

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Adoption of 5th Amendment to Lease for City owned property located at 2837 Pacific Coast Highway.

RECOMMENDATION

Recommendation of the City Manager for the City Council to consider the adoption of a 5th Amendment to Lease for City owned property located at 2837 Pacific Coast Highway. If the City Council concurs then the City Manager further recommends that the City Council authorize the Mayor to Execute and The City Clerk to Attest to a 5th Amendment to Lease by and between THE CITY OF TORRANCE, a municipal corporation ("Lessor"), and TOWN & COUNTRY INVESTORS, LLC, a California limited liability company ("Lessee").

Funding

No funding is required for this action. Approval will increase the annual rent from \$96,000 to \$100,000 annually

BACKGROUND

The Lessee purchased the Leasehold in 1999 whereby a 4th Amendment to Lease was adopted that made certain modifications to the Lease. City staff have been in negotiations with the Lessee regarding certain dealpoints in the existing Lease. Through the negotiation process, direction was received from Your Honorable Body and this direction is incorporated in the 5th Amendment to Lease.

ANALYSIS

The 5th Amendment to Lease contains the following changes:

Term

The term of the Ground Lease is extended 10 years from a termination date of October 31, 2049 to October 31, 2059.

Gross Rents Defined

There has been some confusion regarding the calculation of Gross Rents under the terms of the existing Lease. The revision clarifies the gross rent calculation to 15% of gross rents with a minimum base rent of \$100,000 annually. The current rent structure calls for 25% of gross rents over a base of \$569,000. This revision makes the gross rent calculation similar to other existing Lease on City owned property.

Fair Market Valuation

The current Lease calls for a Fair Market Valuation of property at November 2010, the proposed Amendment of Lease would set the Fair Market Valuations at: November 1, 2017, November 1, 2027, and November 1, 2037.

Lessee Transfer Fee

The Amendment calls for a Lease Transfer Fee if the current Master Tenant sells or assigns the Leasehold on or prior to November 1, 2017. The Fee is set at \$250,000.

Capital Improvements

As consideration for the City's willingness to enter into the Amendment, the Lessee has agreed to invest an additional Two Hundred Thousand Dollars (\$200,000.00) into the Premises, which Additional Investment shall be expended by Lessee in full on or before December 31, 2009, and shall be reserved exclusively for the purpose of funding the cost of certain capital improvements and upgrades to the Premises.

The requirement for this type of investment as found in the Lease Amendment gives the City a written guarantee in the Lease for re-investment in the property. Upgrades to Leaseholds may assist in allowing the Lessee to improve the sub-rent structure on the property, thereby potentially increasing the City's percentage rent.

Lease Extension Fee

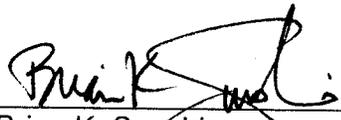
As part of the City's consideration of the Lease Amendment, the Lessee has agreed to pay to the City a fee of \$150,000 at execution and delivery of the Amendment. This fee also acts as a catch all for any prior rent items that may come through an audit and commences the rent structure forward from adoption.

Lease Clean Up Language

The original Lease was executed in 1981. There are several areas of clean up of certain business points that bring the Lease to more current commercially viable language. The changes proposed to the lease are set forth in Attachment A.

Respectfully submitted,

LeROY J. JACKSON
CITY MANAGER

By 
Brian K. Sunshine
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

BKS/LJJ/dle

Attachments: A) Proposed Changes to Ground Lease
B) 5th Amendment to Lease

**Proposed Changes to Ground Lease between
CITY OF TORRANCE and TOWN & COUNTRY INVESTORS, LLC**

The following Paragraphs of the Ground Lease are hereby supplemented, amended and/or deleted as indicated:

9.1 Reimbursement of Lessor Audit Costs. Subparagraph 4D (f) of the Ground Lease is hereby amended to change the percentage threshold triggering Lessee's obligation to reimburse Lessor for the cost of the audit referenced in such subparagraph from "one percent (1%)" to "five percent (5%)."

9.2 Threshold for Construction Bond Requirements. Paragraph 9E (entitled "Bonds") of the Ground Lease is hereby amended to provide that the requirements set forth in that subparagraph shall apply only in the case where the cost to construct the building, structure or other improvement being constructed by Lessee shall exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

9.3 Lessor's Confirmation of Zoning. Paragraph 9H (entitled "Applicable Laws") of the Ground Lease is hereby supplemented to include the following additional sentence: "To the extent reasonably required in connection with Lessee's sale or refinance of its interest in the Premises, Lessor shall provide a customary zoning letter in a form typically issued by Lessor within a reasonable time following Lessee's written request."

9.4 Notice to Lessor of Construction on Premises. Paragraph 11B (entitled "Notices") of the Ground Lease is hereby amended to increase the dollar value threshold triggering Lessee's obligation to provide written notice to Lessor prior to commencing construction on the Premises from "Twenty-Five Thousand Dollars (\$25,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.5 Intentionally Omitted.

9.6 Valuation; Possessory Interest Tax. Paragraph 21D (entitled "Payments to City") and Paragraph 21E (entitled "Valuation") of the Ground Lease are each hereby deleted in their entirety notwithstanding anything to the contrary set forth in the Ground Lease, Lessee acknowledges that as of the date of the Ground Lease, the Premises were valued by the City Tax Assessor for the purpose of assessing and levying real property (possessory interest) taxes pursuant to the formula articulated in *De Luz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 290 P.2d 544 (1955) (hereinafter, the "De Luz Case"). Lessee agrees that, if at any time during the term of the Ground Lease, the law is changed so as to require that the City Tax Assessor value the interest of Lessee in the Premises in a manner other than pursuant to the De Luz Case, then Lessee shall be responsible for any and all real property (possessory interest) taxes, as calculated from time to time according to applicable law.

9.7 Additional Insurance Required to be Maintained by Lessee. Subparagraph 23A (2) of the Ground Lease is hereby amended to provide that Lessor cannot impose additional insurance requirements upon Lessee, whether in the form of increased liability limits, additional coverage or more stringent approval requirements for Lessee's insurers (collectively, any "Additional Insurance Requirements") unless such Additional Insurance Requirements are customarily required by ground lessors of similarly situated ground lessees with respect to properties similar in type, value and location to the Premises.

9.8 Lessor's Right to Purchase Insurance Required to Be Maintained by Lessee. Paragraph 23H (entitled "Failure to Provide") of the Ground Lease is hereby amended to provide that Lessor shall not be entitled to purchase any insurance coverage on Lessee's behalf under such subparagraph unless Lessor has provided Lessee with at least ten (10) business days' prior written notice and Lessee has failed within such notice period to provide Lessor with evidence of the coverage required to be maintained by Lessee under the Ground Lease.

9.9 Threshold for Delivery to Lessor of Casualty Estimates. Paragraph 24A (entitled "Statement of Costs") of the Ground Lease is hereby amended to change the cost of repair threshold triggering Lessee's obligations under such subparagraph from "Ten Thousand Dollars (\$10,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.10 Threshold for Trustee Management of Casualty Insurance Proceeds. Subparagraph 24B (2) of the Ground Lease is hereby amended to change the dollar threshold triggering the use of an insurance trustee to receive and manage the insurance proceeds payable with respect to a casualty occurring on or with respect to the Premises under such subparagraph from "Twenty-Five Thousand Dollars (\$25,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.11 City Manager Approval of Subleases. Subparagraph 25A (1) of the Ground Lease is hereby amended to change the square footage threshold set forth therein from "4,000 square feet" to "5,000 square feet," and Subparagraph 25A (2) of the Ground Lease is hereby amended to change both references in such subparagraph to "the City Council" instead to "the City Manager."

9.12 Permitted Lessee Affiliate Transfers. Subparagraph 25A (3) of the Ground Lease is hereby supplemented to include the following additional language: "Notwithstanding any contrary provision in this subparagraph, Lessee shall be entitled, without obtaining the consent of Lessor, to transfer any interest in Lessee and/or any portion of Lessee's interest under the Ground Lease so long as, upon consummation of such transfer, (i) Scott Douglas or Evans/Douglas, Inc. continues to be the managing member of the entity that owns the Lessee's interest under the Ground Lease and (ii) Scott Douglas and Evans/Douglas, Inc.'s percentage membership interest in Lessee has not decreased."

9.13 Cure Period for Event of Default Under Leasehold Mortgage. Subparagraph 27A (2) of the Ground Lease is hereby deleted and replaced with the following language: “(2) the occurrence of an event of default by Lessee, as expressly defined under the instruments or agreements evidencing or securing the indebtedness held by any Leasehold Mortgagee, where such event of default is not remedied within the time period provided in such instruments or agreements for the remedy of such event of default; or”.

9.14 Default Due to Vacation or Abandonment of the Premises. Subparagraph 27A (3) of the Ground Lease is hereby deleted and replaced with the following language: “(3) the abandonment or vacation of the Premises by Lessee without the intention to re-occupy the same where such vacation or abandonment has continued for a period of forty (40) consecutive days (provided, however, that Lessee shall provide reasonable assurances to minimize potential vandalism within such 40 day period); or”.

9.15 Extension of Cure Period Where Cure Requires More than Thirty Days. Subparagraph 27A (4) of the Ground Lease is hereby deleted and replaced with the following language: “(4) the failure of Lessee to perform any other obligation hereunder and the continuance of such failure for a period of thirty (30) days after written notice from Lessor specifying such failure to perform; provided that, if the remedy for such failure to perform cannot reasonably be completed within such thirty (30) day period, no Event of Default shall be deemed to have occurred so long as Lessee has commenced to remedy such failure within such thirty (30) day period, and Lessee thereafter diligently and continuously pursues such remedy to completion; or”.

9.16 Clarification Regarding Sublessee Bankruptcy. Lessor and Lessee hereby agree that notwithstanding the language of Subparagraph 27A (5), the bankruptcy (whether voluntary or involuntary) of any sublessee, licensee or concessionaire of Premises shall not, in and of itself, constitute an Event of Default by Lessee under the Ground Lease.

9.17 Estoppel Certificates. Lessor and Lessee shall at any time and from time to time upon not less than thirty (30) days prior written request by the other, deliver to the requesting party an executed written statement certifying that (a) the Ground Lease is unmodified and in full force and effect (or if the Ground Lease has been modified or if the Ground Lease is not in full force or effect, stating the nature of the modification or the basis on which the Ground Lease had been terminated, whichever is applicable); (b) to its knowledge, the requesting party is not in default under the Ground Lease (or if any such default exists, stating the specific nature and extent of the default); and (c) the dates to which the Basic Rent, Additional Rent and other monetary obligations under the Ground Lease have been paid in advance. Each certificate delivered pursuant to this Section 9.17 may be relied upon by any prospective purchaser, lender or transferee of Lessor or Lessee’s respective interests in the Premises.

10. Leasehold Mortgage Provisions. Paragraph 26 (entitled "Encumbrances") is hereby deleted in its entirety and replaced with the following:

A. *Right to Encumber*

During the term of this Lease and any extension or renewal thereof, with Lessor's consent (which consent shall not unreasonably be withheld, conditioned or delayed, and shall be evidenced by the written consent of the City Manager or Mayor, as contemplated in Section 13 of this Amendment below), Lessee may assign for security purposes only, or may encumber Lessee's leasehold interest under this Lease and the leasehold estate created hereby (a "Leasehold Mortgage") in favor of an institutional lender (herein sometimes referred to as the "Leasehold Mortgagee") and in that connection may perform any and all acts and execute any and all instruments necessary or proper to consummate any loan transaction and perfect the security therefor to be given the Leasehold Mortgagee; provided, however, that:

(1) Any such Leasehold Mortgage must constitute a first lien on Lessee's leasehold estate; and

(2) Such Leasehold Mortgage shall be an assignment or encumbrance only of the Lessee's leasehold interest under this Lease and the leasehold estate created hereby and shall not convey or be a lien upon the Lessor's fee estate in the Premises or the Lessor's reversionary interest in all buildings and improvements located on the Premises.

B. *Leasehold Mortgagee Defined*

The term "Leasehold Mortgage" as used in this Paragraph 26 and elsewhere in this Lease shall mean the mortgagee under any mortgage, or the trustee and beneficiary under any deed of trust or indenture of mortgage and deed of trust encumbering the leasehold estate or Lessee's interest therein (including the assignee or successor of any such mortgagee, beneficiary or trustee and the holder of any promissory note or bond secured thereby), and executed by Lessee and delivered for the purpose of securing to such mortgagee, trustee or beneficiary payment of any indebtedness incurred by Lessee and secured by such mortgage, deed of trust or indenture of mortgage and deed of trust. The terms "Approved Leasehold Mortgagee" and "Approved Leasehold Mortgage" shall mean a Leasehold Mortgagee and a Leasehold Mortgage, respectively, complying with the requirements of Paragraph 26(A) above.

C. Agreements Regarding Leasehold Mortgagees

(1) Notices to Leasehold Mortgagee. So long as an Approved Leasehold Mortgagee notifies the Lessor in writing of its Approved Leasehold Mortgagee status and provides Lessor with an address for delivery of notices, copies of all notices given or documents delivered by the Lessor to Lessee under the terms of this Lease, including without limitation notices of Lessee's default under this Lease, shall be concurrently served by the Lessor on the Approved Leasehold Mortgagee by United States mail, postage prepaid, registered or certified mail, return receipt requested, at the address last provided to the Lessor in writing by such Approved Leasehold Mortgagee. No notice given by the Lessor under this Lease shall be effective unless served as provided in this Paragraph.

2) Approved Leasehold Mortgagee's Rights to Cure. Notwithstanding any provision to the contrary set forth in this Lease, Lessor shall not terminate this Lease because of any default by Lessee or on the basis of any other event or circumstance which gives the Lessor the right to terminate this Lease if the Approved Leasehold Mortgagee, within twenty (20) days after its receipt of notice from the Lessor of a default by the Lessee under this Lease in the case of a default which can be cured by the payment of money required to be paid by Lessee under the terms of this Lease, or within thirty (30) days after its receipt of such notice in the case of a non-monetary default, shall at its election either:

(a) Cure such default within such twenty (20) days, if the default can be cured by the payment of money required to be paid by Lessee under the terms of this Lease or, if the default cannot be cured in such a manner, commence to cure the default within such thirty (30) day period and thereafter diligently proceed to complete such cure; or

(b)(i) Institute a trustee's sale or judicial foreclosure proceedings under the Approved Leasehold Mortgage and thereafter diligently proceed to complete such proceedings; (ii) cure such default within such twenty (20) days if the default can be cured by the payment of money required to be paid by Lessee under the terms of this Lease; (iii) comply with all of the terms and conditions of this Lease requiring the payment or expenditure of money by Lessee until such time (the "Foreclosure Date") as this Lease has been sold by trustee's sale, judicial foreclosure or transfer in lieu of foreclosure or reconveyed under the Approved Leasehold Mortgage; and (iv) commence to cure all non-monetary defaults within thirty (30) days following the Foreclosure Date and thereafter diligently proceed to complete the cure; provided, however, that if the Approved Leasehold Mortgagee fails to comply with any one of the conditions set forth in Paragraph 26(C)(2)(a) or 26(C)(2)(b), then Lessor shall be released from the covenant of forbearance contained in this subparagraph.

(3) Prosecution of Foreclosure. The Approved Leasehold Mortgagee shall be deemed to be diligently proceeding to complete a trustee's sale or judicial foreclosure notwithstanding the fact that such proceedings or the commencement of such proceedings are stayed by statute, rule, court order, bankruptcy stay, or other similar enactment or action, provided that, (a) such Approved Leasehold Mortgagee is at all times during such stay in compliance with the provisions of Paragraphs 26(C)(2)(b)(ii) and 26(C)(2)(b)(iii) hereof, and (b) such trustee's sale or judicial foreclosure is completed within twenty-four (24) months following the institution of such proceedings; provided that, such twenty four (24) month period shall be extended if the Approved Leasehold Mortgagee is unable to complete such proceedings within such twenty-four (24) month period so long as the Approved Leasehold Mortgagee is at all times diligently prosecuting such proceedings to conclusion.

4) New Lease. If this Lease terminates because of a default by Lessee or any other event or circumstance which entitles the Lessor to terminate this Lease (including, but not limited to, rejection of the Lease in a bankruptcy proceeding), Lessor shall provide the Approved Leasehold Mortgagee with written notice of such termination. If within thirty (30) days after receiving notice of such termination, the Approved Leasehold Mortgagee by written notice to Lessor requests that Lessor enter into a new lease for the Premises, then the Lessor shall enter into a new lease for the Premises with the Approved Leasehold Mortgagee within thirty (30) days after the Approved Leasehold Mortgagee's request, provided that the Approved Leasehold Mortgagee has delivered to Lessor at the time of such request the Approved Leasehold Mortgagee's written agreement to cure Lessee's defaults under this Lease, and provided further that if Lessee has defaulted under Paragraph 27 of this Lease (as such Paragraph has been amended by Sections 9.13 through 9.16, inclusive, of this Amendment), the Approved Leasehold Mortgagee shall have entered into a written agreement with Lessor pursuant to which such Approved Leasehold Mortgagee has agreed to perform (or caused a third party to agree to perform) the remaining obligations of Lessee under said Paragraph 27 (as such Paragraph has been amended by Sections 9.13 through 9.16, inclusive, of this Amendment). The new lease shall commence, and rent and all obligations of the Approved Leasehold Mortgagee shall begin to accrue, as of the date of termination of this Lease. The term of the new lease shall be for the period which would have constituted the remainder of the term of this Lease had this Lease not been terminated, and the new lease shall be upon all of the other terms and conditions of this Lease, as modified by all amendments, if any, entered into by Lessor and Lessee (which amendments shall include, without limitation, the amendments described in Recital Paragraph A of this Amendment and this Amendment itself). The new lease shall be free of all rights of Lessee. Lessee shall provide in all subleases pertaining to the Premises that each subtenant of the Premises shall, at the Approved Leasehold Mortgagee's option, attorn to the Approved Leasehold Mortgagee under the new lease, and the Approved Leasehold Mortgagee agrees to accept such an attornment, provided the subtenant is not in default under its sublease at the time of such attornment. Prior to or upon execution of the new lease, the Approved Leasehold Mortgagee shall (a) pay to Lessor all Basic Rent, Additional Rent, and other amounts owing

to Lessor by Lessee under this Lease as of the date of termination of this Lease; (b) shall pay to Lessor all rent and other amounts due under the new lease from the date of commencement of the term of the new lease to the date of execution of the new lease; (c) shall provide in a manner reasonably satisfactory to Lessor for the cure of all non-monetary defaults of Lessee under this Lease; and (d) shall pay to Lessor all reasonable out-of-pocket costs incurred by Lessor in connection with the preparation and execution of the new lease.

(5) Performance by Approved Leasehold Mortgagee. Lessor shall accept performance by the Approved Leasehold Mortgagee of Lessee's obligations under this Lease with the same force and effect as if performed by Lessee; provided, however, that the Approved Leasehold Mortgagee shall not become liable for the performance of Lessee's obligations under this Lease unless and until the Approved Leasehold Mortgagee acquires title to the Lease, and provided further that, if the Approved Leasehold Mortgagee shall so acquire title to this Lease or any new lease pursuant to Paragraph 26(C)(4) above, within ninety (90) days after such Approved Leasehold Mortgagee shall have so acquired title to this Lease or such new lease, such Approved Leasehold Mortgagee shall have either: (i) sold or otherwise transferred this Lease to a third party approved by Lessor pursuant to Paragraph 25 of the Lease; or (ii) engaged the services of a commercial property management company (which may be a division of Leasehold Mortgagee or its affiliate) acceptable to and approved in writing by Lessor in its sole and absolute discretion, which commercial property management company shall be experienced in operating facilities similar to the Premises and which commercial property management company shall actively operate and manage the Premises until such time as such Approved Leasehold Mortgagee shall have sold or otherwise transferred this Lease to a third party as contemplated in clause (i) of this sentence.

(6) No Merger. Without the written consent of the Approved Leasehold Mortgagee, there shall be no merger of this Lease or of the leasehold estate created hereunder with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate may be held directly or indirectly by or for the benefit of any person who owns the fee estate in the Premises or any portion thereof.

(7) No Voluntary Surrender. No voluntary surrender of this Lease by Lessee or amendment or mutual termination of this Lease shall be effective without the prior written consent of the Approved Leasehold Mortgagee.

(8) Leasehold Foreclosure. Lessor's consent shall not be required for a transfer of this Lease to the Approved Leasehold Mortgagee by trustee's sale, judicial foreclosure or transfer in lieu of foreclosure.

(9) Approved Transfers by an Approved Leasehold Mortgagee. Notwithstanding any provision to the contrary contained in the Lease, in the event that an Approved Leasehold Mortgagee acquires title to the Premises by way of foreclosure, deed in lieu of foreclosure, or other exercise of remedies provided under its Approved Leasehold Mortgage, such Approved Leasehold Mortgagee shall thereafter have the right to assign the Lease to a purchaser/assignee who shall assume each and all of the obligations of the Lessee under the Lease, which assignment shall be subject to the provisions of Paragraph 25 of the Lease.

(10) Cure of a Prohibited Junior Leasehold Mortgage. Lessor agrees that if Lessee violates the prohibition in the Lease on creation of any junior Leasehold Mortgage, Lessor shall give written notice to the Approved Leasehold Mortgagee. If the Approved Leasehold Mortgagee, within thirty (30) days after receipt of such notice either (i) pays and discharges the junior Leasehold Mortgagee in its entirety, or (ii) commences foreclosure proceedings, or exercises a power of sale, under a trust deed or mortgage held by the Approved Mortgagee, and thereafter diligently prosecutes such proceedings or sale to conclusion, either of such actions shall constitute a "cure" of such default by Lessee entitling the Approved Leasehold Mortgagee to obtain the new lease provided for in Paragraph 21(C)(4) of the Lease. Nothing contained herein shall alter the prohibition against creation of junior Leasehold Mortgages by the Lessee nor be construed as Lessor's consent thereto.

D. Insurance and Condemnation Proceeds.

Lessor hereby agrees that approved Leasehold Mortgagee shall be entitled to participate with Lessor in any settlement regarding insurance and/or condemnation proceeds or awards, to collect and hold any such proceeds or awards and to determine and direct whether any such proceeds or awards are made available for the restoration of the Premises or are applied to the repayment of the loan secured by its Leasehold Mortgage; provided that, the Approved Leasehold Mortgagee's rights shall be limited to enforcing its rights (if any) with respect to Lessee's share (if any) of such insurance and/or condemnation proceeds and shall not apply to or affect Lessor's share of any such insurance and/or condemnation proceeds.

E. Use of Leasehold Loan Proceeds.

Lessor and Lessee hereby acknowledge that the Buildings have been completed, and that no provision of the Ground Lease shall restrict Lessee's right to use or apply the proceeds (any "Leasehold Loan Proceeds") of any loan secured by any Approved Leasehold Mortgage, and that Lessee may use any such Leasehold Loan Proceeds previously or hereafter obtained by Lessee for such purposes as Lessee shall determine in Lessee's sole and absolute discretion.

11. Dispute Resolution. The Ground Lease is hereby amended to delete any and all references to arbitration and/or mediation. Lessor and Lessee hereby agree, that except as otherwise specifically provided in this Amendment, all disputes, claims or controversies arising under the Ground Lease shall be resolved in accordance with the provisions of this Section 11.

11.1 Any action to resolve any controversy or claim arising out of or related to the Ground Lease, or the breach by either party thereof, however characterized, shall be resolved through a binding, non-public arbitration before an adjudicator selected as provided in this Section 11. Any party to the Ground Lease (each a "Party" and collectively, the "Parties") desiring to bring any action under the Ground Lease shall give written notice to the other Party, which notice shall state with particularity the nature of the dispute and the demand for relief, making specific reference by section number and title, if applicable, of the provisions of the Ground Lease (or any amendment thereto) pertaining to the dispute; provided, however, provided that, the Approved Leasehold Mortgagee's rights shall be limited to enforcing its rights (if any) with respect to Lessee's share (if any) of such condemnation proceeds and shall not apply to or affect Lessor's share of any such condemnation proceeds.

11.2 The Parties shall endeavor to agree, within thirty (30) days of the above-described notice, upon a mutually acceptable adjudicator to resolve the dispute. The adjudicator shall be a single former judge of the Superior Court or the Court of Appeal of the State of California or member in good standing with the California State Bar currently employed by or associated with the office of JAMS/ENDISPUTE ("JAMS") located in Los Angeles, California. If the Parties cannot agree upon the adjudicator within such thirty (30)-day period, then JAMS, in its sole discretion, shall provide a list of three adjudicators with the qualifications set forth above. Within ten (10) days of JAMS providing the above-described list, each of the Parties shall be entitled to strike one name from the list and so notify JAMS. JAMS, in its sole discretion, thereafter shall select as adjudicator any one of the persons remaining on the list, and the person so selected shall thereafter serve as adjudicator. If for any reason JAMS is unable or unwilling to make such an appointment, either Party may apply to the Superior Court of the State of California in and for the City and County of Los Angeles for appointment of any former judge of the Superior Court or the Court of Appeal of the State of California to serve as adjudicator. The appointment of an adjudicator, whether by JAMS or by the Superior Court pursuant to the foregoing, shall be made, and the adjudicator shall serve, without further objection from any Party, except on the ground of conflict of interest, if any, pursuant to the same rules that would apply if the former judge were still serving as an active member of the Superior Court or Court of Appeal.

11.3 The proceeding shall take place at a mutually acceptable location in Los Angeles, California and shall be conducted pursuant to the provisions of the California Arbitration Act commencing with California Code of Civil Procedure Section 1280, the rules and procedures established by JAMS, and such other rules and procedures as may be determined by the adjudicator; provided, however, that in all events the rules of evidence in such proceeding shall be governed by the California Evidence Code. Discovery between the Parties prior to the arbitration hearing shall be limited to the

mutual exchange of relevant documents. Interrogatories and request for admissions shall not be allowed under any circumstances. Depositions of witnesses employed by any Party shall not be permitted unless it is shown that the witness will be otherwise unavailable and it is necessary to preserve his or her testimony for the hearing. The adjudicator shall have the authority set forth in Section 1282.6 of the California Code of Civil Procedure to issue subpoenas requiring the attendance at the hearing of witnesses, and to issue subpoenas duces tecum for the production at the hearing of books, records, documents and other evidence.

12. Reaffirmation and Estoppel. As a material part of the consideration to Lessor and Lessee for execution and delivery of this Amendment, Lessor and Lessee hereby acknowledge and agree as follows: (i) except as modified herein, the Ground Lease is in full force and effect and constitutes the entire agreement between Lessor and Lessee with respect to the Premises; (ii) there are no other agreements (except for the agreements contained herein) between Lessor and Lessee with respect to the Ground Lease or the Premises; (iii) upon mutual execution and delivery of this Amendment and payment of the amount payable by Lessee to Lessor under Section 7 of this Amendment above, Lessor acknowledges that Lessee shall not be in default under the Ground Lease, (iv) Lessee acknowledges that, to Lessee's current, actual knowledge, there are no defenses, offsets, claims or counterclaims by or in favor of Lessee against Lessor under the Lease as of the date of this Amendment; (v) as of the date of this Amendment, the annual Basic Rent payable under the Ground Lease is currently Ninety-Six Thousand Dollars (\$96,000.00), and the annual Additional Rent payable under the Ground Lease is equal to twenty-five percent (25%) of the amount by which the Gross Rents generated by the Premises (as defined pursuant to Section 2.1 of this Amendment above) exceeds \$569,205.84 (i.e., if the annual Gross Rents equal \$629,000.00, then the Additional Rent payable by Lessee would be \$14,948.54); (vi) Lessor acknowledges that all work on the Premises to be performed by Lessee under the Ground Lease (except for the work described in Section 6 of this Amendment above) has been completed in accordance with the Ground Lease.

13. Approvals By City.

13.1 Notwithstanding anything to the contrary set forth in the Ground Lease, no consent, approval or satisfaction of the Lessor contemplated under the Ground Lease, and no waiver by Lessor of any provisions thereof, shall be effective unless given in writing specifically referring to the Ground Lease and executed by the City Manager or the Mayor for the City. No such consent, approval, satisfaction or waiver under or with respect to the Ground Lease shall be inferred or implied from any other act or omission of Lessor or any agent or employee thereof. Similarly, unless otherwise expressly provided therein, no approval, consent or other action taken by Lessor under or pursuant to the Ground Lease shall be deemed to waive any other rights or authority of Lessor in any capacity other than as the lessor under the Ground Lease.

13.2 Although Lessor is a city of the State of California having regulatory powers, the execution of this Amendment and the lease of the Premises pursuant to the Ground Lease is and has been undertaken by Lessor in its proprietary capacity, and not in its regulatory capacity. Lessee agrees that Lessor retains all of its regulatory

powers, and that the Premises is and shall remain subject to the applicable laws and regulations of Lessor, and other governmental agencies having jurisdiction. Nothing contained in the Ground Lease shall in any way restrict or diminish the rights, powers or jurisdiction of Lessor, its City Council, Planning Commission and other agencies with respect to the governance of the Premises and all buildings, improvements, business and activities located on or conducted thereon. Lessee acknowledges that Lessee shall be required to apply for land use entitlements and building permits and to comply with applicable laws and ordinances in order to implement the development or alteration of the Premises. The Ground Lease does not and will not constitute any agreement, promise or assurance by Lessor to grant such land use entitlements or issue building permits, or that Lessor is obligated to obtain the agreement or assurance from such agencies that such agencies will do so, nor is Lessor obligated to amend any of its laws or regulations regarding land use entitlements or building permits, or to grant any entitlements or building permits.

14. Memorandum of Ground Lease. To the extent required in connection with Lessee's financing of its interest under the Ground Lease (which shall be subject to the provisions of Section 10 of this Amendment), Lessor and Lessee shall promptly execute and deliver a Memorandum of Lease in commercially reasonable form, which Lessee may cause to be recorded in the Official Records of Los Angeles County, California, at Lessee's expense.

15. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be an original, and all of which, when taken together, shall constitute a single original document.

FIFTH AMENDMENT TO LEASE

THIS FIFTH AMENDMENT TO LEASE (this "Amendment"), dated as of this 18th day of April, 2006, by and between THE CITY OF TORRANCE, a municipal corporation ("Lessor"), and TOWN & COUNTRY INVESTORS, LLC, a California limited liability company ("Lessee"), is made with reference to the following facts:

A. WHEREAS, Lessor is the landlord and Lessee is the tenant under that certain Lease dated January 1, 1981 (the "Original Ground Lease") between Lessor and Lessee's predecessor-in-interest, UWC Torrance Airport, a California limited partnership, as supplemented and amended by: (i) that certain First Amendment to Lease dated January 1, 1982, (ii) that certain Second Amendment to Lease dated November 3, 1982, (iii) that certain Third Amendment to Lease dated November 1, 1988, and (iv) that certain Fourth Amendment to Lease (the "Fourth Amendment") dated as of October 5, 1999 (as so supplemented and amended, the "Ground Lease"), pertaining to certain real property located in the City Torrance, County of Los Angeles, State of California, commonly known as Town & Country Shopping Center, and more particularly described in the Ground Lease (the "Premises").

B. WHEREAS, Lessor and Lessee desire to amend the Ground Lease in certain respects, all as more particularly set forth herein.

C. WHEREAS, all capitalized but otherwise undefined terms used herein shall have the meanings attributed to them in the Ground Lease, and all references herein to "Lessor" shall mean and refer to "the City," as such term used in the Original Ground Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereto hereby agree as follows:

1. Extension of Term. The term of the Ground Lease, which is scheduled to expire on October 31, 2049, is hereby extended, such that the term of the Ground Lease shall instead expire on October 31, 2059.

2. Gross Rents Defined. For purposes of calculating: (i) the Additional Rent payable under Paragraph 4 of the Ground Lease, and (ii) the cap on the Aggregate Annual Rent being implemented pursuant to Section 3 of this Amendment below, the term "Gross Rents" shall be and hereby is redefined as follows:

2.1 The term "Gross Rents" shall mean the annual aggregate of all "Subrents" (as hereinafter defined), minus the annual aggregate of all "Permitted Deductions" (as hereinafter defined).

2.2 The term "Subrents" shall mean, as to the calendar year in question: (a) all rentals (including, without limitation, fixed rent and percentage rent) and other payments paid directly or indirectly to Lessee by sublessees, licensees or concessionaires (collectively, "Subtenants") for the occupancy or use of the Premises; (b) the reasonable rental value of any part of the Premises occupied by Lessee or any "affiliate of Lessee" (as hereinafter defined), with such rental value being calculated on a per square foot

basis at the rental rate then being collected by Lessee for comparable space at the Premises; and (c) any and all monies and other things of value received by Lessee as consideration for the use or occupancy of all or any part of the Premises (excluding, however, the proceeds received by Lessee in connection with any sale or transfer of Lessee's interest under the Ground Lease). As used herein, an "affiliate of Lessee" shall mean any person or entity that, directly or indirectly, owns or controls, or is owned or controlled by Lessee, or any member of Lessee.

2.3 The term "Permitted Deductions" shall mean, as to the calendar year in question: (a) all commercially reasonable and customary reimbursements received by Lessee from Subtenants with respect to real property taxes, utilities, maintenance, repairs and other common area charges pertaining to the Premises (collectively, the "Subtenant Reimbursements"); (b) an amount equal to 4% of the collected Subrents (which amount shall be deemed Lessee's management fee, whether or not Lessee or any affiliate of Lessee collects a management fee in a greater or lesser amount in connection with the management and operation of the Premises; and (c) an amount equal to the annual Basic Rent paid by Lessee under the Ground Lease. Any dispute between Lessor and Lessee regarding the reasonableness of any of the Subtenant Reimbursements shall be resolved in accordance with Section 11 of this Amendment below.

2.4 Lessor and Lessee acknowledge and agree that the term "Gross Rents" as defined above shall not, under any circumstances, include any consideration in whatever form received by Lessee (or its successors and/or assigns) in connection with the assignment and assumption of all or a part of Lessee's interest as the tenant under the Ground Lease (such transaction, a "Ground Lease Assignment"), and that (except for the Transfer Fee payable pursuant to Section 5 of this Amendment) Lessor shall not be entitled to any portion of the consideration received by Lessee in connection with any Ground Lease Assignment. Lessee shall continue to report Gross Rents to Lessor in a form substantially the same as the form attached as Schedule 1 of the Fourth Amendment.

3. Cap on Aggregate Rent. Notwithstanding anything to the contrary set forth in the Ground Lease, commencing with calendar year 2006 and continuing through the balance of the term of the Ground Lease (as extended hereby), the aggregate of the Basic Rent and the Additional Rent payable by Lessee to Lessor pursuant to Paragraphs 3 and 4 of the Ground Lease (as such Basic Rent is adjusted from time to time) in any calendar year (collectively, the "Aggregate Annual Rent") shall not exceed an amount equal to fifteen percent (15%) of the "Gross Rents" (as such term is defined in Section 2.1 of this Amendment above) generated by the Premises during such calendar year; provided, however, the Aggregate Annual Rent payable by Lessee in any calendar year shall not be less than \$100,000.00.

4. Basic Rent Adjustments.

4.1 Effective as of April 1, 2006, the monthly Basic Rent under the Ground Lease shall be increased to Eight Thousand Three Hundred Thirty-Three and 33/100ths Dollars (\$8,333.33).

4.2 Paragraph 3 of the Ground Lease shall be and hereby is amended to provide for the following subsequent adjustments to the monthly Basic Rent (and the following described

adjustments shall supersede and replace the adjustments contemplated under Section 3(c) of the Fourth Amendment): On November 1, 2017, November 1, 2027, and November 1, 2037, the monthly Basic Rent payable under the Ground Lease shall be adjusted to an amount which, when combined with one-twelfth (1/12) of the Additional Rent payable to Lessor for the preceding calendar year, would equal the fair rental value of the Premises; provided that the monthly Basic Rent payable as a consequence of any such adjustment shall not be less than the monthly Basic Rent payable pursuant to Section 4.1 of this Amendment. As used herein, "fair rental value" shall mean and refer to the fair market value of the Premises, as defined by the Courts of the State of California as of the first day of such each such adjustment period for the uses of the Premises permitted under the Ground Lease. If the parties cannot agree on the fair rental value of the Premises prior to July 1, 2017, July 1, 2027 and July 1, 2037, respectively (as the case may be), then the fair market value shall be determined by arbitration in accordance with subparagraph B of Paragraph 3 of the Ground Lease (and pending such determination, Lessee shall continue to pay Basic Rent in the amount payable immediately prior to such determination, subject to adjustment, if applicable, based upon such determination).

4.3 Paragraph 3(B)(1) of the Ground Lease is hereby deleted in its entirety and replaced by the following:

"(1) If arbitration is required to fix the fair market value of the Premises, such arbitration shall be conducted in the following manner: On or before July 1, 2017, July 1, 2027 and July 1, 2037, as the case may be, Lessor shall appoint an arbitrator and give written notice thereof to Lessee, and within ten (10) days after the receipt of such notice, Lessee shall appoint an arbitrator and give written notice thereof to Lessor, or in case of the failure of either party hereto so to do, the other party shall have the right to apply to the Superior Court of Los Angeles County, California, to appoint an arbitrator to represent the defaulting party. The two arbitrators thus appointed (in either manner) shall select and appoint in writing a third arbitrator and give written notice thereof to Lessor and Lessee, or if within ten (10) days after their appointment, the two arbitrators shall fail to appoint a third, then either party hereto shall have the right to make application to said Superior Court to appoint such third arbitrator. All such arbitrators shall have a minimum of ten (10) years experience in commercial real estate appraisal in the greater Los Angeles area, and shall be both impartial and unrelated to either Lessor or Lessee."

5. Lessee Transfer Fee. If, on or before November 1, 2017, any sale or assignment of any interest in Lessee or of Lessee's interest under the Ground Lease or in the Premises is effectuated and as a consequence neither Scott Douglas nor Evans/Douglas, Inc. continues to be the managing member of the Lessee under the Ground Lease and/or Scott Douglas' or Evans/Douglas, Inc.'s percentage interest in the entity that owns the Lessee's interest under the Ground Lease is decreased, then in such case as a condition precedent to the effectiveness of such sale or assignment, Lessee shall pay to Lessor a one-time payment in the amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Transfer Fee"). No fee (including any Transfer Fee) shall be due and payable to Lessor in connection with any transfer of any interest in Lessee or of any portion of Lessee's interest under the Ground Lease or in the Premises so long as Scott Douglas or Evans/Douglas, Inc. continues to be the managing member of the entity that owns the Lessee's interest under the Ground Lease and Scott Douglas' or Evans/Douglas, Inc.'s percentage interest in the entity that owns the Lessee's interest under the Ground Lease

has not decreased. Additionally, no fee (including any Transfer Fee) shall be due and payable to Lessor in connection with any transfer of any interest in Lessee or of Lessee's interest under the Ground Lease or in the Premises to the extent that the transfer is consummated after November 1, 2017.

6. Capital Improvements. As consideration for Lessor's willingness to enter into this Amendment, Lessee agrees to invest an additional Two Hundred Thousand Dollars (\$200,000.00) into the Premises (the "Additional Investment"), which Additional Investment shall be expended by Lessee in full on or before December 31, 2009, and shall be reserved exclusively for the purpose of funding the cost of certain capital improvements and upgrades to the Premises generally described in Exhibit "A" attached hereto and hereby made a part hereof (each such improvement, a "Capital Improvement"). Each Capital Improvement shall be subject to Lessor's approval, which approval shall not unreasonably be withheld, conditioned or delayed. Lessee shall begin construction of the Capital Improvements on or before October 31, 2009 and shall continue to construct the Capital Improvements in a good and workmanlike manner by properly qualified and licensed contractors approved by Lessor (which approval shall not unreasonably be withheld, conditioned or delayed), and such work shall be diligently prosecuted to completion on or before December 31, 2009. Upon completion of each Capital Improvement, Lessee shall certify, in writing, to Lessor as to the cost actually incurred by Lessee for such Capital Improvement (which cost shall be deemed to include a construction supervision fee equal to five percent (5%) of the aggregate cost of such Capital Improvement), as well as the then unexpended balance, if any, of Lessee's Additional Investment along with reasonable back-up documentation detailing the costs incurred in connection with such Capital Improvement.

7. Condition Precedent. Concurrently with the execution and delivery of this Amendment, Lessee shall pay to Lessor the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Lease Extension Fee"). The Lease Extension Fee shall compensate Lessor for the time and expense incurred in connection with this Amendment, and shall bring current as of the date of this Amendment all sums due and payable by Lessee to Lessor under the Ground Lease as of the date of this Amendment.

8. Notices. Paragraph 32 of the Ground Lease is hereby deleted and replaced with the following:

"32. Notices.

Whenever either of the parties hereto desires to give or serve any notice, demand, request or other communication with respect to this Lease, each such notice, demand, request or communication shall be given in writing (at the address set forth below) by any of the following means: (a) personal service (including service by overnight courier service); (b) electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by personal service or United States registered or certified mail, first class postage prepaid, return receipt requested); or (c) United States registered or certified mail, first class postage prepaid, return receipt requested, and addressed as below. Any notice, demand, request or other communication sent pursuant to item (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means, and if sent pursuant to item (c) above, shall be deemed received three (3) days following deposit in the United States mail:

If to Lessor:

The City of Torrance
3031 Torrance Boulevard
Torrance, California 90503
Attention: City Clerk
Facsimile: (310) 618-2931

With a copy to:

The City of Torrance
3031 Torrance Boulevard
Torrance, California 90503
Attention: City Manager
Facsimile: (310) 618-5891

If to Lessee:

Town & Country Investors, LLC
c/o Evans/Douglas, Inc.
25500 Hawthorne Boulevard
Suite 2250
Torrance, California 90505
Attention: Scott Douglas
Facsimile: (310) 540-3232

With a copy to:

Sabrina Burton, Esq.
2015 Navy Street
Santa Monica, California 90405
Facsimile: (310) 496-0134

Either party hereto may specify a different address for notice purposes by giving the other party notice in the same manner as herein provided."

9. Additional Changes to the Ground Lease. The following Paragraphs of the Ground Lease are hereby supplemented, amended and/or deleted as indicated:

9.1 Reimbursement of Lessor Audit Costs. Subparagraph 4D (f) of the Ground Lease is hereby amended to change the percentage threshold triggering Lessee's obligation to reimburse Lessor for the cost of the audit referenced in such subparagraph from "one percent (1%)" to "five percent (5%)."

9.2 Threshold for Construction Bond Requirements. Paragraph 9E (entitled "Bonds") of the Ground Lease is hereby amended to provide that the requirements set forth in that subparagraph shall apply only in the case where the cost to construct the building, structure or other improvement being constructed by Lessee shall exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

9.3 Lessor's Confirmation of Zoning. Paragraph 9H (entitled "Applicable Laws") of the Ground Lease is hereby supplemented to include the following additional sentence:

"To the extent reasonably required in connection with Lessee's sale or refinance of its interest in the Premises, Lessor shall provide a customary zoning letter in a form typically issued by Lessor within a reasonable time following Lessee's written request."

9.4 Notice to Lessor of Construction on Premises. Paragraph 11B (entitled "Notices") of the Ground Lease is hereby amended to increase the dollar value threshold triggering Lessee's obligation to provide written notice to Lessor prior to commencing construction on the Premises from "Twenty-Five Thousand Dollars (\$25,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.5 Intentionally Omitted.

9.6 Valuation; Possessory Interest Tax. Paragraph 21D (entitled "Payments to City") and Paragraph 21E (entitled "Valuation") of the Ground Lease are each hereby deleted in their entirety. Notwithstanding anything to the contrary set forth in the Ground Lease, Lessee acknowledges that as of the date of the Ground Lease, the Premises were valued by the City Tax Assessor for the purpose of assessing and levying real property (possessory interest) taxes pursuant to the formula articulated in De Luz Homes, Inc. v. County of San Diego, 45 Cal. 2d 546, 290 P.2d 544 (1955) (hereinafter, the "De Luz Case"). Lessee agrees that, if at any time during the term of the Ground Lease, the law is changed so as to require that the City Tax Assessor value the interest of Lessee in the Premises in a manner other than pursuant to the De Luz Case, then Lessee shall be responsible for any and all real property (possessory interest) taxes, as calculated from time to time according to applicable law.

9.7 Additional Insurance Required to be Maintained by Lessee. Subparagraph 23A (2) of the Ground Lease is hereby amended to provide that Lessor cannot impose additional insurance requirements upon Lessee, whether in the form of increased liability limits, additional coverages or more stringent approval requirements for Lessee's insurers (collectively, any "Additional Insurance Requirements") unless such Additional Insurance Requirements are customarily required by ground lessors of similarly situated ground lessees with respect to properties similar in type, value and location to the Premises.

9.8 Lessor's Right to Purchase Insurance Required to Be Maintained by Lessee. Paragraph 23H (entitled "Failure to Provide") of the Ground Lease is hereby amended to provide that Lessor shall not be entitled to purchase any insurance coverage on Lessee's behalf under such subparagraph unless Lessor has provided Lessee with at least ten (10) business days' prior written notice and Lessee has failed within such notice period to provide Lessor with evidence of the coverage required to be maintained by Lessee under the Ground Lease.

9.9 Threshold for Delivery to Lessor of Casualty Estimates. Paragraph 24A (entitled "Statement of Costs") of the Ground Lease is hereby amended to change the cost of

repair threshold triggering Lessee's obligations under such subparagraph from "Ten Thousand Dollars (\$10,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.10 Threshold for Trustee Management of Casualty Insurance Proceeds. Subparagraph 24B (2) of the Ground Lease is hereby amended to change the dollar threshold triggering the use of an insurance trustee to receive and manage the insurance proceeds payable with respect to a casualty occurring on or with respect to the Premises under such subparagraph from "Twenty-Five Thousand Dollars (\$25,000.00)" to "Fifty Thousand Dollars (\$50,000.00)."

9.11 City Manager Approval of Subleases. Subparagraph 25A (1) of the Ground Lease is hereby amended to change the square footage threshold set forth therein from "4,000 square feet" to "5,000 square feet," and Subparagraph 25A (2) of the Ground Lease is hereby amended to change both references in such subparagraph to "the City Council" instead to "the City Manager."

9.12 Permitted Lessee Affiliate Transfers. Subparagraph 25A (3) of the Ground Lease is hereby supplemented to include the following additional language: "Notwithstanding any contrary provision in this subparagraph, Lessee shall be entitled, without obtaining the consent of Lessor, to transfer any interest in Lessee and/or any portion of Lessee's interest under the Ground Lease so long as, upon consummation of such transfer, (i) Scott Douglas or Evans/Douglas, Inc. continues to be the managing member of the entity that owns the Lessee's interest under the Ground Lease and (ii) Scott Douglas and Evans/Douglas, Inc.'s percentage membership interest in Lessee has not decreased."

9.13 Cure Period for Event of Default Under Leasehold Mortgage. Subparagraph 27A (2) of the Ground Lease is hereby deleted and replaced with the following language: "(2) the occurrence of an event of default by Lessee, as expressly defined under the instruments or agreements evidencing or securing the indebtedness held by any Leasehold Mortgagee, where such event of default is not remedied within the time period provided in such instruments or agreements for the remedy of such event of default; or".

9.14 Default Due to Vacation or Abandonment of the Premises. Subparagraph 27A (3) of the Ground Lease is hereby deleted and replaced with the following language: "(3) the abandonment or vacation of the Premises by Lessee without the intention to re-occupy the same where such vacation or abandonment has continued for a period of forty (40) consecutive days (provided, however, that Lessee shall provide reasonable assurances to minimize potential vandalism within such 40 day period); or".

9.15 Extension of Cure Period Where Cure Requires More than Thirty Days. Subparagraph 27A (4) of the Ground Lease is hereby deleted and replaced with the following language: "(4) the failure of Lessee to perform any other obligation hereunder and the continuance of such failure for a period of thirty (30) days after written notice from Lessor specifying such failure to perform; provided that, if the remedy for such failure to perform cannot reasonably be completed within such thirty (30) day period, no Event of Default shall be deemed to have occurred so long as

Lessee has commenced to remedy such failure within such thirty (30) day period, and Lessee thereafter diligently and continuously pursues such remedy to completion; or”.

9.16 Clarification Regarding Sublessee Bankruptcy. Lessor and Lessee hereby agree that notwithstanding the language of Subparagraph 27A (5), the bankruptcy (whether voluntary or involuntary) of any sublessee, licensee of concessionaire of Premises shall not, in and of itself, constitute an Event of Default by Lessee under the Ground Lease.

9.17 Estoppel Certificates. Lessor and Lessee shall at any time and from time to time upon not less than thirty (30) days prior written request by the other, deliver to the requesting party an executed written statement certifying that (a) the Ground Lease is unmodified and in full force and effect (or if the Ground Lease has been modified or if the Ground Lease is not in full force or effect, stating the nature of the modification or the basis on which the Ground Lease had been terminated, whichever is applicable); (b) to its knowledge, the requesting party is not in default under the Ground Lease (or if any such default exists, stating the specific nature and extent of the default); and (c) the dates to which the Basic Rent, Additional Rent and other monetary obligations under the Ground Lease have been paid in advance. Each certificate delivered pursuant to this Section 9.17 may be relied upon by any prospective purchaser, lender or transferee of Lessor or Lessee’s respective interests in the Premises.

10. Leasehold Mortgage Provisions. Paragraph 26 (entitled “Encumbrances”) is hereby deleted in its entirety and replaced with the following:

“A. Right to Encumber

During the term of this Lease and any extension or renewal thereof, with Lessor’s consent (which consent shall not unreasonably be withheld, conditioned or delayed, and shall be evidenced by the written consent of the City Manager or Mayor, as contemplated in Section 13 of this Amendment below), Lessee may assign for security purposes only, or may encumber Lessee’s leasehold interest under this Lease and the leasehold estate created hereby (a “Leasehold Mortgage”) in favor of an institutional lender (herein sometimes referred to as the “Leasehold Mortgagee”) and in that connection may perform any and all acts and execute any and all instruments necessary or proper to consummate any loan transaction and perfect the security therefor to be given the Leasehold Mortgagee; provided, however, that:

- (1) Any such Leasehold Mortgage must constitute a first lien on Lessee’s leasehold estate; and

(2) Such Leasehold Mortgage shall be an assignment or encumbrance only of the Lessee's leasehold interest under this Lease and the leasehold estate created hereby and shall not convey or be a lien upon the Lessor's fee estate in the Premises or the Lessor's reversionary interest in all buildings and improvements located on the Premises.

B. Leasehold Mortgagee Defined

The term "Leasehold Mortgagee" as used in this Paragraph 26 and elsewhere in this Lease shall mean the mortgagee under any mortgage, or the trustee and beneficiary under any deed of trust or indenture of mortgage and deed of trust encumbering the leasehold estate or Lessee's interest therein (including the assignee or successor of any such mortgagee, beneficiary or trustee and the holder of any promissory note or bond secured thereby), and executed by Lessee and delivered for the purpose of securing to such mortgagee, trustee or beneficiary payment of any indebtedness incurred by Lessee and secured by such mortgage, deed of trust or indenture of mortgage and deed of trust. The terms "Approved Leasehold Mortgagee" and "Approved Leasehold Mortgage" shall mean a Leasehold Mortgagee and a Leasehold Mortgage, respectively, complying with the requirements of Paragraph 26(A) above.

C. Agreements Regarding Leasehold Mortgagees

(1) Notices to Leasehold Mortgagee. So long as an Approved Leasehold Mortgagee notifies the Lessor in writing of its Approved Leasehold Mortgagee status and provides Lessor with an address for delivery of notices, copies of all notices given or documents delivered by the Lessor to Lessee under the terms of this Lease, including without limitation notices of Lessee's default under this Lease, shall be concurrently served by the Lessor on the Approved Leasehold Mortgagee by United States mail, postage prepaid, registered or certified mail, return receipt requested, at the address last provided to the Lessor in writing by such Approved Leasehold Mortgagee. No notice given by the Lessor under this Lease shall be effective unless served as provided in this Paragraph.

2) Approved Leasehold Mortgagee's Rights to Cure. Notwithstanding any provision to the contrary set forth in this Lease, Lessor shall not terminate this Lease because of any default by Lessee or on the basis of any other event or circumstance which gives the Lessor the right to terminate this Lease if the Approved Leasehold Mortgagee, within twenty (20) days after its receipt of notice from the Lessor of a default by the Lessee under this Lease in the case of a default which can be cured by the payment of money required to be paid by Lessee under the terms of this Lease, or within thirty (30) days after its receipt of such notice in the case of a non-monetary default, shall at its election either:

(a) Cure such default within such twenty (20) days, if the default can be cured by the payment of money required to be paid by Lessee under the terms of this Lease or, if the default cannot be cured in such a manner, commence to cure the default within such thirty (30) day period and thereafter diligently proceed to complete such cure; or

(b)(i) Institute a trustee's sale or judicial foreclosure proceedings under the Approved Leasehold Mortgage and thereafter diligently proceed to complete such proceedings; (ii) cure such default within such twenty (20) days if the default can be cured by the payment of money required to be paid by Lessee under the terms of this Lease; (iii) comply with all of the terms and conditions of this Lease requiring the payment or expenditure of money by Lessee until such time (the "Foreclosure Date") as this Lease has been sold by trustee's sale, judicial foreclosure or transfer in lieu of foreclosure or reconveyed under the Approved Leasehold Mortgage; and (iv) commence to cure all non-monetary defaults within thirty (30) days following the Foreclosure Date and thereafter diligently proceed to complete the cure; provided, however, that if the Approved Leasehold Mortgagee fails to comply with any one of the conditions set forth in Paragraph 26(C)(2)(a) or 26(C)(2)(b), then Lessor shall be released from the covenant of forbearance contained in this subparagraph.

(3) Prosecution of Foreclosure. The Approved Leasehold Mortgagee shall be deemed to be diligently proceeding to complete a trustee's sale or judicial foreclosure notwithstanding the fact that such proceedings or the commencement of such proceedings are stayed by statute, rule, court order, bankruptcy stay, or other similar enactment or action, provided that, (a) such Approved Leasehold Mortgagee is at all times during such stay in compliance with the provisions of Paragraphs 26(C)(2)(b)(ii) and 26(C)(2)(b)(iii) hereof, and (b) such trustee's sale or judicial foreclosure is completed within twenty-four (24) months following the institution of such proceedings; provided that, such twenty four (24) month period shall be extended if the Approved Leasehold Mortgagee is unable to complete such proceedings within such twenty-four (24) month period so long as the Approved Leasehold Mortgagee is at all times diligently prosecuting such proceedings to conclusion.

4) New Lease. If this Lease terminates because of a default by Lessee or any other event or circumstance which entitles the Lessor to terminate this Lease (including, but not limited to, rejection of the Lease in a bankruptcy proceeding), Lessor shall provide the Approved Leasehold Mortgagee with written notice of such termination. If within thirty (30) days after receiving notice of such termination, the Approved Leasehold Mortgagee by written notice to Lessor requests that Lessor enter into a new lease for the Premises, then the Lessor shall enter into a new lease for the Premises with the Approved Leasehold Mortgagee within thirty (30) days after the Approved Leasehold Mortgagee's request, provided that the Approved Leasehold Mortgagee has delivered to Lessor at the time of such request the Approved Leasehold Mortgagee's written agreement to cure Lessee's defaults under this Lease, and provided further that if Lessee has defaulted under Paragraph 27 of this Lease (as such Paragraph has been amended by Sections 9.13 through 9.16, inclusive, of this Amendment), the Approved Leasehold Mortgagee shall have entered into a written agreement with Lessor pursuant to which such Approved Leasehold Mortgagee has agreed to perform (or caused a third party to agree to perform) the remaining obligations of Lessee under said Paragraph 27 (as such Paragraph has been amended by

Sections 9.13 through 9.16, inclusive, of this Amendment). The new lease shall commence, and rent and all obligations of the Approved Leasehold Mortgagee shall begin to accrue, as of the date of termination of this Lease. The term of the new lease shall be for the period which would have constituted the remainder of the term of this Lease had this Lease not been terminated, and the new lease shall be upon all of the other terms and conditions of this Lease, as modified by all amendments, if any, entered into by Lessor and Lessee (which amendments shall include, without limitation, the amendments described in Recital Paragraph A of this Amendment and this Amendment itself). The new lease shall be free of all rights of Lessee. Lessee shall provide in all subleases pertaining to the Premises that each subtenant of the Premises shall, at the Approved Leasehold Mortgagee's option, attorn to the Approved Leasehold Mortgagee under the new lease, and the Approved Leasehold Mortgagee agrees to accept such an attornment, provided the subtenant is not in default under its sublease at the time of such attornment. Prior to or upon execution of the new lease, the Approved Leasehold Mortgagee shall (a) pay to Lessor all Basic Rent, Additional Rent, and other amounts owing to Lessor by Lessee under this Lease as of the date of termination of this Lease; (b) shall pay to Lessor all rent and other amounts due under the new lease from the date of commencement of the term of the new lease to the date of execution of the new lease; (c) shall provide in a manner reasonably satisfactory to Lessor for the cure of all non-monetary defaults of Lessee under this Lease; and (d) shall pay to Lessor all reasonable out-of-pocket costs incurred by Lessor in connection with the preparation and execution of the new lease.

(5) Performance by Approved Leasehold Mortgagee. Lessor shall accept performance by the Approved Leasehold Mortgagee of Lessee's obligations under this Lease with the same force and effect as if performed by Lessee; provided, however, that the Approved Leasehold Mortgagee shall not become liable for the performance of Lessee's obligations under this Lease unless and until the Approved Leasehold Mortgagee acquires title to the Lease, and provided further that, if the Approved Leasehold Mortgagee shall so acquire title to this Lease or any new lease pursuant to Paragraph 26(C)(4) above, within ninety (90) days after such Approved Leasehold Mortgagee shall have so acquired title to this Lease or such new lease, such Approved Leasehold Mortgagee shall have either: (i) sold or otherwise transferred this Lease to a third party approved by Lessor pursuant to Paragraph 25 of the Lease; or (ii) engaged the services of a commercial property management company (which may be a division of Leasehold Mortgagee or its affiliate) acceptable to and approved in writing by Lessor in its sole and absolute discretion, which commercial property management company shall be experienced in operating facilities similar to the Premises and which commercial property management company shall actively operate and manage the Premises until such time as such Approved Leasehold Mortgagee shall have sold or otherwise transferred this Lease to a third party as contemplated in clause (i) of this sentence.

(6) No Merger. Without the written consent of the Approved Leasehold Mortgagee, there shall be no merger of this Lease or of the leasehold estate

created hereunder with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate may be held directly or indirectly by or for the benefit of any person who owns the fee estate in the Premises or any portion thereof.

(7) No Voluntary Surrender. No voluntary surrender of this Lease by Lessee or amendment or mutual termination of this Lease shall be effective without the prior written consent of the Approved Leasehold Mortgagee.

(8) Leasehold Foreclosure. Lessor's consent shall not be required for a transfer of this Lease to the Approved Leasehold Mortgagee by trustee's sale, judicial foreclosure or transfer in lieu of foreclosure.

(9) Approved Transfers by an Approved Leasehold Mortgagee. Notwithstanding any provision to the contrary contained in the Lease, in the event that an Approved Leasehold Mortgagee acquires title to the Premises by way of foreclosure, deed in lieu of foreclosure, or other exercise of remedies provided under its Approved Leasehold Mortgage, such Approved Leasehold Mortgagee shall thereafter have the right to assign the Lease to a purchaser/assignee who shall assume each and all of the obligations of the Lessee under the Lease, which assignment shall be subject to the provisions of Paragraph 25 of the Lease.

(10) Cure of a Prohibited Junior Leasehold Mortgage. Lessor agrees that if Lessee violates the prohibition in the Lease on creation of any junior Leasehold Mortgage, Lessor shall give written notice to the Approved Leasehold Mortgagee. If the Approved Leasehold Mortgagee, within thirty (30) days after receipt of such notice either (i) pays and discharges the junior Leasehold Mortgagee in its entirety, or (ii) commences foreclosure proceedings, or exercises a power of sale, under a trust deed or mortgage held by the Approved Mortgagee, and thereafter diligently prosecutes such proceedings or sale to conclusion, either of such actions shall constitute a "cure" of such default by Lessee entitling the Approved Leasehold Mortgagee to obtain the new lease provided for in Paragraph 21(C)(4) of the Lease. Nothing contained herein shall alter the prohibition against creation of junior Leasehold Mortgages by the Lessee nor be construed as Lessor's consent thereto.

D. Insurance and Condemnation Proceeds.

Lessor hereby agrees that approved Leasehold Mortgagee shall be entitled to participate with Lessor in any settlement regarding insurance and/or condemnation proceeds or awards, to collect and hold any such proceeds or awards and to determine and direct whether any such proceeds or awards are made available for the restoration of the Premises or are applied to the repayment of the loan secured by its Leasehold Mortgage; provided that, the Approved Leasehold Mortgagee's rights shall be limited to enforcing its rights (if any) with respect to Lessee's share (if any) of such insurance and/or condemnation proceeds and shall not apply to or affect Lessor's share of any such insurance and/or condemnation proceeds.

E. Use of Leasehold Loan Proceeds.

Lessor and Lessee hereby acknowledge that the Buildings have been completed, and that no provision of the Ground Lease shall restrict Lessee's right to use or apply the proceeds (any "Leasehold Loan Proceeds") of any loan secured by any Approved Leasehold Mortgage, and that Lessee may use any such Leasehold Loan Proceeds previously or hereafter obtained by Lessee for such purposes as Lessee shall determine in Lessee's sole and absolute discretion.

11. Dispute Resolution. The Ground Lease is hereby amended to delete any and all references to arbitration and/or mediation. Lessor and Lessee hereby agree, that except as otherwise specifically provided in this Amendment, all disputes, claims or controversies arising under the Ground Lease shall be resolved in accordance with the provisions of this Section 11.

11.1 Any action to resolve any controversy or claim arising out of or related to the Ground Lease, or the breach by either party thereof, however characterized, shall be resolved through a binding, non-public arbitration before an adjudicator selected as provided in this Section 11. Any party to the Ground Lease (each a "Party" and collectively, the "Parties") desiring to bring any action under the Ground Lease shall give written notice to the other Party, which notice shall state with particularity the nature of the dispute and the demand for relief, making specific reference by section number and title, if applicable, of the provisions of the Ground Lease (or any amendment thereto) pertaining to the dispute; provided, however, provided that, the Approved Leasehold Mortgagee's rights shall be limited to enforcing its rights (if any) with respect to Lessee's share (if any) of such condemnation proceeds and shall not apply to or affect Lessor's share of any such condemnation proceeds.

11.2 The Parties shall endeavor to agree, within thirty (30) days of the above-described notice, upon a mutually acceptable adjudicator to resolve the dispute. The adjudicator shall be a single former judge of the Superior Court or the Court of Appeal of the State of California or member in good standing with the California State Bar currently employed by or associated with the office of JAMS/ENDISPUTE ("JAMS") located in Los Angeles, California. If the Parties cannot agree upon the adjudicator within such thirty (30)-day period, then JAMS, in its sole discretion, shall provide a list of three adjudicators with the qualifications set forth above. Within ten (10) days of JAMS providing the above-described list, each of the Parties shall be entitled to strike one

name from the list and so notify JAMS. JAMS, in its sole discretion, thereafter shall select as adjudicator any one of the persons remaining on the list, and the person so selected shall thereafter serve as adjudicator. If for any reason JAMS is unable or unwilling to make such an appointment, either Party may apply to the Superior Court of the State of California in and for the City and County of Los Angeles for appointment of any former judge of the Superior Court or the Court of Appeal of the State of California to serve as adjudicator. The appointment of an adjudicator, whether by JAMS or by the Superior Court pursuant to the foregoing, shall be made, and the adjudicator shall serve, without further objection from any Party, except on the ground of conflict of interest, if any, pursuant to the same rules that would apply if the former judge were still serving as an active member of the Superior Court or Court of Appeal.

11.3 The proceeding shall take place at a mutually acceptable location in Los Angeles, California and shall be conducted pursuant to the provisions of the California Arbitration Act commencing with California Code of Civil Procedure Section 1280, the rules and procedures established by JAMS, and such other rules and procedures as may be determined by the adjudicator; provided, however, that in all events the rules of evidence in such proceeding shall be governed by the California Evidence Code. Discovery between the Parties prior to the arbitration hearing shall be limited to the mutual exchange of relevant documents. Interrogatories and request for admissions shall not be allowed under any circumstances. Depositions of witnesses employed by any Party shall not be permitted unless it is shown that the witness will be otherwise unavailable and it is necessary to preserve his or her testimony for the hearing. The adjudicator shall have the authority set forth in Section 1282.6 of the California Code of Civil Procedure to issue subpoenas requiring the attendance at the hearing of witnesses, and to issue subpoenas duces tecum for the production at the hearing of books, records, documents and other evidence.

12. Reaffirmation and Estoppel. As a material part of the consideration to Lessor and Lessee for execution and delivery of this Amendment, Lessor and Lessee hereby acknowledge and agree as follows: (i) except as modified herein, the Ground Lease is in full force and effect and constitutes the entire agreement between Lessor and Lessee with respect to the Premises; (ii) there are no other agreements (except for the agreements contained herein) between Lessor and Lessee with respect to the Ground Lease or the Premises; (iii) upon mutual execution and delivery of this Amendment and payment of the amount payable by Lessee to Lessor under Section 7 of this Amendment above, Lessor acknowledges that Lessee shall not be in default under the Ground Lease, (iv) Lessee acknowledges that, to Lessee's current, actual knowledge, there are no defenses, offsets, claims or counterclaims by or in favor of Lessee against Lessor under the Lease as of the date of this Amendment; (v) as of the date of this Amendment, the annual Basic Rent payable under the Ground Lease is currently Ninety-Six Thousand Dollars (\$96,000.00), and the annual Additional Rent payable under the Ground Lease is equal to twenty-five percent (25%) of the amount by which the Gross Rents generated by the Premises (as defined pursuant to Section 2.1 of this Amendment above) exceeds \$569,205.84 (i.e., if the annual Gross Rents equal \$629,000.00, then the Additional Rent payable by Lessee would be \$14,948.54); (vi) Lessor acknowledges that all work on the Premises to be performed by Lessee under the Ground Lease (except for the work described in Section 6 of this Amendment above) has been completed in accordance with the Ground Lease.

13. Approvals By City.

13.1 Notwithstanding anything to the contrary set forth in the Ground Lease, no consent, approval or satisfaction of the Lessor contemplated under the Ground Lease, and no waiver by Lessor of any provisions thereof, shall be effective unless given in writing specifically referring to the Ground Lease and executed by the City Manager or the Mayor for the City. No such consent, approval, satisfaction or waiver under or with respect to the Ground Lease shall be inferred or implied from any other act or omission of Lessor or any agent or employee thereof. Similarly, unless otherwise expressly provided therein, no approval, consent or other action taken by Lessor under or pursuant to the Ground Lease shall be deemed to waive any other rights or authority of Lessor in any capacity other than as the lessor under the Ground Lease.

13.2 Although Lessor is a city of the State of California having regulatory powers, the execution of this Amendment and the lease of the Premises pursuant to the Ground Lease is and has been undertaken by Lessor in its proprietary capacity, and not in its regulatory capacity. Lessee agrees that Lessor retains all of its regulatory powers, and that the Premises is and shall remain subject to the applicable laws and regulations of Lessor, and other governmental agencies having jurisdiction. Nothing contained in the Ground Lease shall in any way restrict or diminish the rights, powers or jurisdiction of Lessor, its City Council, Planning Commission and other agencies with respect to the governance of the Premises and all buildings, improvements, business and activities located on or conducted thereon. Lessee acknowledges that Lessee shall be required to apply for land use entitlements and building permits and to comply with applicable laws and ordinances in order to implement the development or alteration of the Premises. The Ground Lease does not and will not constitute any agreement, promise or assurance by Lessor to grant such land use entitlements or issue building permits, or that Lessor is obligated to obtain the agreement or assurance from such agencies that such agencies will do so, nor is Lessor obligated to amend any of its laws or regulations regarding land use entitlements or building permits, or to grant any entitlements or building permits.

14. Memorandum of Ground Lease. To the extent required in connection with Lessee's financing of its interest under the Ground Lease (which shall be subject to the provisions of Section 10 of this Amendment), Lessor and Lessee shall promptly execute and deliver a Memorandum of Lease in commercially reasonable form, which Lessee may cause to be recorded in the Official Records of Los Angeles County, California, at Lessee's expense.

15. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be an original, and all of which, when taken together, shall constitute a single original document.

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SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the day and year first written above.

THE CITY OF TORRANCE, a municipal corporation

By _____
Dan Walker, Mayor

Attest: _____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS, III, City Attorney

By _____
_____, Deputy City Attorney

TOWN & COUNTRY INVESTORS, LLC, a California limited liability company

By:
Scott Douglas
Managing Member

EXHIBIT A

Town and County Shopping Center, Torrance, CA.
Proposed Capital Improvements

1. Add a precast water fountain element at the corner of Pacific Coast Highway and Rolling Hills Way.
2. Add a wrought iron fence with pilasters between the sidewalk and the parking lot along Pacific Coast Highway and on Rolling Hills Way from the intersection to the Southeast corner of the free standing shop building.
3. Renovate the existing multi-tenant pylon sign on Pacific Coast Highway with new tenant signage, a tile roof element and wrought iron accents.
4. Renovate the existing clock tower with added wrought iron grillwork.
5. Renovate the (5) existing roof tower elements with tenant signage and wrought iron grillwork and optional tenant signage.
6. Renovate the existing trash enclosure at the corner of Airport Drive and Rolling Hills Way with new doors.
7. Add more Boston Ivy vines to rear walls along Airport Drive.
8. Add accent color paint along storefront arcade and columns.
9. Replace existing storefront arcade lighting.
10. Add infill landscape material as needed in existing planting areas throughout the shopping center.

