

AMENDMENT TO COMMERCIAL AVIATION GROUND LEASE
BETWEEN THE CITY OF HAYWARD AND MAHABAL HOSPITALITY LLC

THIS AMENDMENT TO THE AGREEMENT, dated for convenience this _____ day of _____, 2018, is by and between MAHABAL HOSPITALITY LLC, ("CONTRACTOR") and the CITY OF HAYWARD, a public body of the State of California ("CITY");

WITNESSETH

WHEREAS, the City Council of the City of Hayward by Resolution No. 17-168, dated November 14, 2017, approved the City Manager to negotiate and execute land leases with Ramesta Hospitality, LLC and Mahabal Hospitality, LLC for three parcels on the north side of the Hayward Executive Airport; and

WHEREAS, CONTRACTOR AND CITY entered into a Lease Agreement dated November 15, 2017, entitled "Commercial Aviation Ground Lease Between CITY Executive Airport and CONTRACTOR ("AGREEMENT")"; and

WHEREAS, all parties desire to amend the aforesaid AGREEMENT in order to revise the amount of time required to obtain all needed permits and complete construction; adherence to approved site development plans; right to sublease property; requirement for sublessees to provide proof of insurance; right to mortgage and encumber; new lease provisions associated with termination or bankruptcy by Lessee; agreement by lessee to abide by all FAA rules and regulations, including height limits, so that the Airport remains in compliance with grant covenants; and clarifications on the assignment of responsibility for any hazardous waste existing on the hotel sites

NOW, THEREFORE, CONTRACTOR and the CITY do hereby agree to the following amendments to the AGREEMENT:

(1) Section 1.07 Required Development Affecting Lease Term - is hereby stricken from said AGREEMENT and replaced by the following paragraph:

Lessee will have twenty four months (24) months from Effective Date to obtain all plans, permits and will at minimum construct or cause to have been constructed a franchise such as Hilton, Marriott, InterContinental, or Hyatt hotel or other nationally recognized hotel franchise with a minimum of 110 rooms, including an approximately 200 person capacity banquet hall that can be divided into three smaller rooms, swimming pool, and a restaurant, as set forth in Section 1.08 (collectively, the "Improvements"). Lessee will give Lessor written notice of the completion of the construction required herein. Upon receiving written notice of completion, the Lessor will have the right to inspect the Premises to ensure that the Improvements were made, and may audit the Lessee's records to ensure that the minimum investment was made. Lessee hereby agrees to cooperate in any such audit and will promptly furnish any requested records to aid the Lessor in completing any such audit.

(2) Section 1.08 Site Development Plans - is hereby stricken from said AGREEMENT and replaced by the following paragraph:

As a material inducement to Lessor and Lessee to enter into this Lease, Lessor and Lessee have agreed that the Leased Premises will be developed by Lessee as per Section 1.07 and as shown on the proposed Site Development Plan (Exhibit D), which is attached hereto and incorporated by reference only herein. Further, Lessee shall not make any changes to the Site Plan once approved, without first obtaining prior written consent of the City, which consent shall not be unreasonably withheld. Nothing in this provision should be construed as an entitlement or guarantee to any permit or authorization which may be required from the City in its governing capacity as a municipality.

(3) Section 5.04 (B) Hazardous Substances Provisions - is hereby stricken from said AGREEMENT and replaced by the following paragraph:

Lessee warrants and represents that from and after the Effective Date, no Hazardous Substances, other than those permitted under Section 5.04(c), will be present in or on the Premises or will otherwise be used or permitted to be used in, on or about the Premises. As a material inducement to the Lessor to enter into this Lease, Lessee covenants and agrees that Lessee shall save the Lessor harmless from, and shall indemnify and defend (with counsel acceptable to Lessor) the Lessor against any and all loss, cost, damage, or expense, including reasonable attorneys' fees, resulting from or arising out of (i) Lessee's breach of any of the warranties and representations set forth in this Section 5.04, or (ii) any Hazardous Substances which appear or are discovered in the Premises during the Term of this Lease, including any extensions (if any), except for any Hazardous Substances solely introduced or released by Lessor or Lessor's agents or present on the Premises prior to the Lessee taking possession of the Premises. Nothing in this Section should be interpreted as releasing the Lessee from any liability for any environmental damage caused by Lessee whether discovered during the Term or at some subsequent time.

(4) Section 9.02 Lessee's Right to Sublease - is hereby stricken from said AGREEMENT and replaced by the following paragraphs:

The Leased Premises, or any part thereof, can be subleased or transferred by Lessee, by process or operation of law or in any other manner, only with the prior written consent of Lessor, such consent to not be unreasonably withheld. Notwithstanding, all subleases shall include the restrictions on use in this Lease; provided, however, that the term of any sublease shall not extend beyond the term of this Lease; and any and all subleases shall be expressly made subject and inferior to all of the terms, covenants, and conditions of this Lease.

Additionally, Lessee shall require each sublessee and sub-sublessee to provide, within thirty (30) days of occupying the Leased Premises, a certificate of general liability insurance in accordance with Section 7.02(a) and (c). All certificates shall name Lessee and City as additional insured. Lessee shall cause each sublessee or sub-sublessee to maintain such insurance certificates in full force and effect while occupying the Leased Premises. Lessee shall provide copies of sublessee and sub-sublessee insurance certificates to the City. Violation of this provision by Lessee shall be held as an event subject to termination of this Lease as defined under Section 8.01. Lessee may sublease space only for purposes to which City agrees in writing.

Lessee may sublease space only for purposes to which City agrees in writing and otherwise permitted under this Lease.

(5) Section 9.03 Lessee's Right to Mortgage and Encumber - is hereby stricken from said AGREEMENT and replaced by the following paragraph:

Notwithstanding anything contained in this Lease to the contrary, including but not limited to Section 9.01 hereof, Lessee may, upon notice to Lessor, at any time mortgage, encumber, pledge or assign as security its right, title and interest in and to this Lease and the leasehold estate created hereby in the Leased Premises. Lessee may, at any time, give to Lessor a notice (hereinafter referred to as a "Mortgage Notice") containing the name and address of a lender (hereinafter referred to as a "Lender") to which the leasehold estate created hereby has been or will be mortgaged, encumbered, pledged or assigned as security. Upon written request from Lessee or any Lender identified in a Mortgage Notice, Lessor will acknowledge, in writing, the receipt of any Mortgage Notice which it has received. The mortgage, assignment or deed of trust granting such rights in the Lease and Leased Premises to the Lender is referred to as the "Leasehold Mortgage".

(6) Section 9.04 (D) is hereby stricken from said AGREEMENT and replaced by the following paragraphs numbered D through K inclusive:

(d) New Lease Provisions. Should City terminate this Lease or if this Lease shall be rejected or terminated in any bankruptcy proceedings, City, on request by Lender given within sixty (60) days after such termination, immediately shall execute and deliver a new lease of the Premises to Lender, or its purchaser, assignee, or transferee, for the remainder of the Term of this Lease on the same provisions (except for any requirements that have been fulfilled by Lessee before termination) as are contained in this Lease and any amendments hereto; provided, however, that Lender shall promptly cure any defaults of Lessee to the maximum extent they are susceptible to cure by Lender and shall as a condition to execution and delivery of such new lease pay to City any and all Rent and all other sums, to the extent such Rent and other sums are reasonably ascertainable, payable to City by Lessee pursuant to this Lease, including such Rent and other sums that absent termination would have accrued during the period from the date of termination of this Lease to the date of execution and delivery of such new lease, and Lender shall agree in such new lease to pay promptly on reasonable determination and written notice from City all other Rent and other sums payable to City under this Lease or that, absent termination, would have accrued during such period. On execution and delivery of such new lease, City, at the expense of the Lender or any new Lessee, as the case may be, take such reasonable action as shall be necessary to remove Lessee named herein from the Premises.

The provisions of this Section 9.04(d) shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 9.04(d) were a separate and independent contract made by Lessor, Lessee and the Lender and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease under Section 9.04(d), the Lender may use and enjoy the leasehold estate created by this Lease without hindrance by Lessor. The aforesaid agreement of Lessor to enter into a new lease with the Lender shall be deemed a separate agreement between Lessor and such Lender, separate and apart from this Lease as well as a part of this Lease, and shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by any party.

(e) Written Consent. If a Leasehold Mortgage is in effect, this Lease shall not be modified or amended by the parties hereto, or terminated or surrendered by Lessee, nor shall Lessor accept any such termination or surrender of this Lease by Lessee, without the prior written consent of the Lender.

(f) Enforceability. The provisions of this Section 9.04 are for the benefit of the Lender and may be relied upon and shall be enforceable by the Lender as if the Lender were a party to this Lease.

(g) Estoppel Certificate. Lessor shall, within thirty (30) days of the request of any Lender or prospective Lender, provide an estoppel certificate as to any matters reasonably requested by Lender subject to City Council approval.

(h) Leasehold Mortgage Rights. The holder of the most senior Leasehold Mortgage on Lessee's leasehold estate created hereby (the "First Mortgagee") shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Leased Premises or any improvements thereon and such First Mortgagee shall have the right to supervise and control the receipt and disbursements of all insurance proceeds and shall be entitled to all insurance proceeds which are not used to restore the Leased Premises to be applied to the reduction of the debt secured by the Leasehold Mortgage.

(i) Merger. Under no circumstances shall the fee estate of the Lessor and the leasehold estate created hereby merge, even though owned by the same party, without the written consent of the holder of a Leasehold Mortgage.

(j) Controlling Provision. To the extent any of the provisions of this Lease are inconsistent with the provisions of this Section 9.04, the provisions of this Section 9.04 shall control and shall be read in a manner to give the ultimate protection of the provisions hereof to the holder of a Leasehold Mortgage on the leasehold estate of Lessee under this Lease.

(k) Termination. Notwithstanding any provisions of this Lease to the contrary, so long as a Leasehold Mortgage is in effect, Lessee shall have no right to terminate this Lease with respect to any event unless the written approval of the Lender holding a Leasehold Mortgage on the leasehold estate is obtained, including, without limitation, the right to terminate in the event of any damage or condemnation.

(7) Section 12.04 is hereby stricken from said AGREEMENT and replaced by the following paragraphs:

FAA Reservation:

Pursuant to the City's covenant(s) with the United States of America, by and through the FAA, City and Lessee expressly agree as follows:

- a. There is hereby reserved to the City of Hayward, California, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known and hereafter used, for navigation of or flights in the air, using said airspace or landing at, taking off from, or operating on Hayward Executive Airport.
- b. Lessee by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises above such a mean sea level elevation in accordance with

Part 77 of the Federal Aviation regulations as may be prescribed for the Leased Premises by that certain document entitled Drawing 1527.C424 Hayward Terminal Aerial Contours, dated April 15, 1965, as recorded in the official records of Alameda County, California on April 8, 1966, Book 5, Page 24. Lessee by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises if the improvement does not comply with the plan(s) the FAA approves. In the event the aforesaid covenant is breached, City reserves the right to enter on the Premises and remove the offending structure or object and to cut the offending tree, all of which shall be at the expense of the Lessee.

- c. Lessee, by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the safety, utility, efficiency, or efficiency of the airport, or interfere with landing and taking off of aircraft from the Hayward Executive Airport or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, City reserves the right to enter on the Premises without prior consent or a warrant and cause the abatement of such interferences at the expense of Lessee.

City acknowledges and agrees that (i) the Improvements to be constructed within the Premises as set forth in the Site Plan, and (ii) the hotel operation identified in its Administrative Use Permit does not violate any provision of this section.

(8) All other terms and provisions of the AGREEMENT not modified by this Amendment shall remain in full force and effect.

(9) This amendment shall be effective on the ____ day of _____, 2018.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, the day and year first written above:

By: _____
Doug McNeeley, Airport Manager Date

By: _____
Alex Ameri, Interim Director of Public Works Date

By: _____
Kelly McAdoo, City Manager Date

Approved as to form:

By: _____
Michael S. Lawson, City Attorney Date

Attest: _____
Miriam Lens, City Clerk Date

LESSEE, MAHABAL HOSPITALITY, LLC

By: _____
Jayvant Shah, Vice President Development

Date