON THE FACE OF A CONCRETE BULKHEAD, SAID POINT ALSO BEING THE WATER LINE AND BEING ON A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 690.00 FEET, A RADIAL TO SAID POINT BEARS SOUTH 87 DEGREES 31 MINUTES 05 SECONDS EAST; THENCE NORTHERLY AND WESTERLY ALONG SAID CONCRETE BULKHEAD THE FOLLOWING COURSES AND DISTANCES: NORTHERLY ALONG SAID LAST MENTIONED CURVE HAVING A RADIUS OF 690.00 FEET THROUGH A CENTRAL ANGLE OF 2 DEGREES 29 MINUTES 30 SECONDS, AN ARC LENGTH OF 30.00 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 35 SECONDS WEST 170.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 50.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 78.54 FEET; THENCE SOUTH 89 DEGREES 59 MINUTES 25 SECONDS WEST 482.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 50.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 41 DEGREES 18 MINUTES 55 SECONDS, AN ARC LENGTH OF 36.05 FEET; THENCE LEAVING SAID CONCRETE BULKHEAD LINE, NORTH 51 DEGREES 09 MINUTES 08 SECONDS WEST 60.76 FEET; THENCE NORTH 0 DEGREES 01 MINUTES 08 SECONDS WEST 18.97 FEET; THENCE SOUTH 89 DEGREES 58 MINUTES 52 SECONDS WEST 19.29 FEET; THENCE NORTH 0 DEGREES 01 MINUTES 08 SECONDS WEST 96.05 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS AND MINERAL RIGHTS OF EVERY KIND OR NATURE LYING BELOW THE SURFACE OF SAID AREA, AND EXCEPT THEREFROM ALL RIGHTS TO THE SUBSURFACE OF SAID LAND AND WATER AREA MORE THAN ONE HUNDRED (100) FEET BELOW GROUND LEVEL OR WATER SURFACE LEVEL, OTHER THAN THE RIGHT TO DRIVE PILES TO A DEPTH GREATER THAN ONE HUNDRED (100) FEET, AS RESERVED IN THE LEASE DATED MAY 6, 1981, EXECUTED BY CITY OF LONG BEACH, AS LESSOR AND CROWLEY DEVELOPMENT CORPORATION, LESSEE, A SHORT FORM OF SAID LEASE BEING RECORDED ON AUGUST 5, 1983 AS INSTRUMENT NO. 83-901168 OFFICIAL RECORDS. SAID LEASE FURTHER PROVIDES:

LANDLORD SHALL NOT EXERCISE ANY RIGHT OF SURFACE ENTRY ON THE PREMISES NOR ANY RIGHT TO USE THE SUBSURFACES OF THE LAND AND WATER AREAS DESCRIBED WITHIN ONE HUNDRED (100) FEET BELOW GROUND LEVEL OR WATER SURFACE LEVEL OF SAID PREMISES FOR THE PURPOSE OF MINERAL EXPLORATION OR DEVELOPMENT.

PARCEL 2:

A PORTION OF THE ARTIFICIALLY CREATED LAND AND WATER AREA WITHIN THE TIDELANDS AND SUBMERGED LANDS CONVEYED TO THE CITY OF LONG BEACH BY THE STATE OF CALIFORNIA UNDER AN ACT OF MAY 1, 1911, CHAPTER 676, PAGE 1304, AS AMENDED, AS SHOWN ON CITY ENGINEERS FILE MAP NO. B-1774, SHEETS 1 THROUGH 4, DATED JUNE 9, 1959 ON FILE WITH THE CITY OF LONG BEACH, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 2 OF RECORD OF SURVEY FILED IN BOOK 86 PAGES 21 AND 22 OF RECORD OF SURVEY, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 0 DEGREES 01 MINUTES 08 SECONDS EAST 96.05 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 52 SECONDS EAST 19.29 FEET; THENCE SOUTH 0 DEGREES 01 MINUTES 08 SECONDS EAST 18.97 FEET; THENCE SOUTH 51 DEGREES 09 MINUTES 08 SECONDS EAST 60.76 FEET, MORE OR LESS, TO A POINT ON THE FACE OF A CONCRETE BULKHEAD, SAID POINT ALSO BEING THE WATER LINE AND BEING ON A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 41 DEGREES 19 MINUTES 30 SECONDS EAST, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 41 DEGREES 18 MINUTES 55 SECONDS, AN ARC LENGTH OF 36.05 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 25 SECONDS EAST 482.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 78.54 FEET; THENCE SOUTH 0 DEGREES 00 MINUTES 35 SECONDS EAST 170.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 690.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26 DEGREES 50 MINUTES 41 SECONDS, AN ARC LENGTH OF 323.28 FEET; THENCE NORTH 63 DEGREES 09 MINUTES 54 SECONDS WEST ALONG A RADIAL LINE 75.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 615.00 FEET, A RADIAL LINE OF SAID CURVE TO SAID POINT BEARS SOUTH 63 DEGREES 09 MINUTES 54 SECONDS EAST; THENCE SOUTHWESTERLY ALONG SAID CURVE HAVING A RADIUS OF 615.00 FEET, THROUGH A CENTRAL ANGLE OF 3 DEGREES 09 MINUTES 19 SECONDS, AN ARC LENGTH OF 33.87 FEET TO A POINT OF COMPOUND CURVE; THENCE SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 915.00 FEET, THROUGH A CENTRAL ANGLE OF 10 DEGREES 25 MINUTES 52 SECONDS, AN ARC LENGTH OF 166.58 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 49 DEGREES 34 MINUTES 43 SECONDS WEST; THENCE NORTH 66 DEGREES 00 MINUTES 35 SECONDS WEST 118.52 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE OF SAID CURVE TO SAID POINT BEARS SOUTH 66 DEGREES 00 MINUTES 35 SECONDS EAST; THENCE

{10000958.1}

EXHIBIT A-1

Page 3 of 6

NORTHWESTERLY ALONG SAID CURVE HAVING A RADIUS OF 15.00 FEET, THROUGH A CENTRAL ANGLE OF 123 DEGREES 33 MINUTES 26 SECONDS, AN ARC LENGTH OF 32.35 FEET TO A POINT OF REVERSE CURVE; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 15.00 FEET THROUGH A CENTRAL ANGLE OF 33 DEGREES 33 MINUTES 26 SECONDS, AN ARC LENGTH OF 8.79 FEET TO A POINT OF COMPOUND CURVE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 300.00 FEET THROUGH A CENTRAL ANGLE OF 45 DEGREES 16 MINUTES 05 SECONDS, AN ARC LENGTH OF 237.02 FEET TO A POINT OF COMPOUND CURVE; THENCE NORTHERLY ALONG A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 580.10 FEET THROUGH A CENTRAL ANGLE OF 20 DEGREES 43 MINUTES 55 SECONDS, AN ARC LENGTH OF 209.90 FEET; THENCE NORTH 0 DEGREES 00 MINUTES 35 SECONDS WEST, 170.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 50.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48 DEGREES 41 MINUTES 05 SECONDS, AN ARC LENGTH OF 42.49 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS AND MINERAL RIGHTS OF EVERY KIND OR NATURE LYING BELOW THE SURFACE OF SAID AREA, AND EXCEPT THEREFROM ALL RIGHTS TO THE SUBSURFACE OF SAID LAND AND WATER AREA MORE THAN ONE HUNDRED (100) FEET BELOW GROUND LEVEL OR WATER SURFACE LEVEL, OTHER THAN THE RIGHT TO DRIVE PILES TO A DEPTH GREATER THAN ONE HUNDRED (100) FEET, AS RESERVED IN THE LEASE DATED MAY 6, 1981, EXECUTED BY CITY OF LONG BEACH, AS LESSOR AND CROWLEY DEVELOPMENT CORPORATION, LESSEE, A SHORT FORM OF SAID LEASE BEING RECORDED ON AUGUST 5, 1983 AS INSTRUMENT NO. 83-901168 OFFICIAL RECORDS.

PARCEL 3:

A NONEXCLUSIVE RIGHT OF WAY FOR ACCESS OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF GOLDEN SHORE (FORMERLY GOLDEN AVENUE), 64 FEET IN WIDTH, AND THE WESTERLY PROLONGATION OF THE SOUTHERLY LINE OF BLOCK 5, OCEAN PIER WEST, AS PER MAP RECORDED IN BOOK 5 PAGE 131 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF LOS ANGELES; THENCE ALONG THE SOUTHERLY PROLONGATION OF SAID CENTERLINE SOUTH 0 DEGREES 00 MINUTES 35 SECONDS EAST 20.84 FEET TO AN ANGLE POINT; THENCE ALONG THAT LINE HAVING A BEARING OF NORTH 0 DEGREES 01 MINUTES 32 SECONDS WEST AND DESCRIBED AS "TRANSIT LINE PER C.L.B. F.B. C-420 P.53, 59 & 60" ON RECORD OF SURVEY FILED IN BOOK 86 OF RECORDS OF SURVEYS AT PAGE 21 RECORDS OF LOS ANGELES COUNTY, SOUTH 0 DEGREES 01 MINUTES 32 SECONDS EAST 629.58 FEET TO A POINT PERPENDICULARLY DISTANT 29.00 FEET WESTERLY OF THE NORTHERLY TERMINUS OF A 101.00 FOOT RADIUS CURVE IN THE

WESTERLY BOUNDARY OF PARCEL 1 OF THE DEED TO THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND COLLEGES, RECORDED ON JUNE 4, 1973 AS INSTRUMENT NO. 3863, SAID PARCEL BEING ALSO SHOWN ON THE ABOVE MENTIONED RECORD OF SURVEY; THENCE AT RIGHT ANGLES NORTH 89 DEGREES 58 MINUTES 28 SECONDS EAST 19.00 FEET TO THE TRUE POINT OF BEGINNING OF THE ACCESS WAY TO BE HEREIN DESCRIBED; THENCE FROM A TANGENT THAT BEARS SOUTH 0 DEGREES 01 MINUTES 32 SECONDS EAST SOUTHEASTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 111.00 FEET THROUGH A CENTRAL ANGLE OF 89 DEGREES 58 MINUTES 28 SECONDS, AN ARC DISTANCE OF 174.30 FEET TO A TANGENT POINT ON THE SOUTHERLY LINE OF THE ABOVE DESCRIBED PARCEL 1; THENCE ALONG SAID SOUTHERLY LINE OF PARCEL 1 EAST 198.25 FEET TO THE SOUTHEASTERLY CORNER THEREOF; THENCE SOUTH 38.00 FEET; THENCE WEST 55.75 FEET; THENCE SOUTH 10.00 FEET TO THE NORTHEAST CORNER OF PARCEL 2 OF SAID INSTRUMENT NO. 3863, SAID PARCEL ALSO BEING SHOWN ON THE ABOVE DESCRIBED RECORD OF SURVEY; THENCE ALONG SAID NORTHERLY LINE OF PARCEL 2 AND ITS WESTERLY PROLONGATION WEST 291.33 FEET TO A LINE THAT IS PARALLEL WITH AND 19.00 FEET WESTERLY OF THE TRANSIT LINE SHOWN ON SAID RECORD OF SURVEY; THENCE ALONG LAST SAID PARALLEL LINE NORTH 0 DEGREES 01 MINUTES 32 SECONDS WEST TO A LINE THAT IS PARALLEL WITH AND 19.00 FEET WESTERLY OF SAID SOUTHERLY PROLONGATION OF THE CENTERLINE OF GOLDEN SHORE; THENCE ALONG LAST SAID PARALLEL LINE NORTH 0 DEGREES 00 MINUTES 35 SECONDS WEST TO THE GENERAL NORTHERLY LINE OF SEASIDE WAY, 100 FEET WIDE, AS SHOWN ON MAP OF SEASIDE PARK PLAT NO. 3, RECORDED IN BOOK 10 PAGE 27 OF MAPS, RECORDS OF LOS ANGELES COUNTY; THENCE EASTERLY ALONG SAID GENERAL NORTHERLY LINE OF SEASIDE WAY AS SHOWN ON LAST SAID MAP AND SAID MAP OF OCEAN PIER WEST TO A LINE PARALLEL WITH AND 19.00 FEET EASTERLY OF THE CENTERLINE OF GOLDEN SHORE AND ITS SOUTHERLY PROLONGATION; THENCE ALONG SAID PARALLEL LINE SOUTH 0 DEGREES 00 MINUTES 35 SECONDS EAST TO A LINE THAT IS PARALLEL WITH AND 19.00 FEET EASTERLY OF THE ABOVE DESCRIBED TRANSIT LINE; THENCE ALONG LAST SAID PARALLEL LINE SOUTH 0 DEGREES 01 MINUTES 32 SECONDS EAST TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DESCRIBED AS "PARCEL B" IN A GRANT DEED RECORDED FEBRUARY 3, 2000, AS INSTRUMENT NO. 00-016934 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY.

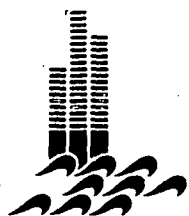
PARCEL 4:

A NONEXCLUSIVE RIGHT OF WAY FOR ACCESS OVER, UPON AND ACROSS THAT PORTION OF THE ARTIFICIALLY CREATED LAND WITHIN THE TIDELANDS AND SUBMERGED LANDS CONVEYED TO THE CITY OF LONG BEACH BY THE STATE OF CALIFORNIA UNDER AN ACT OF MAY 1, 1911, CHAPTER 676, PAGE 1304, AS AMENDED, AS SHOWN ON CITY ENGINEERS FILED MAP NO. B-1774, SHEETS 1 THROUGH 4, DATED JUNE 9, 1959, ON FILED WITH THE CITY OF LONG BEACH,

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA INCLUDED WITHIN THE ROADWAYS DEPICTED ON EXHIBIT B-2 OF THE SECOND AMENDMENT TO GROUND LEASE, DATED JUNE 29, 1989, AS FILED IN THE CITY CLERKS OFFICE OF THE CITY OF LONG BEACH AS CLERKS DOCUMENT NO. 15366, AND AS SHOWN ON EXHIBIT "B" OF THE MEMORANDUM OF SECOND AMENDMENT TO GROUND LEASE RECORDED AUGUST 1, 1989 AS INSTRUMENT NO. 89-1229721.

JNM:pw  
5/1/02  
C6\CATALINA.LEGAL

{10000958.1}



# CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 WEST OCEAN BOULEVARD

LONG BEACH, CALIFORNIA 90802

(562) 570-6711  
FAX (562) 570-6583

HENRY TABOADA  
CITY MANAGER

April 29, 2002

Mr. John M. Nagle, CPM  
Senior Investment Officer  
John Hancock Real Estate Investment Group  
P.O. Box 111  
Boston, MA 02117-0111

Subject: Catalina Landing Ground Lease

Dear Mr. Nagle:

This clarifies the following regarding this lease:

1. Lease Term: The Commencement Date (as defined in Lease Paragraph 2.2) is April 29, 2002, and the term of the Lease shall end on April 28, 2068, unless sooner terminated pursuant to the terms of the Lease. When this letter has been signed by Tenant in the space provided below, this letter shall constitute the Landlord and Tenant's confirmation of the Lease Commencement Date under Lease Paragraph 2.2.
2. Calculation of Rent: Landlord and Tenant hereby confirm that the April 22, 2002 Memorandum attached hereto and incorporated herein by reference accurately describes the parties' intent and the method to be used to determine rent adjustments under the Lease beginning in the year 2015.

Sincerely,

Vincent Coughlin  
Special Assistant to the City Manager

VC:mb

Attachment

Exhibit "B"



KEYSER MARSTON ASSOCIATES INC.

500 SOUTH GRAND AVENUE, SUITE 1480  
LOS ANGELES, CALIFORNIA 90071  
PHONE: 213/622-8095  
FAX: 213/622-5204

ADVISORS IN:  
REAL ESTATE  
REDEVELOPMENT  
AFFORDABLE HOUSING  
ECONOMIC DEVELOPMENT  
FISCAL IMPACT  
INFRASTRUCTURE FINANCE  
VALUATION AND  
LITIGATION SUPPORT

MEMORANDUM

**To:** Mr. Vince Coughlin,  
Special Assistant to the City Manager  
City of Long Beach

**From:** Keyser Marston Associates, Inc.

**cc:** Ms. Ruth Mizobe Shikada

**Date:** April 22, 2002

**Subject:** Review of John Hancock Letter  
Regarding Rent Adjustments

*Los Angeles*  
Calvin E. Hollis, II  
Kathleen H. Head  
James A. Rabe  
Paul C. Anderson  
Gregory D. Soo-Hoo

*San Diego*  
Gerald M. Trimble  
Paul C. Marra

*SAN FRANCISCO*  
A. Jerry Keyser  
Timothy C. Kelly  
Kate Earle Funk  
Robert J. Wetmore  
Debbie M. Kern

Pursuant to your request, Keyser Marston Associates, Inc. (KMA) has reviewed the e-mail letter from John Hancock dated April 16, 2002, regarding the clarification of certain lease provisions. Specifically you have asked KMA to review the request for clarification related to the calculation of rent.

The clarification requested by John Hancock is as follows. "The City and John Hancock intended that beginning with the first CPI rental adjustment in the year 2020 and continuing with respect to each CPI rental adjustment thereafter, if, on any rental adjustment date, 11% of gross annual rents and gross parking revenue for the lease year immediately preceding the rent adjustment is more than \$1,166,400, but less than the amount of CPI adjusted annual rent that would then be payable under paragraph 3.2.2, then the annual rent shall equal the 11% of gross annual rents and gross parking revenue for the lease year immediately preceding the rent adjustment."

The clarification requested by John Hancock is inconsistent with the intent of the negotiations between the City and Robert Penney, which are incorporated in the lease.

The issue of rent adjustments and the intent of the parties was previously addressed by KMA in its September 6, 2000 memorandum, which is attached. It was the intent of the two parties, the City and Robert Penney, that the adjustment of rent, based on 11% of gross rent revenues and gross parking revenues, would only happen one time. The intent of the parties was that in

**To:** Mr. Vince Coughlin, City of Long Beach  
**Subject:** Review of John Hancock Letter Regarding Rent Adjustments

April 22, 2002  
Page 2

2010 the rent would be increased to \$1,166,400. In 2015 there will be a test as to whether 11% of the average gross annual rents and gross parking revenues for the previous two years exceeds \$1,166,400. If the answer is yes, then the new rent will be the 11% of gross rent revenues and gross parking revenues computed, and thereafter rent will be adjusted based upon the CPI computation with the 16% adjustment cap and an absolute floor of \$1,166,400.

If the answer is no, then the rent remains at \$1,166,400 until 2020. In 2020, the test is repeated and the new rent is the greater of \$1,166,400 or 11% of the average of gross rent revenues and gross parking revenues for the previous two years. If the answer is yes, then the new rent will be the 11% of gross rent revenues and gross parking revenues computed, and thereafter rent will be adjusted based upon the CPI computation with the 16% adjustment cap and an absolute floor of \$1,166,400. If the answer is no, then the rent remains at \$1,166,400 and the process repeats until 11% of gross rent revenues and gross parking revenues exceeds \$1,166,400.

This change in the rent adjustment formula was a concession on the City side and was another part of the reason that the lessee was required to provide assistance to what was then Catalina Landing. We hope that this explanation is helpful. If you need further clarification, please call.

500 SOUTH GRAND AVENUE, SUITE 1480  
LOS ANGELES, CALIFORNIA 90071  
PHONE: 213/622-8095  
FAX: 213/622-5204  
WEB SITE: WWW.KMAINC.COM

ADVISORS IN:  
REAL ESTATE  
REDEVELOPMENT  
AFFORDABLE HOUSING  
ECONOMIC DEVELOPMENT  
FISCAL IMPACT  
INFRASTRUCTURE FINANCE  
VALUATION AND  
LITIGATION SUPPORT

MEMORANDUM

To: Ruth Mizobe-Shikada, City of Long Beach  
Robert Penney, Penco Properties

From: James Rabe

cc: James McCabe, City of Long Beach  
Bruce Gagnon, Atkinson, Conway & Gagnon

Date: September 6, 2000

Subject: Rent Language for Catalina Landing Lease

Los Angeles  
Calvin E. Hollis, II  
Kathleen H. Head  
James A. Rabe

San Diego  
Gerald M. Trimble  
Robert J. Wetmore  
Paul C. Marra

SAN FRANCISCO  
A. Jerry Keyser  
Timothy C. Kelly  
Kate Earle Funk  
Denise E. Conley  
Debbie M. Kern  
Martha N. Packard

Following my discussion with Bob Penney and further discussion with the City of Long Beach, I have prepared the following suggested changes in the lease. I have added one point which was never discussed and that is revenues from the operation of a marina on site. That was an unknown at the time, so I have included marina/slip revenues as part of gross revenues for purposes of this lease.

Section 3.2.2 Rent and Adjustment of Rent

The sentence on rent adjustment should be modified to read "Beginning in Lease Year 2015 and every five years thereafter, the annual rent shall be adjusted to be equal to (a) 11% of the average gross annual rents and gross parking revenues for the previous two years or (b) \$1,166,400. Once the ground rents have been adjusted by this formula, the ground rents shall be adjusted by every five years thereafter based upon the increase or decrease in the Consumer Price Index for all items for the area that includes Long Beach California ..."

For purposes of determining gross annual rents, Tenant shall lease office space on a "full service gross" basis. "Gross annual rents" shall mean rents actually collected and attributable to the project, including any rental of marina space, for the subject years but excluding (i) any separately stated expense reimbursements above the "base year expenses" contained in the full service gross lease, and (ii) gross parking revenues.

To: Ruth Mizc Shikada, City of Long Beach  
Robert Penney, Penco Properties  
Subject: Rent Language for Catalina Landing Lease

September 6, 2000  
Page 2

"Full service gross" means the rental rate which includes base year expenses.

"Base year expenses" means all operating expenses and real estate taxes in the first year and as adjusted periodically through subtenant leases.



# CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 WEST OCEAN BOULEVARD

LONG BEACH, CALIFORNIA 90802

(562) 570-6711  
FAX (562) 570-0500

May 23, 2002

Mr. John M. Nagle, CPM  
Senior Investment Officer  
John Hancock Real Estate Investment Group  
P.O. Box 111  
Boston, MA 02117-0111

Subject: Catalina Landing Ground Lease

Dear Mr. Nagle:

This clarifies the following regarding the lease:

1. Event of Default: The first line of paragraph 10.2 of the lease should be changed to read:

"The occurrence of any of the following shall constitute an 'event of default' by Lessee".

2. Lender's Rights: the reference in Paragraph 8.2.4 to Paragraph 10.1.1 should be changed to a reference to Paragraph 10.2a.

Sincerely,

Vincent Coughlin  
Special Assistant to the City Manager

VC:mb

cc: J. McCabe-Deputy City Attorney



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

ROBERT E. SHANNON  
City Attorney

HEATHER A. MAHOOD  
Assistant City Attorney

PRINCIPAL DEPUTIES

Barbara D. de Jong  
Dominic Holzhaus  
Michael J. Mais  
Daniel S. Murphy

DEPUTIES

William A. Reidder  
Richard A. Alesso  
Alan D. Bennett  
Randall C. Fudge  
Charles M. Gale  
Michelle Gardner  
Everett L. Glenn  
Doina F. Gwin  
Monte H. Machit  
Lisa Peskay Malmsten  
Belinda R. Mayes  
James N. McCabe  
Susan C. Oakley  
J. Charles Parkin  
Carol A. Shaw

April 30, 2002

VIA FACSIMILE (714) 384-4320 &  
OVERNIGHT MAIL

Garrett DeFrenza Stiepel LLP  
Plaza Tower  
600 Anton Boulevard, 18<sup>th</sup> Floor  
Costa Mesa, California 92626-7653

Attention: Marc F. DeFrenza, Esq.

Re: Section 5 of Fee Agreement

Dear Marc:

This is to confirm our understanding that Section 5 of the Fee Agreement between the City of Long Beach and John Hancock Insurance is intended (subject to Sections 5.1, 5.2, 5.3 and 5.4) to state the City's obligation to dredge and maintain the Catalina Landing Basin so that Providers may navigate those portions of the Basin appropriate for docking at Catalina Landing taking into account the need for the support of the seawalls in that Basin.

Please indicate your concurrence to the above by signing below and returning a signed copy of this letter to me by fax. Many thanks.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By

  
James N. McCabe, Deputy

JNM:pw

Approved:

May 2, 2002

By:

  
Marc DeFrenza, Esq.

Exhibit "C"

## AGREEMENT

THIS AGREEMENT is made and entered into as of May 1, 2002, pursuant to a minute order adopted by the City Council of the City of Long Beach at its May 16, 2000, and June 27, 2000 meetings by and between the **CITY OF LONG BEACH**, a municipal corporation and trust grantee of the State of California of certain tide and submerged lands within said City (the "City"), and **JOHN HANCOCK LIFE INSURANCE COMPANY**, a Massachusetts corporation ("**Owner**").

## RECITALS

A. Pursuant to a Ground Lease between Owner and City ("**Ground Lease**"), Owner is the ground leasehold owner of that certain project located at 310 through 340 Golden Shore, Long Beach, California ("**Project**"), and commonly known as Catalina Landing. Owner acknowledges that City currently has no obligation to maintain the depth of the docking basin located at the Project ("**Basin**") by dredging or other means. Owner desires that City agree to maintain the depth of the Basin as described below during the entire Term (defined below).

B. As inducement and in consideration of City's agreement to maintain the depth of the Basin as described below and for other good and valuable consideration, Owner and City agree as set forth below.

1. **DEFINITIONS:** As used in this Agreement, the following terms will have the following meanings:

1.1 "**Calendar Year**" means any calendar year during the term of this Agreement.

1.2 "**Net Parking Revenue**" means all parking revenue received by Owner resulting directly from the operation of a waterborne passenger service to or from the Project including, without limitation, passenger service between the Project and Catalina Island, harbor cruises, whale watching cruises, water taxi service, and other waterborne passenger services (collectively, "**Waterborne Passenger Services**"). "**Net Parking Revenue**" shall include revenue from the sale of monthly parking passes, validations and prepaid parking, daily and hourly parking fees, and parking fees collected by a Provider (defined below) to the extent that Provider actually pays the proceeds of such sales and fees to Owner or Owner's designee or assignee, or any party that holds a lien on Owner's right, title or interest in Net Parking Revenue. Net Parking Revenue shall not include (or, if included, there shall be deducted to the extent of such inclusion) the following:

(a) any parking revenue not directly related to Waterborne Passenger Services ("**Non-Passenger Parking**"); and

(b) sales and use taxes, transportation taxes, excise taxes, franchise taxes and other similar taxes now or in the future imposed upon Net Parking Revenue, but only if such taxes and charges are added to the selling price, separately stated and collected from customers.

In lieu of implementing a program at the Project to establish with certainty the amount of parking revenue attributable to Non-Passenger Parking relating to transient parkers ("**Transient Parkers**") visiting Project tenants, Owner may elect, in its sole discretion, for purposes of calculating Net Parking Revenue, to assume that the parking revenue paid by Transient Parkers during any calendar year is Twenty-five Thousand and 00/100 Dollars (\$25,000) ("**Assumed Amount**"). In no event will the Assumed Amount be deemed to include any revenue from the following types of Non-Passenger Parking: Prepaid monthly tenant parking (including prepaid parking for the personnel of any Provider but not including monthly parkers using Waterborne Passenger Services), parking provided for the Long Beach Grand Prix, or parking for any other event, use or purpose that Owner and City mutually agree shall not be included in the Assumed Amount. The Assumed Amount shall be (i) prorated for any partial calendar year during which this Agreement is in effect based on the number of months during that year that this Agreement is in effect and (ii) increased, but never decreased, on January 1 of each calendar year based on increases during the immediately preceding calendar year in the Consumer Price Index (All Urban Consumers) for the Los Angeles-Anaheim-Riverside Metropolitan Area ("**CPI**") published by the Bureau of Labor Statistics of the U.S. Department of Labor. The increase shall be determined by multiplying the percentage increase in the CPI by the Assumed Amount in effect as of December 31 of the immediately preceding calendar year. The increase that will take effect on January 1, 2003 shall be based on the increase in the CPI for the entire 2002 calendar year.

1.3 "**Hazardous Materials**" means any toxic, hazardous, corrosive, reactive, ignitable, carcinogenic, mutagenic or reproductive toxic chemical, compound, material, mixture, waste or substance, whether now or hereafter defined, listed in or otherwise classified pursuant to any state or federal law, now or hereafter applicable to the Project; petroleum, including crude oil or any fraction thereof; and asbestos containing materials.

1.4 "**Term**" means the period beginning on the date of this Agreement and ending on the date of expiration or earlier termination of the term of any existing or future agreement between Owner, or its successors and assigns, and City pursuant to which the Project is ground leased from the City.

1.5 "**Provider**" means any person or entity that provides Waterborne Passenger Services to or from the Project.

2. **FEE:** Owner shall pay to City an annual fee (the "**Fee**") equal to thirty percent (30%) of all Net Parking Revenue collected during each Calendar Year during the Term, prorated for the initial and last years of the Term based on the Net Parking Revenue collected on the days during those years that this Agreement is in effect.

3. **PAYMENT SCHEDULE:** Owner shall pay City the Fee, if any, required under Paragraph 2, above, on a yearly basis by February 28 of each year for the immediately preceding Calendar Year. Owner shall by each such February 28 furnish City a statement of Net Parking Revenue ("**Statement**") received by Owner during the immediately preceding Calendar Year and will on said date pay City the amount of any Fee City is entitled to receive. Such Statement shall show Net Parking Revenue received by Owner and the amount of the Fee City is entitled to receive.



#### 4. RECORDS:

4.1 Owner shall keep or cause to be kept at the Premises accurate and complete records, books of account, records showing transactions relating to parking for Waterborne Passenger Services and Non-Passenger Parking, general ledgers, journals including supporting documents and any other accounting records maintained by Owner that City's auditor reasonably deems necessary for proper reporting of Fees and Net Parking Revenue (collectively, "**Records**"). Owner shall install and maintain an accurate transaction processing system providing a cumulative total of total parking revenue at the Project and of Net Parking Revenue and shall keep records of those totals reflecting every such transaction; provided, however, that if Owner elects to fix Non-Passenger Parking Revenue at the Assumed Amount as permitted above, then Owner shall only be required to accurately record the cumulative total of total parking revenue at the Project.

4.2 Owner shall hold the Records for a period of two (2) years after the end of the applicable calendar year and shall, upon City's prior written request, make the Records available to City at the Project, during normal weekday business hours. City shall have the right at any reasonable time during the Term, and for two (2) years after expiration or termination of the Term, to examine and audit the Records for the purpose of determining the accuracy thereof, at City's sole cost and expense. In addition, City's auditor may from time to time conduct an audit of the Records and observe the operation of the relevant portions of Owner's business (at no cost to Owner and without interfering with the operation of any business operating at the Project) to confirm the accuracy of the Records. If the audit accurately reflects a deficiency in the payment of any Fee, the deficiency shall become immediately due and payable. In the event that the audit accurately reflects that Owner understated Net Parking Revenue by more than five percent (5%), then Owner shall pay the reasonable cost of City's audit.

4.3 All accounting records audited by City or received by City shall be treated as confidential and exempt from public disclosure thereof to the extent permitted by law.

5. **OBLIGATION TO DREDGE BASIN:** City shall at all times keep and maintain the Basin properly dredged. The Basin shall be deemed properly dredged if the water depth at low tide is sufficient to permit each Provider's vessels to navigate the Basin, provided that in all events a minimum water depth of fifteen (15) feet at low tide shall be deemed sufficient.

5.1 As part of City's obligation to keep and maintain the Basin properly dredged, City shall use every reasonable opportunity to dredge the Basin and dispose of the resultant spoils in advance of silting in the Basin actually impinging on the fifteen (15) foot standard mentioned above. Factors that will be taken into account to determine when dredging should be undertaken shall include but not be limited to the following ("**Dredging Factors**"): (i) the then current depth of the Basin at low tide (i.e., whether the depth of the Basin is substantially greater than fifteen (15) feet at low tide), (ii) whether or not a suitable site for depositing dredging spoils is available, (iii) how deep the Basin can be dredged without risking damage to the seawalls of the Basin (i.e., City will dredge the Basin deeper than the fifteen (15) foot standard whenever possible to minimize the likelihood that the fifteen (15) foot standard will not be met, and (iv) whether or not impending or continuing rains might result in the depth of the Basin being less than fifteen (15) feet at low tide in the foreseeable future.

5.2 City will implement the following procedures to ensure that dredging of the Basin will occur when warranted by the Dredging Factors: (a) City personnel will review reports of the depth of the Basin provided by Catalina Channel Express, Inc. ("CCE") or any other Provider obligated to provide such reports to Owner, (b) City shall operate and properly maintain a dredge capable of dredging the Basin or contract with the operator of a dredge so that the dredge will be reasonably available to dredge the Basin when warranted by the Dredging Factors, (c) All appropriate agencies of City shall coordinate their dredging efforts throughout the Port of Long Beach so that City may take advantage of opportunities to deposit dredge spoils from the Basin at sites identified and used by City in connection with dredging operations at other sites, (d) City shall, to the extent feasible, at all times maintain all permits required to dredge the Basin and deposit dredge spoils, (e) City shall implement an ongoing program to identify sites at which City may acquire the right to deposit dredge spoils at nominal cost, and (f) City shall at all times take all other action reasonably required to be able to perform its dredging obligations under this Paragraph 5 consistent with the provisions of Paragraph 5.1 and this Paragraph 5.2.

5.3 If City faithfully and fully implements the procedures described in Paragraph 5.2, above, then Owner's sole remedy against City if City fails to keep the Basin properly dredged as required under this Paragraph 5 shall be to elect one or more of the following remedies, which shall be cumulative and not exclusive of each other: (a) Owner shall be entitled to the prompt return of Fees paid by Owner to City under this Agreement ("**Past Fees**") to the extent that Owner must abate or pay any amount to CCE under that certain Lease Agreement, dated January 29, 2002, between Owner and CCE, or under any other substantially similar agreement with any other Provider because City fails to keep the Basin properly dredged (collectively, "**Abatement Costs**"); (b) Owner shall be entitled to offset against Fees then payable to City, or payable to City at any time in the future (collectively, "**Future Fees**"), the amount of any Abatement Costs for which Owner is not reimbursed under Clause (a), above, and (c) issuance by a court with jurisdiction over the matter of an injunction ordering City to properly dredge the Basin as soon as reasonably possible and deposit the dredge spoils within Los Angeles County, or ordering City to take or cease such other action that will, as soon as reasonably possible, effectuate the proper dredging of the Basin and the deposit of the dredge spoils within Los Angeles County. If City fails to faithfully and fully implement the procedures described in Paragraph 5.2, above, then Owner's monetary remedies shall not be limited by the amount of Past Fees or Future Fees but shall instead be limited to the greater of (i) the amount Owner would be entitled to under the immediately preceding sentence and (ii) all Abatement Costs relating to the office/terminal space (as compared to any loss of parking related revenue) that CCE or any other Providers is obligated to lease (or otherwise pay a fee to occupy) at the Property, now or in the future, and incurred by Owner because City has failed to keep the Basin properly dredged.

5.4 Notwithstanding the other provisions of this Paragraph 5, City shall have no liability to Owner under this Paragraph 5 if City's failure to dredge the Basin is caused by war, fire, civil commotion, earthquake, other acts of God (other than rain, flood, mudslide, alluvium deposits, or silting), or any state or federal regulation enacted in the future and publicly opposed by City that materially impairs City's ability to dredge the Basin and not due to the City's fault or neglect or financial inability to perform, provided that in all events City shall use reasonable

diligence to overcome any such event. City agrees that its obligations under this Paragraph 5 are in addition to and not limited by the provisions of the Ground Lease.

**6. NO COMPETING FACILITIES:** Other than CCE's use of the existing facilities at the Queen Mary site or any sail boat service provided on a chartered basis, City shall not actively encourage or promote the use of, construct any facilities on, lease, or license, or permit the use, construction of any facilities on, leasing, subleasing, licensing, or sublicensing of any property owned by, or under the direct or indirect control of City for the purpose of providing ferry service from City to Catalina Island or for the parking of vehicles in connection with any such ferry service. Notwithstanding the foregoing, City shall not be in breach of this Paragraph 6 to the extent that (a) a third party provides ferry service from City to Catalina Island from property that is not owned by, or under the direct or indirect control of City, (b) a third party acting pursuant to rights granted by City before the date of this Agreement, uses, constructs facilities on, leases, or licenses, any property owned by, or under the direct or indirect control of City for the purpose of providing ferry service from City to Catalina Island or for the parking of vehicles in connection with any such ferry service, or (c) City's compliance with its obligations under this Paragraph 6 will violate applicable law. If City breaches its obligations under this paragraph, as Owner's sole remedies: (x) Owner's obligation to pay City the Fee shall be permanently abated for the entire period that City is in breach and for twelve (12) months after the breach is cured and (y) issuance by a court with jurisdiction over the matter of an injunction against City entering into any agreement or enacting any law or ordinance, or taking any similar action, that will breach City's obligations under this Paragraph 6.

**7. NO ADDITIONAL FEES:** As additional consideration for the Fee, City agrees that it shall not impose or charge any other fee of any nature, whether in the form of rent, a use or operations fee, an assessment, tax, or otherwise, against Owner or any Provider, including, without limitation, CCE in connection with either (a) any Provider's lease or use of a portion of the Project or (b) any Provider's, including, without limitation, CCE's operation of a ferry service from the Project to Catalina Island (collectively, the "**Fee Waiver**"); provided, however, that the Fee Waiver shall not apply to any generally applicable tax, fee, assessment, or charge payable by businesses or property owners operating in City. The Fee Waiver will remain in effect until the expiration of the later of (x) the Term or (y) the term of the lease for a portion of the Project between CCE and Hancock, and shall also apply to any assignee of CCE under the Lease.

City agrees that (a) CCE is relying on the Fee Waiver in entering into its lease with Owner, (b) the rent that CCE has agreed to pay under the Lease is based on CCE's understanding that City will agree to the Fee Waiver and (c) CCE would not have entered into the Lease absent the Fee Waiver. The Fee Waiver shall apply to City and all of its agencies. Each Provider, including, without limitation, CCE is a third party beneficiary to this Paragraph 7, and each Provider, including, without limitation, CCE (and each of their successors) may enforce this Paragraph 7 against City directly. In any action or proceeding between City and any Provider, including, without limitation, CCE in connection with the interpretation or enforcement of this Paragraph 7, the prevailing party shall be entitled to reimbursement of its reasonable attorney's fees and costs from the other party. Notwithstanding anything contained in this Paragraph 7, neither City's breach of its obligations under this Paragraph 7 nor the inability to enforce the provisions of this Paragraph 7 shall limit or modify CCE's or Owner's obligations under the Lease.

8. **HAZARDOUS MATERIALS:** As additional consideration for the annual Fee payable under this Agreement, City agrees that, except for any Release (defined below) of Hazardous Materials within the Basin by Owner, a Provider, or any other tenant or licensee of Owner (collectively, an "**Owner Release**"), Owner will have no liability for the presence of any Hazardous Materials in the Basin, including, without limitation, in, on, or under the Basin or the waters located therein (collectively, a "**Release**") and, except for any claim arising out of an Owner Release, City hereby waives and releases Owner from any claim City may now or hereafter have against Owner arising out of or in connection with any Release. City understands, has been advised by its legal counsel, and with respect to the matters covered by this paragraph, hereby waives the provisions of Section 1542 of the California Civil Code, which provides as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

9. **WAIVER:** Any waiver by either party of any breach of any one or more of the terms, covenants, or conditions of this Agreement shall be in writing and shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term, covenant, or condition of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the terms, covenants, or conditions of this Agreement be construed as in any manner changing the terms, covenants, or conditions hereof or preventing the enforcement of the provisions hereof, nor shall the conduct of the parties be deemed to change or modify the terms, covenants, or conditions of this Agreement. No delay, failure or omission of either party to insist on strict enforcement of any term, covenant, or condition or to exercise any right, power, privilege or option arising from any default shall impair any such right, power, privilege or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. The receipt and acceptance by City of a delinquent fee payment shall not constitute a waiver of any other default but shall only constitute waiver of timely payment for the particular fee payment involved. No notice to either party shall be required to restore "time is of the essence" after the waiver of any default. No option, right, power, remedy or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

10. **SUCCESSORS AND ASSIGNS:** This agreement is binding on the successors and assigns of Owner. It is agreed between Owner and City that in no event shall it be unreasonable for City to refuse to consent to an assignment of this Agreement without the written promise of any such assignee to both adhere to the terms of this Agreement and to require such assignees, successors and assigns to adhere to the terms of this Agreement. Otherwise, City shall not unreasonably withhold its consent to an assignment of this Agreement.

#### 11. **MISCELLANEOUS PROVISIONS:**

11.1 **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses set forth below or such other address as may have been specified by notifying the other party of the change of address.

To City: City of Long Beach  
Attention: City Manager  
333 West Ocean Boulevard, 13th Floor  
Long Beach, CA 90802

With copy to: The City Attorney  
City of Long Beach  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802

To Owner: John Hancock Life Insurance Company  
Property Management Office  
300 Golden Shore  
Long Beach, CA 90802  
FAX: (562) 495-2270

Notice shall be deemed served on the second business day following the day of mailing if properly mailed with the United States Postal Service, by certified mail, return receipt requested.

11.2 Time of Essence. Time is of the essence as to each provision of this Agreement.

11.3 Covenants and Conditions. All provisions hereof expressed as either covenants or conditions on the part of Owner or City to be performed or observed shall be deemed to be both covenants and conditions.

11.4 California Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Owner covenants and agrees to submit to the personal jurisdiction of any state court located in Los Angeles County, California, for any dispute, claim or matter arising out of or related to this Agreement.

11.5 Integrated Agreement. This Agreement constitutes the entire agreement between Owner and City regarding the subject matter of this Agreement and cannot be amended or modified except by written agreement.

11.6 Interpretation. The captions of this Agreement shall have no effect on its interpretation. When required by the context of this Agreement, the singular shall include the plural.

11.7 Severability. The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

11.8 Attorney Fees. If either party becomes a party to any litigation concerning this Agreement, by reason of any act or omission of the other party or its authorized representatives, and not by an act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party commences an action against the other

party arising out of or in connection with this Agreement, the prevailing party shall be entitled to request the court for an award of reasonable attorneys' fees and costs of suit from the losing party. Such reasonable attorney's fees, costs, and expenses shall also be applicable to representation of all leasehold interests in any bankruptcy proceedings.

11.9 Municipal Authority. The execution and delivery of this Agreement by City and the consummation of the transactions contemplated herein have been duly authorized and approved by all requisite action of the City of Long Beach, acting by and through its City Council, and constitutes a valid and binding obligation on City.

11.10 Owner's Authority. The execution and delivery of this Agreement by Owner and the consummation of the transactions contemplated herein have been duly authorized and approved by all required action of Owner. Owner represents and warrants to City that it is duly incorporated under the laws of the State of Massachusetts and in good standing with the Secretary of State. Owner represents and warrants that this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation on Owner.

WITNESS the execution hereof under seal the day and year first above written.

"CITY"

**CITY OF LONG BEACH**, a municipal corporation

By: 

City Manager

"OWNER"

**JOHN HANCOCK LIFE INSURANCE COMPANY**, a Massachusetts corporation

By: 

John Nagle, Senior Investment Officer

Approved as to form this 1st day of May, 2002.

ROBERT E. SHANNON, City Attorney

By: 

Deputy