

AMENDMENT OF AGREEMENT REGARDING THE HARBOR CENTER PROJECT AND KINCAID'S RESTAURANT LEASE

This **AMENDMENT OF AGREEMENT REGARDING THE HARBOR CENTER PROJECT AND KINCAID'S RESTAURANT LEASE** (Amendment) amends the Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease (Agreement), dated April 9, 2009, attached as Exhibit A, and is entered into by and between the **CITY OF REDONDO BEACH**, acting by and through its City Council (City) and the **STATE OF CALIFORNIA**, acting by and through the California State Lands Commission (Commission).

WHEREAS, the City acquired legal title as trustee to certain tidelands and submerged lands located within its boundaries through a series of statutory grants from the State of California, commencing with Chapter 57, Statutes of 1915 (the Granted Trust Lands); and

WHEREAS, the Granted Trust Lands are subject to constitutional, statutory, and common law requirements that impose certain public trust restrictions on their use and the use of the revenues derived from these lands, which public trust restrictions are referred to as the "Trust;" and

WHEREAS, the fundamental purpose of the Trust is to protect and preserve the tidelands and submerged lands on the State of California for the benefit of all of the citizens of the State and to that end the Trust restricts the use of the Granted Trust Lands and revenues derived from these lands to purposes connected with or that promote and accommodate marine oriented commerce, navigation, fisheries, water-oriented recreation and ecological preservation; and

WHEREAS, the statutory grants of the Granted Trust Lands confer the status of trustee of the City with respect to the Granted Trust Lands and the revenues derived from them; and

WHEREAS, applicable law imposes a fiduciary responsibility on the trustee to all citizens of the State of California, who are the Trust beneficiaries, and requires, among other things, that the trustee administer the Trust property in accordance with the requirements and restrictions of the Trust and solely in the interests of the Trust beneficiaries; and

WHEREAS, the City administers the Trust on a day-to-day basis and may enter into contracts and acquire property beneficial to and consistent with the Trust; and

WHEREAS, under state law, property purchased with Trust assets becomes Trust property and is subject to the provisions of the Trust; and

WHEREAS, property purchased with Trust assets can be sold for fair market value and the revenues of said sale shall be subject to the provisions of the Trust; and

WHEREAS, the City desires to sell or exchange a property purchased with Trust assets (Trust Parcel) located within the Harbor Center Project that is not being used for a Trust consistent purpose;

WHEREAS, the City and Commission desire to resolve the matter regarding the Trust Parcel in a manner that is in furtherance of the Public Trust and in the best interests of the people of the State of

California; and

WHEREAS, the City provided trust assets to the City's former Redevelopment Agency for the purposes of public redevelopment; and;

WHEREAS, the City has agreed to make annual payments towards this tideland debt using Harbor Center area tax increment revenues; and

WHEREAS, pursuant to AB X126, Chapter 5, Statutes of 2011, and AB 1484, Chapter 26, Statutes of 2012, all redevelopment agencies in the State have been dissolved; and

WHEREAS, the City's debt has been determined by the Department of Finance to not be enforceable obligation and, therefore, the City is unable to perform under the agreement to make annual payments towards tideland debt using Harbor Center area tax increment revenues; and

WHEREAS, the City and Commission desire to resolve the issue regarding the repayment of the debt due to the impossible performance; and

WHEREAS, the City and Commission desire to change the date when the City must annually submit to the Commission a detailed accounting of the income and expenditures relating to the Kincaid's Restaurant Lease; and

WHEREAS, by reason of the foregoing, it is now the desire of the City and Commission to amend the Agreement.

NOW THEREFORE, the City and Commission hereto agree as follows:

Article 2: ACTIVITIES TO BE UNDERTAKEN, Section A: HARBOR CENTER PROJECTS, subsection (a) is hereby deleted.

Article 2: ACTIVITIES TO BE UNDERTAKEN, Section A: HARBOR CENTER PROJECTS, subsection (b) is hereby deleted and replaced with the following:

The City shall begin no later than March 2, 2014, and proceed expeditiously and in a commercially reasonable manner with negotiations for the sale or exchange of the Trust Parcel in the Harbor Center Project area. The sale or exchange of the Trust Parcels will require prior Commission approval. The appraisal of the subject properties will also require prior Commission approval. The Trust Parcels shall not be sold or exchanged for less than fair market value. Proceeds from said sale will be subject to the provisions of the Trust and be placed within the Tidelands fund for future Trust consistent purposes.

Article 2: ACTIVITIES TO BE UNDERTAKEN, Section B: KINCAID'S RESTAURANT LEASE, subsection (a) is hereby deleted and replaced with the following:

The City shall submit annually to the Commission on or before October 1, a detailed accounting of the income and expenditures relating to the Kincaid's Restaurant Lease, in addition to its responsibilities under the Public Resources Code section 6306.

The effective date of this Amendment to the Agreement shall be December 2, 2013.

This Amendment is a portion of the Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease, consisting of seven (7) Articles with a total of six (6) pages.

All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates hereafter affixed.

**CITY: CITY OF REDONDO BEACH
CITY COUNCIL**

By: _____



Title: _____

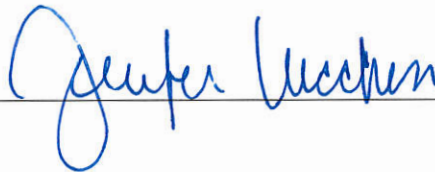
MAYOR

Date: _____

04-01-14

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: _____



Title: _____

Executive Officer

Date: _____

JUL 15 2014

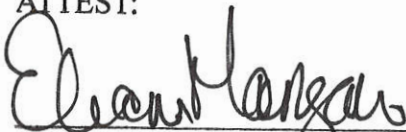
ACKNOWLEDGEMENT

This amendment was authorized by the
California State Lands Commission on

December 2, 2013

_____, 2013

ATTEST:



ELEANOR MANZANO, CITY CLERK

**AGREEMENT REGARDING THE HARBOR CENTER PROJECT
AND KINCAID'S RESTAURANT LEASE**

This Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease (Agreement) is entered into by and between the City of Redondo Beach, acting by and through its City Council (City) and the State of California, acting by and through the California State Lands Commission (Commission).

WHEREAS, the City acquired legal title as trustee to certain tidelands and submerged lands located within its boundaries through a series of statutory grants from the State of California, commencing with Chapter 57, Statutes of 1915 (the Granted Trust Lands); and

WHEREAS, the Granted Trust Lands are subject to constitutional, statutory, and common law requirements that impose certain public trust restrictions on their use and the use of the revenues derived from these lands, which public trust restrictions are referred to as the "Trust;" and

WHEREAS, the fundamental purpose of the Trust is to protect and preserve the tidelands and submerged lands of the State of California for the benefit of all of the citizens of the State and to that end the Trust restricts the use of the Granted Trust Lands and revenues derived from these lands to purposes connected with or that promote and accommodate marine oriented commerce, navigation, fisheries, recreation and ecological preservation; and

WHEREAS, the statutory grants of the Granted Trust Lands confer the status of trustee on the City with respect to the Granted Trust Lands and the revenues derived from them; and

WHEREAS, applicable law imposes a fiduciary responsibility on the trustee to all citizens of the State of California, who are the Trust beneficiaries, and requires, among other things, that the trustee administer the Trust property in accordance with the requirements and restrictions of the Trust and solely in the interests of the Trust beneficiaries; and

WHEREAS, under state law, property purchased with Trust assets becomes Trust property and is subject to the provisions of the Trust; and

WHEREAS, the City administers the Trust on a day-to-day basis and may enter into contracts and acquire property beneficial to and consistent with the Trust; and

WHEREAS, the City and the Commission desire a stable, reliable basis for determining how to resolve disputes that have arisen between them regarding the Harbor Center Project and Kincaid's Restaurant Lease;

NOW, THEREFORE, the City and the Commission agree as follows:

ARTICLE 1. DEFINITIONS

"Authorized Representative" means with respect to the City, the City Manager or his or her duly authorized designee, and with respect to the Commission, the Executive Officer of the Commission or his or her duly authorized designee.

"Harbor Center Project" means the hotel, retail and parking complex on lands acquired by the City using Trust funds and uplands that was developed by the City's Redevelopment Agency pursuant to the Harbor Center Redevelopment Plan originally adopted on December 1, 1980.

"Kincaid's Restaurant Lease" means the agreement entered into in 1997 between the Redondo Beach Public Finance Authority (PFA) and the City for the construction of a restaurant on the "Horseshoe" portion of the Redondo Beach pier on the Granted Trust Lands and later subleased by the PFA to Kincaid's for the operation of Kincaid's Restaurant.

ARTICLE 2. ACTIVITIES TO BE UNDERTAKEN

A. Harbor Center Project

- a. The City shall apply annually to the repayment of the tidelands debt, the Harbor Center area tax increment revenues in excess of those needed for debt service of existing bonded indebtedness and regular operating expenses, unless otherwise approved by the Commission.
- b. The City shall begin within 90 days of the effective date of this Agreement and proceed expeditiously and in a commercially reasonable manner with negotiations for a land exchange of the Trust parcel in the Harbor Center Project area for a parcel more useful to the Trust.

B. Kincaid's Restaurant Lease

- a. The City shall submit annually to the Commission within five business days of each anniversary date of this Agreement, a detailed accounting of the income and expenditures relating to the Kincaid's Restaurant Lease, in addition to its responsibilities under the Public Resources Code Section 6306.

C. Miscellaneous Activities

- a. The City shall notify the Commission staff of proposed leases in excess of five years involving Trust property no later than fourteen days prior to City Council consideration.
- b. The City shall provide funding or reimbursement for Commission staff review and monitoring of future activities involving Trust lands and

assets submitted to the Commission by the City for review, consistent with the reimbursement requirements applicable to other tidelands trustees. Such reimbursement shall be reasonably determined by Commission staff and the City prior to commencement of work by Commission staff on any particular project.

- c. The City shall seek Commission approval before committing to any capital improvement expenditure in excess of \$250,000, pursuant to Chapter 1555, Statutes of 1971, directly or indirectly from debt proceeds secured by a pledge of Trust revenues or assets as collateral, consistent with the requirements applicable to other tideland trustees.

ARTICLE 3. RELEASE

For the sole consideration of the mutual promises, agreements, commitments and covenants in this Agreement, the receipt and sufficiency of which are acknowledged, the City and the Commission release and forever discharge and hold harmless one another and all of their boards, bureaus, officers, commissioners, agents, employees, attorneys and all persons that acted on its or their behalf with relation to the Harbor Center Project and Kincaid's Restaurant Lease, of and from any and all matters, claims and suits of every kind whatsoever, including, but without limitation, any relating to any and all known or unknown breach of duty, damage, loss, cost or expenses of every nature whatsoever resulting or to result from the events connected with the City's and the Commission's actions or omissions in relation to the Harbor Center Project and Kincaid's Restaurant Lease as of the effective date of this Agreement. The release shall be effective only upon full compliance by the City with all of its obligations under this Agreement.

ARTICLE 4. EFFECTIVE DATE

The effective date of this Agreement shall be the date when this Agreement has been executed by the Authorized Representatives of both the City and the Commission.

ARTICLE 5. ALTERNATIVE DISPUTE RESOLUTION

- A. If a dispute arises between the City and the Commission relating to this Agreement, the City and the Commission shall notify each other promptly and use, to the fullest extent permitted by law, negotiation to resolve the dispute. No legal action may be brought in connection with this Agreement until the City and the Commission have met and conferred in person through their respective staffs to seek an amicable resolution to the dispute.
- B. The City and the Commission understand that the full implementation of this Agreement will require the execution of further agreements, the full nature of

which are not currently known. In the event that such agreements cannot be executed, the City and the Commission will meet and confer in order to seek a mutually agreeable outcome.

ARTICLE 6. NOTICES

The Authorized Representatives for receipt of all notices and correspondence related to this Agreement are:

City Manager
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

ARTICLE 7. MISCELLANEOUS

A. Entire Agreement

This Agreement contains the entire understanding of the City and the Commission with respect to the subject matter of this Agreement and supersedes all prior oral and written agreements and understandings with respect to this subject matter to the extent those prior agreements and understandings are inconsistent with this Agreement.

B. Headings

The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the terms of this Agreement.

C. Non-Admission

This Agreement is not an admission by either the City or the Commission with respect to any matter addressed in it. This Agreement shall not be admissible in any proceeding as evidence of or an admission by either the City or the Commission of any violation of any law or regulation or wrongful act. This Agreement may not be used a precedent with respect to any dispute that may arise after its effective date.

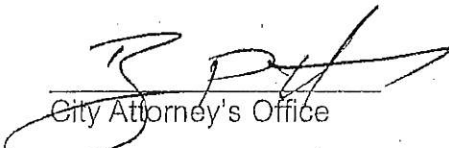
IN WITNESS WHEREOF, the City and the Commission have executed this Agreement on the date set forth to the left of their signatures.

THE CITY OF REDONDO BEACH

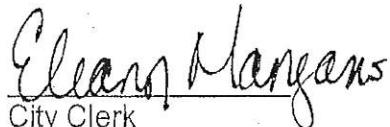
Dated: March 17, 2009

By: 
Mayor

APPROVED AS TO FORM:


City Attorney's Office

ATTEST:

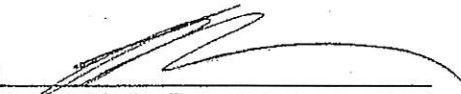

City Clerk

CALIFORNIA STATE LANDS COMMISSION

Dated: April 7, 2009

By: 
Paul D. Thayer
Executive Officer

APPROVED AS TO FORM:

By: 
Curtis L. Fossum
Chief Counsel