

**STAFF REPORT
C91**

A 70

10/19/17

G 05-03

S 33

R. Boggiano

**CONSIDER APPROVAL OF FINDINGS PURSUANT TO PUBLIC RESOURCES
CODE SECTION 6702, SUBDIVISION (b) REGARDING THE HYATT LONG BEACH
HOTEL LEASE AGREEMENTS AND THE HYATT EQUITIES, LLC, ASSIGNMENT
OF THE LEASES, EACH AS AMENDED AND RESTATED, TO INVESTEL
SHORELINE LLC, INVOLVING LEGISLATIVELY GRANTED LANDS IN THE
CITY OF LONG BEACH, LOS ANGELES COUNTY**

APPLICANT:

Hyatt Equities, LLC

LOCATION:

Granted sovereign tide and submerged lands located in the city of Long Beach, Los Angeles County.

BACKGROUND:

The City of Long Beach (City) is a trustee of sovereign tide and submerged lands granted by the Legislature under Chapter 676, Statutes of 1911 and as amended; Chapter 102, Statutes of 1925 and as amended; and Chapter 158, Statutes of 1935.

In 1979, the City and Hyatt Long Beach Corporation (Hyatt LB) entered into a Ground Lease, a Parking Structure Sublease, and a Public Facilities Sublease (Original Lease) on granted lands that are adjacent to the Long Beach Convention and Entertainment Center. The leased property, shown in Exhibit A, includes an 8.443-acre site of filled tide and submerged lands that are subject to the common law Public Trust Doctrine. The leases contemplated that Hyatt LB would construct a Hyatt Regency hotel and a parking structure for public use and public related facilities. The parking structure and public facilities were to be leased back to the City when construction ended.

As contemplated in the 1979 agreements, certain provisions of the Original Lease were amended in 1981 to reflect further agreements between the parties and the financing obtained by Hyatt LB. On March 10, 1981, the City approved an Amended Restated Ground Lease and the Amended and Restated Parking Structure - Public Facilities Sublease (1981 Amendments).

STAFF REPORT NO. **C91** (CONT'D)

Later in 1981, the City requested that the Commission approve the 1981 Amendments between the City and Hyatt LB under Public Resources Code section 6702, subdivision (b). This statute provides a discretionary procedure where third parties may obtain approval from the Commission for a lease, contract, or other instrument to ensure that the provisions of the instrument will be unimpaired in the event of a modification, amendment, or revocation of the legislative grant.

Commission staff analyzed the project and determined that a sufficient market exists for supporting a Hyatt Regency hotel and that the leases would generate sufficient revenues to enhance the City's tidelands trust fund. The Commission made the findings for the 1981 Amendments pursuant to Public Resources Code section 6702 ([Item 16, April 7, 1981](#)).

The 1981 Amendments were amended again in 1995. Neither the City nor Hyatt LB requested that the Second Amended and Restated Ground Lease and Restated Parking Structure – Public Facilities Sublease (1995 Amendments) be approved by the Commission under Public Resources Code section 6702, subdivision (b). By a series of assignments, Hyatt Equities, LLC, (Hyatt) became the lessee. Now, Hyatt intends to assign the leases, as amended in 1995, to Investel Shoreline LLC (Investel).

Hyatt is requesting that the Commission consider making the determinations and findings for the 1995 Amendments as assigned to Investel under Public Resources Code section 6702, subdivision (b).

STAFF ANALYSIS:

Authority:

Public Resources Code sections 6005, 6301, 6701, and 6702; California Code of Regulations, title 2, sections 2801 and 2802.

Public Resources Code section 6702 sets forth three determinations that the Commission must make:

1. That the lease is in accordance with the statute by which the Legislature granted the tide and submerged lands.
2. That the proceeds of the lease will be deposited into a fund for statewide purposes permitted by the granting statute.
3. That the lease is in the best interests of the State.

The Commission has regulations (Cal. Code Regs., tit. 2, § 2802), that establish the criteria it will consider when determining, in the context of Public Resources Code section 6702, subdivision (b), whether a lease is

STAFF REPORT NO. C91 (CONT'D)

in the best interests of the state. The criteria are that the project is consistent with the Commission's policies and practices; that the project is economically viable, necessary, and desirable; that it is appropriate for developmental mix; that the project is conducive to public access; that it is consistent with environmental protection; and that the project is otherwise in the best interests of the State. Staff has examined the proposed assignment and supporting documentation as it relates to these criteria.

Hyatt submitted all significant transactional documents to the Commission to support its request to assign the 1995 Amendments to Investel, including: the assignment documents, the Original Lease; the 1981 Amendments; and the 1995 Amendments. Hyatt has also submitted an application for findings under Public Resources Code section 6702 and a grantee report as required by California Code of Regulations, title 2, section 2801, subdivision (a). The City of Long Beach has reviewed the capability and qualification of the proposed assignee and consents to the proposed assignment of the leases.

The 1995 Amendments modify the lease agreements the Commission approved in 1981. The modifications include deleting unnecessary provisions relating to constructing the hotel, clarifying certain responsibilities of the lessee and lessor, revising the rent structure, and new clarifying definitions. The summarized modifications are attached as Exhibit B.

Public Resources Code Section 6702 Findings

The City's granting statute allows uses that are consistent with the Public Trust (Chapter 158, Statutes of 1935). The common law Public Trust Doctrine permits certain visitor-serving use of Public Trust lands, such as hotels and parking garages, to accommodate waterfront visitors and promote or facilitate water-related uses. The hotel and parking garage are visitor-serving uses that have operated at this site since 1981. The uses in the 1995 Amendments are consistent with the Public Trust Doctrine and the City's granting statutes.

The revenues derived from the leases have been and will continue to be deposited into the City's Tideland Operating Fund for reinvestment back into the granted lands.

Staff analyzed the 1995 Amendments, the proposed lease assignments, and the audited financial information that was prepared by an independent auditor. The leases and assignment appear to continue to be consistent with Commission policies and practices, economically viable, necessary,

STAFF REPORT NO. **C91** (CONT'D)

and desirable. The uses provided are an appropriate developmental mix, conducive to public access, and consistent with environmental protection. The hotel and parking garage, located close to the shore, will continue to provide public access to the ocean and enhance the public's use and enjoyment of the waterfront. Staff believes the 1995 Amendments, as assigned, are in the best interests of the state.

OTHER PERTINENT INFORMATION:

1. This proposed action is consistent with a Targeted Outcome under Strategy 1.2 of the Commission's Strategic Plan to respond promptly to trust consistency determination requests and reports of inconsistent uses.
2. The authorization to make determinations under Public Resources Code 6702, subdivision (b) is not a project as defined by in the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Location and Site Map
- B. Memorandum – Summary of Modifications in the Second Amended and Restated Lease Agreements.

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

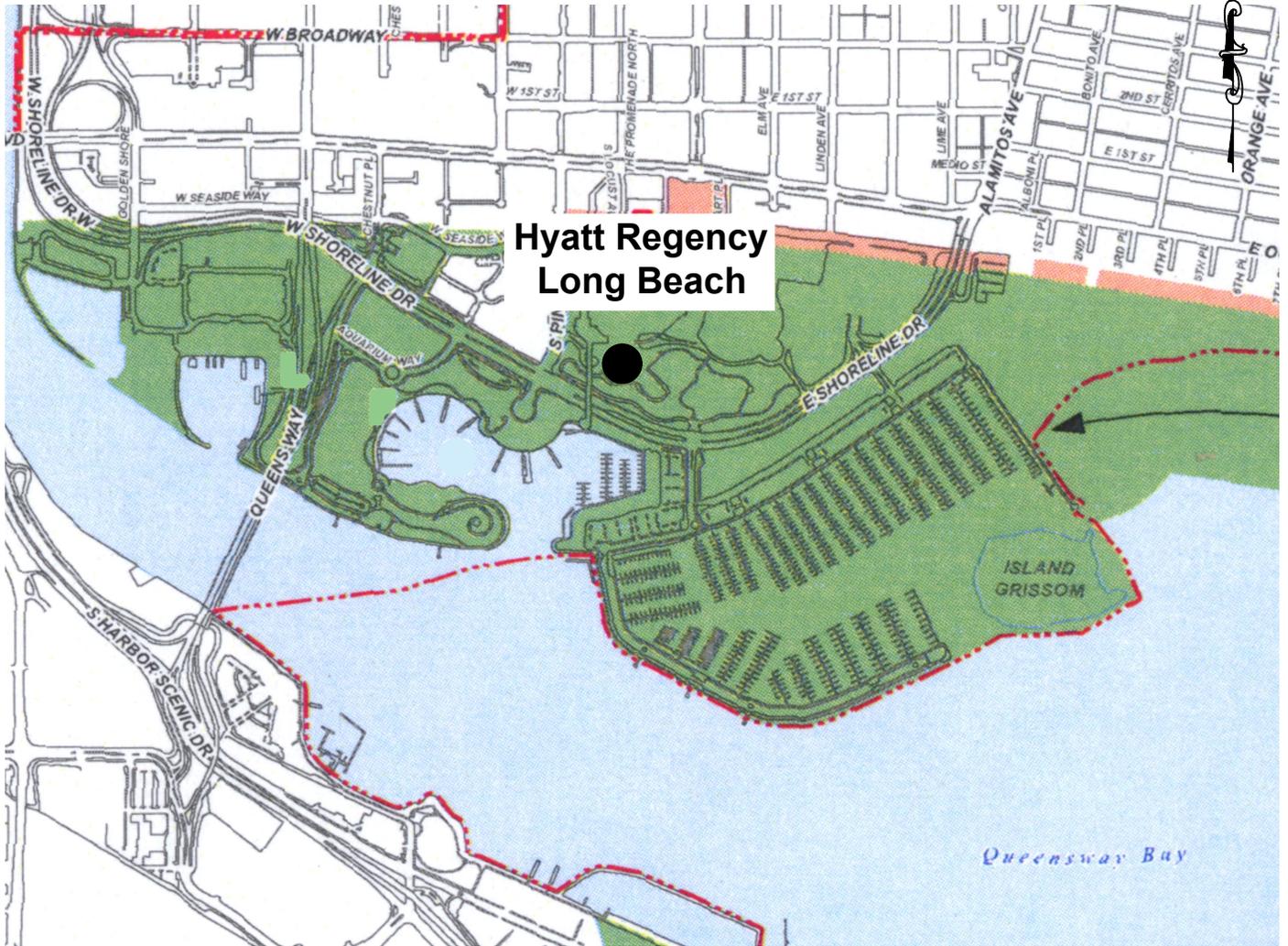
1. Determine, under Public Resources Code section 6702, subdivision (b)(1), that the Second Amended and Restated Ground Lease and Restated Parking Structure – Public Facilities Sublease as assigned to Investel Shoreline, LLC is in accordance with the City's legislative granting statutes.
2. Determine, under Public Resources Code section 6702, subdivision (b)(2), that all proceeds of the Second Amended and Restated Ground Lease and Restated Parking Structure – Public Facilities Sublease as assigned to Investel Shoreline LLC shall be deposited into an appropriate fund expendable only for statewide purposes authorized by the City's legislative grant.

STAFF REPORT NO. **C91** (CONT'D)

3. Determine that the Second Amended and Restated Ground Lease and Restated Parking Structure – Public Facilities Sublease as assigned to Investel Shoreline LLC is in the best interests of the State under Public Resources Code section 6702, subdivision (b)(3) and California Code of Regulations, title 2, section 2802.

NO SCALE

SITE



LONG BEACH TIDELANDS

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

CITY OF LONG BEACH
 G 05-03
 FINDINGS UNDER PUBLIC
 RESOURCES CODE 6702(b)
 LOS ANGELES COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

EXHIBIT B

	<u>Original Lease Provision(s)¹</u>	<u>New Lease Provision(s)</u>
Section 1.2.1 (Original Lease; New Lease)	<u>Premises</u> : The parcel of real property on which the Hotel is located is more particularly described on Exhibit A to the Original Lease.	<u>Premises</u> : The parcel of real property on which the Hotel is located is more particularly described on Exhibit A to the New Lease, which now excludes a portion of land more particularly described on Exhibit A-1 of the New Lease (the “Released Parcel”). There are no differences between the Exhibit A of the Original Lease and Exhibit A of the New Lease.
Section 1.2.2 (Original Lease; New Lease)	<u>Parking Structure</u> : The Parking Structure will have 1,258 parking spaces, with 200 spaces located on grade outside the walls thereof.	<u>Parking Structure</u> : The Parking Structure will have 1,137 parking spaces.
Section 2.2 (Original Lease; New Lease)	<u>Term and Commencement Date</u> : The Term of the Original Lease shall be for 50 years computed from the Commencement Date (<i>i.e.</i> , the date on which the Hotel is formally opened for business by Tenant and Hotel Manager). The Original Lease provides for a process by which the Original Lease may be terminated in the event certain conditions precedent have not been satisfied or waived by July 1, 1981.	<u>Term and Commencement Date</u> : The Term of the New Lease shall be for 50 years computed from the Commencement Date (<i>i.e.</i> , June 1, 1983). The expiration date of the New Lease is May 31, 2033.
Section 3.2.1-3.2.2 (Original Lease; New Lease)	<u>Fixed Minimum Rent</u> : Tenant pays to Landlord a fixed minimum rent of \$200,000 for each Lease Year. Fixed minimum rent is payable annually.	<u>Fixed Minimum Rent</u> : Tenant pays to Landlord a fixed minimum rent of \$242,000 (subject to adjustment) for each Lease Year from and after January 1, 1996. Tenant had no obligation to pay any fixed minimum rent prior to January 1, 1996. Fixed minimum rent is payable

¹ Except as otherwise indicated herein, initially capitalized terms used herein and not otherwise shall have the meanings ascribed to them in the Original Lease or New Lease, as applicable.

Lease)		annually in arrears.
Section 3.2.3 (Original Lease; New Lease)	<u>Adjustment of Fixed Minimum Rent:</u> Fixed minimum rent shall be subject to adjustment on January 1 of the sixth Lease Year, and on January 1 of every fifth Lease Year thereafter.	<u>Adjustment of Fixed Minimum Rent:</u> Fixed minimum rent shall be subject to adjustment on January 1, 1999, and on January 1 of every fifth Lease Year thereafter.
Section 3.2.4 (Original Lease; New Lease)	<u>Percentage Rent:</u> Commencing with the third Lease Year and continuing until December 31 of the twenty-second Lease Year, Tenant agrees to pay to Landlord, in addition to fixed minimum rent, percentage rent equal to 5% of the gross operating profit for each Lease Year.	<u>Percentage Rent:</u> For each Lease Year from and after January 1, 1996, Tenant agrees to pay to Landlord, in addition to fixed minimum rent, percentage rent equal to 2.5% of the gross operating profit for each Lease Year. Tenant has no obligation to pay percentage rent for any Lease Year prior to January 1, 1996.
Section 3.2.6 (Original Lease)	<u>Additional Percentage Rent:</u> In addition to fixed minimum rent and percentage rent, Tenant agrees to pay to Landlord annually additional percentage rent equal to 15% of the remaining balance of rent and remittances.	<u>Additional Percentage Rent:</u> This Section was deleted in its entirety in the New Lease. Tenant does not pay additional percentage rent under the New Lease.
Section 3.2.7 (Original Lease); Section 3.2.5 (New Lease)	<u>Payment of Percentage Rent:</u> Tenant pays to Landlord percentage rent in two installments: (i) the first installment is due on July 20 of each applicable Lease Year based on estimated operating results through June 30 of the same Lease Year, and (ii) the second installment is due on the date Tenant's annual audited financial statements are submitted to Landlord pursuant to the Original Lease in an amount equal to the total percentage rent due for the Lease Year and the amount of the first installment.	<u>Payment of Percentage Rent:</u> Tenant pays to Landlord percentage rent annually in arrears on the date Tenant's audited financial statements are submitted to Landlord pursuant to the New Lease.
Section 3.3(a)(3) (Original Lease; New Lease)	<u>Gross Receipts:</u> Sums withdrawn from a segregated bank account to which deposits have been made for replacement of furniture, fixtures and equipment ("FF&E") and used for a purpose other than repair or	<u>Gross Receipts:</u> Sums withdrawn from a segregated bank account to which deposits have been made for replacement of furniture, fixtures and equipment ("FF&E") and used for a purpose other than repair or

Lease)	replacement of FF&E shall not be included in gross receipts for purposes of calculating any fee computed on the basis of percentage of gross receipts.	replacement of FF&E <u>may</u> be included in gross receipts for purposes of calculating any fee computed on the basis of percentage of gross receipts.
Section 3.3(b) (New Lease)	<u>Exclusions from Gross Receipts</u> : N/A	<u>Exclusions from Gross Receipts</u> : Base rental and additional rental received from Landlord as the sublessee under the Sublease are <u>excluded</u> from the calculation of Gross Receipts under the New Lease.
Section 3.3(c) (Original Lease; New Lease)	<u>Operating Expenses</u> : N/A	<u>Operating Expenses</u> : The definition of “Operating Expenses” under the New Lease is modified as follows: (i) funds deposited into a segregated bank account as a reserve for replacement of FF&E are not deemed “Operating Expenses”; (ii) only fees to the Hotel Manager other than the Basic Management Fee (<i>i.e.</i> , any incentive management fee) (rather than the Management Fee) are deemed “Operating Expenses”; (iii) real property taxes and property insurance premiums are added categories of “Operating Expenses”; and (iv) the costs of equipment leases for data processing and telephone equipment are added as “Operating Expenses”.
Section 3.3(g) (Original Lease); Section 3.3(f) (New Lease)	<u>Fund for Replacement of FF&E</u> : The amount which may be deposited during the beginning of the Term and the first and second Lease Years to a segregated bank account for replacement of FF&E shall not exceed 1.5% of gross receipts for such Lease Years. For each Lease Year thereafter, the amount which may be deposited to such segregated account may not exceed 3% of gross receipts.	<u>Fund for Replacement of FF&E</u> : The amount which may be deposited to a segregated bank account for replacement of FF&E shall not exceed 3% of gross receipts for any Lease Year.
Section 3.4 (Original Lease; New	<u>Remittances to Tenant</u> : The Original Lease provided for terms and conditions by which Tenant could (x) receive remittances paid to it by (i) its Hotel Manager pursuant to	<u>Remittances to Tenant</u> : The New Lease deletes in its entirety the concept of remittances to Tenant and any restrictions on Tenant to make distributions or payments

Lease)	the Management Agreement, and (ii) Landlord as rent under the Sublease, and (y) apply such remittances to payments of operating expenses (<i>i.e.</i> , property taxes, insurance premiums, debt service, base rent, percentage rent, fees under the Management Agreement, leaseback rental payments, etc.)	using the same.
Article IV (Original Lease; New Lease)	<p><u>Construction of Improvements</u>: The Original Lease provides for the rights and obligations of Landlord and Tenant with respect to the construction of the Hotel on the Premises.</p>	<p><u>Construction of Improvements</u>: The New Lease deletes Article IV (and all related exhibits) of the Original Lease in its entirety due to the fact that construction of the Hotel was completed prior to the effective date of the New Lease.</p> <p><u>Expansion Center</u>: Landlord constructed an expansion of the convention center located adjacent to the Hotel (the “Expansion”) and released the Released Parcel. Tenant shall have the following rights (including any rights that may have been relocated by Landlord in connection with the Expansion) with respect to the Released Parcel: (i) utility connections, (ii) rights of way, and (iii) such other leasehold or other rights as Tenant shall deem necessary to maintain any and all structural supports, utilities and mechanical building systems located on the Released Parcel. In addition, Landlord grants to Tenant a right to access and use the “Hyatt Pump Room” located in the Expansion.</p> <p>In the Expansion, Landlord reconstructed the Parking Structure and provided Tenant with (i) the same number of spaces (<i>i.e.</i>, 500 spaces) for registered hotel guests and other invitees of Tenant on the same terms and conditions prior to the Expansion, and (ii) 200 spaces for Tenant’s employees to be maintained by Landlord at its sole cost and expense (excepting ordinary cleanup of the employee</p>

		<p>parking area which cleanup is to be performed by Tenant at its sole cost and expense).</p> <p>Landlord represents and warrants that notwithstanding the removal of the Released Parcel from the Premises, the Premises and the Hotel are in compliance with all applicable zoning and similar laws, and such removal of the Released Parcel will not cause the Premises and/or the Hotel to violate any zoning, fire, building, health, environmental or other similar laws. Landlord agrees to indemnify Tenant and its Lender from any liability resulting from any non-compliance of the Premises and/or the Hotel with any laws, ordinances, rules and regulations if such non-compliance results from the Expansion or the removal of the Released Parcel from the Premises.</p>
<p>Section 6.5 (Original Lease; New Lease)</p>	<p><u>Lagoon Park</u>: The Original Lease provides that Landlord shall maintain the Park in good repair. Tenant shall have the option (without obligation) to maintain the Park and deduct costs from payments due to Landlord if Landlord fails to adequately maintain the Park for 30 days following Tenant’s written notice to Landlord of the same.</p>	<p><u>Lagoon Park</u>: The New Lease provides that notwithstanding Landlord’s obligation to maintain the Park, Tenant has maintained the Park at Landlord’s cost since May 1, 1985, and Tenant agrees to continue to maintain the Park in “first class” condition (including, without limitation, maintenance of irrigation, turf management and electrical systems). Each of Landlord and Tenant has the right to terminate Tenant’s maintenance of the Park upon 30 days’ written notice. In such event, the obligation to maintain the Park shall revert back to Landlord.</p> <p>If Tenant subcontracts for maintenance of the Park, it must secure three bids and submit the most favorable to bid to Landlord for approval by the City Manager prior to May 1 of each year. If Tenant performs maintenance of the Park using its own personnel, it shall submit its</p>

		<p>estimated costs to Landlord for Landlord approval. Tenant shall also obtain Landlord's prior written consent for construction of any improvements and emergency repairs (except in life threatening situations) at the Park.</p> <p>Tenant or Hotel Manager shall submit reasonably detailed invoices for its costs and expenses associated with maintenance of the Park to Landlord on or before the 20th day of each month. Tenant may add to its costs and expenses 10% of the monthly cost of any subcontract for landscaping maintenance. The percentage is subject to annual review. Upon approval by the City Manager of Tenant's monthly invoice for maintenance cost, Tenant may deduct the amount thereof from the rent payment due Landlord under the Sublease.</p>
Section 6.7 (Original Lease)	<p><u>Coastal Development Permits</u>: Landlord covenanted to satisfy and perform all terms and conditions of the coastal development permit issued to Landlord for all work contemplated under the Original Lease (except for Tenant's Work and those portions of Landlord's Work within Tenant's exclusive control, as identified and communicated to Landlord in writing). If Landlord failed to perform such obligations for 30 days following Tenant's written notice to Landlord, Tenant had the option (without obligation) to satisfy such obligations at Landlord's expense.</p>	<p>This section was deleted in its entirety in the New Lease as all Landlord Work and Tenant Work was completed prior to the effective date of the New Lease.</p>
Article VII (Original Lease; New Lease)	<p><u>Section 7.1 - Assignments prior to Commence Date</u>: All assignments, sublets or encumbrances prior to the Commencement Date required Landlord's prior approval.</p> <p><u>Section 7.3 - Assignments</u>: Simultaneously with an assignment of the lease, the assignee shall execute an</p>	<p><u>Section 7.1 - Assignments prior to Commence Date</u>: This section was deleted in its entirety in the New Lease as the Commencement Date had occurred prior to the effective date of the New Lease.</p> <p><u>Section 7.3 - Assignments</u>: The New Lease clarifies that</p>

	agreement with Landlord assuming Tenant's obligations under the lease arising after the date of the assignment.	any such assignee that executes an assumption agreement shall not be responsible for rent and other sums payable that arose or were incurred by Tenant prior to the date of the assignment.
Article VIII (Original Lease; New Lease)	<u>Leasehold Financing</u> : Tenant may assign or mortgage its interest under the Original Lease as security for repayment of Leasehold Mortgages. Tenant may perform all acts necessary to consummate such loan transactions and to allow Lender(s) to perfect their security interests. Tenant is required to deliver to Landlord a copy of such loan documentation with 20 days after execution of the same.	<p>The New Lease clarifies that Landlord's consent is not required for Leasehold Mortgages. Pursuant to the New Lease, Tenant may assign all of its interest in the Leasehold Estate, including, without limitation, (i) rents and income issuing to the Tenant, (ii) subleases and (iii) Tenant's right to election to vacate the Premises following a rejection of the New Lease by Landlord in a bankruptcy proceeding affecting Landlord. It clarifies that the terms "Leasehold Mortgage" and "Note" include amendments thereto, and further provides that Tenant is only required to provide a copy of the Note and Leasehold Mortgage (not all loan documents) following execution of the same.</p> <p>The New Lease adds that Lender's prior written consent is required for (a) modifications or amendments of the New Lease and New Sublease, and (b) surrender of the Premises prior to the termination of the New Lease or expiration of the term of the New Lease.</p> <p>The New Lease introduces new bankruptcy-related provisions. This includes a right for Tenant's Lender to demand a new lease to replace the New Lease in the event Tenant rejects the New Lease pursuant to the Federal Bankruptcy Code.</p>
Section 10.8 (New Lease)	<u>N/A</u>	<u>Limitation of Tenant's Liability</u> : The New Lease adds that Tenant's liability for damages shall be limited to its interest in the Premises and the New Lease, together with

		its proceeds therefrom (including insurance proceeds or condemnation awards). No other property or assets of Tenant shall be subject to levy to satisfy Landlord's remedies, and no employee, owner or affiliate of Tenant shall have personal liability.
--	--	---

	Original Sublease Provision(s) ²	New Sublease Provision(s)
Section 4 (Original Sublease)	<u>Construction of Parking Structure</u> : This section provides that the construction of the Parking Structure and the Public Facilities shall be in accordance with the plans and specifications of Article 4 of the Original Ground Lease.	<u>Construction of Parking Structure</u> : This section has been deleted in its entirety from the New Sublease as the Parking Structure and the Public Facilities were constructed prior to the effective date of the New Sublease.
Section 5 (Original Sublease); Section 4 (New Sublease)	<u>Term</u> : The term set forth in the Original Lease is the same as provided in paragraph 2.2 and 2.4 of the Original Ground Lease (i.e., 50 years with a 25-year renewal option) commencing on the date of substantial completion of the Parking Structure and the Public Facilities.	<u>Term</u> : The term of the New Sublease is the same as provided in paragraph 2.2 and 2.3 of the New Ground Lease (i.e., 50 years with a 25-year renewal option). The Commencement Date of the New Lease was June 1, 1983.
Section 6 (Original Sublease); Section 5 (New Sublease)	<u>Base Rental</u> : The City shall pay to Tenant a base rent as follows: <ul style="list-style-type: none"> (a) For the first five Lease Years, the base rent shall be \$3,172,000 paid in 12 equal installments on the <u>first</u> day of each month. (b) For the period beginning with the sixth Lease Year and ending at the end of the twenty-fifth Lease Year, the annual base rent shall be an amount equal to the annual payments of principal and interest on a \$24,000,000 loan bearing interest at the rate of the Initial Loan or Subsequent Loan amortized over a period of 20 years. (c) For the period beginning with the twenty-sixth Lease Year until the expiration of the term, the total 	<u>Base Rental</u> : The City shall pay to Tenant a base rent as follows: <ul style="list-style-type: none"> a) From the effective date of the New Sublease until December 31, 2008, the base rent shall be \$2,855,263 (which amount is not subject to adjustment) paid in 12 equal installments in arrears on the <u>last</u> day of each month. b) For the period beginning January 1, 2009 until the expiration of the term, the total rent payable shall be equal to the additional rent payable by the City to the Tenant.

² Except as otherwise indicated herein, initially capitalized terms used herein and not otherwise shall have the meanings ascribed to them in the Original Sublease or New Sublease, as applicable.

	Original Sublease Provision(s) ²	New Sublease Provision(s)
	rent payable shall be equal to the additional rent payable by the City to the Tenant.	
Section 12 (Original Sublease); Section 11 (New Sublease)	<u>Damage to the Parking Structure and the Public Facilities:</u> During times when the Parking Structure and Public Facilities are totally unusable or substantially interfered with, the City's rent payable to Tenant shall cease.	<u>Damage to the Parking Structure and the Public Facilities:</u> During times when the Parking Structure and Public Facilities are totally unusable or substantially interfered with, the City's rent payable to Tenant shall be abated.
Section 14 (Original Sublease); Section 13 (New Sublease)	<u>City's Obligation to Operate the Parking Structure:</u> Tenant's monthly payment to the City for the use of the parking spaces reserved for Tenant's registered hotel guests is due on the <u>first</u> day of each month. Such monthly payment shall be equal to the City's actual direct operating costs attributable to the 500 parking spaces reserved for Tenant's registered hotel guests, including a proportional share of the City's base rental payments payable to Tenant. A "proportionate share of City's base rental payments" shall be equal to 16.69% of the base rental payable by City to Tenant.	<u>City's Obligation to Operate the Parking Structure:</u> Tenant's monthly payment to the City for the use of Hotel Spaces (i.e., the 500 parking spaces reserved for Tenant's hotel guests and other invitees as more particularly described in Exhibit D to the New Sublease) is due in arrears on the <u>last</u> day of each month. Such monthly payment shall be equal to the City's or its facility manager's actual direct operating costs attributable to the Hotel Spaces, including a proportional share of the City's base rental payments payable to Tenant. A "proportionate share of City's base rental payments" means \$476,543, which is approximately 16.69% of the base rental payable by City to Tenant.
Section 13.2 (New Sublease)	<u>Hotel Manager's Operation of the Hotel Spaces:</u> N/A	<u>Hotel Manager's Operation of the Hotel Spaces:</u> City and Tenant acknowledge that Tenant's Hotel Manager has been operating the Hotel Spaces since June 1, 1983, and shall continue to operate the Hotel Spaces subject to the following terms and conditions: (a) Consideration: Hotel Manager shall collect and retain all parking fees and other revenues realized from the use of the Hotel Spaces by Hotel patrons. (b) Repairs: Tenant, at its cost, shall cause the Hotel

	Original Sublease Provision(s) ²	New Sublease Provision(s)
		<p>Manager to install, maintain, repair and replace partitions, barriers or fences required to separate Hotel Spaces from the balance of the Parking Structure (including separate entrances and exits to the Hotel Spaces). In addition, Hotel Manager, at its cost, shall install, maintain, repair and replace graphics and directional signs giving notice of the separate Hotel parking area.</p> <p>(c) Rates: Tenant shall set reasonable parking rates and have the right to validate or extend free parking privileges at its discretion (subject to paragraph 5.8 of the Ground Lease requiring Tenant to submit a schedule of parking rates upon the City’s request for City’s approval).</p> <p>(d) Employees: Tenant, through Hotel Manager, shall hire its own parking attendants and supervisors, provide all necessary workers’ compensation insurance, pay all payroll taxes associated therewith, and indemnify the City for any liabilities therefrom.</p> <p>(e) Operating Cost: City shall not include any costs for parking attendants in its actual direct operating cost chargeable to Tenant (see Section 13.1 of New Sublease above).</p>
Section 15 (Original Sublease); Section 14 (New Sublease)	<u>Leaseback of Portion of Premises:</u> The Original Sublease describes a process in which the areas that will be subleased back to City (“Areas Under Tenant’s Control”) shall be approved by the City. Upon such approval, a description of the Areas Under Tenant’s Control shall be attached as an exhibit to the Original Sublease and became a part thereof.	<u>Leaseback of Portion of Premises:</u> The Areas Under Tenant’s Control were approved by the City prior to the effective date of the New Sublease, and are more particularly described in an exhibit to the New Sublease.
Section 15(b)	<u>Rent of the Areas Under Tenant’s Control:</u> Tenant shall pay City 56.15% of the base rental paid by City for the Areas	<u>Rent of Areas Under Tenant’s Control:</u> The New Sublease deletes Tenant’s obligation to pay rent, at any time, for its use

	Original Sublease Provision(s) ²	New Sublease Provision(s)
(Original Sublease); Section 14(b) (New Sublease)	Under Tenant's Control leased back to Tenant and further describes the manner in which the payments shall be made.	of the Areas Under Tenant's Control.
Section 19 (Original Sublease)	<u>Termination of Public Facilities Sublease</u> : This provision states that the Public Facilities Sublease shall be cancelled upon execution of the Original Sublease.	<u>Termination of Public Facilities Sublease</u> : The New Sublease deletes Section 19 in its entirety as the Public Facilities Sublease was terminated in accordance with the Original Sublease.
Section 24 (New Sublease)	<u>Waiver of Jury Trial</u> : N/A	<u>Waiver of Jury Trial</u> : Both City and Tenant waive trial by jury in any action, proceeding or cross-complaint brought by either party against the other arising out of the New Sublease, the relationships of City and Tenant, City's use and occupancy of the Subleased Premises or Tenant's use and occupancy of the Leaseback Premises.
Section 25 (New Sublease)	<u>Limitation on Tenant's Liability</u> : N/A	<u>Limitation on Tenant's Liability</u> : Tenant's liability in the New Sublease is limited to its interest in the Subleased Premises, the Leaseback Premises and the New Sublease, together with its proceeds therefrom (including insurance proceeds or condemnation awards). No other property or assets of Tenant shall be subject to levy to satisfy City's remedies under the New Sublease, and no employee, owner or affiliate of Tenant shall have personal liability.