

FOURTH AMENDMENT TO DISPOSITION & DEVELOPMENT AGREEMENT & GROUND LEASE

WHEREAS, METLOX, LLC, a California limited liability company ("Lessee"), and the CITY OF MANHATTAN BEACH, a California municipal corporation ("Lessor"), entered into a Disposition & Development Agreement & Ground Lease ("Initial Agreement") on May 15, 2002, for lease and development of the "Metlox property" which was subsequently amended by a First Amendment, dated December 17, 2002, a Second Amendment, dated June 17, 2003, and a Third Amendment, dated June 5, 2018. The Initial Agreement, as amended, is referred to herein as the "Agreement";

WHEREAS, Lessor owns the entire leasehold site and leases it to Lessee for the purpose of developing and providing services and facilities which enhance the village atmosphere for residents, and agrees that the amendments implement the purposes of the Agreement by expanding available services;

WHEREAS, Lessee is required to develop, maintain, and use the Metlox property only for the purposes and in accordance with the standards specified in the Agreement and desires to amend certain use and development standards to satisfy market demands. Specifically, Lessee has requested that Lessor approve an increase in the square footage devoted to Personal Improvement, and Eating & Drinking Establishments, without any increase in the total square footage of the Buildings;

WHEREAS, In connection with such use square footage increases, Lessor and Lessee desire to amend the Agreement to: allow the requested uses set forth in Section 2 below;

WHEREAS, The Amendments also include clarifications related to the definition of "Initial leasing activities including commissions" to memorialize the original intent of the Agreement; limiting offsets for subsequent leasing commissions; and requiring Lessee to have prepared and pay for annual audits of the Profit Participation Rents; and

WHEREAS, Lessor and Lessee are currently in a dispute about whether certain offsets taken by Lessee from the 2022, 2023, and 2024, and Profit Participation Rents calculations for the years of 2007-2024 were accurate and consistent with the terms of the Agreement. The amendments contained herein shall not: have any impact upon whether such offsets are appropriate; or constitute an inference, admission or concession by either Lessor or Lessee that such offsets are appropriate or inappropriate.

NOW, THEREFORE, based on the recitals above and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and Lessor agree to the amendments set forth below:

SECTION 1. The above recitals are true and correct and are hereby incorporated by this reference.

SECTION 2. Section 6.2(a) related to permitted uses is hereby amended to read as follows:

- "The Buildings to be constructed on the Tenant Parcels may be two stories (subject to height limitations set forth in this Agreement); shall contain approximately, but not more than, 63,850 square feet; and shall be used for the following purposes (the following categories have an overlap of

maximum square footage, however, it is agreed that under no circumstances shall the total square footage exceed 63,850 square feet):

- (i) 24,138 square feet maximum of retail sales and services, which may, at Tenant's election, include the following:
 - Retail sales;
 - Personal Services;
 - Retail/specialty food service uses such as a bakery, tea salon, coffee house, ice cream shop, yogurt, candy, cookies, juices, and other similar limited specialty food items, each with a maximum of 300 square feet of outdoor seating area, including table, chairs and benches, within the Town Square and Public Areas;
 - Personal Improvement Services;
 - Office uses; and,
 - Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit under the discretion and only upon the approval of the Community Development Director.
- (ii) 17,212 square feet total maximum of restaurant square footage (including 13,770 square feet maximum dining/seating area regardless of whether located indoors or outdoors).."
- (iii) No office use shall be located on the first floor.
- (iv) [Intentionally Deleted.]
- (v) Inn: Minimum of 35 rooms to a maximum of 40 rooms, 2 stories, containing no more than 26,000 square feet, which shall not include a full-service restaurant. The inn, as described above, is an essential element of this Agreement which Tenant is required to provide and failure to provide an inn as an element of the development will be considered a material breach of this Agreement."

SECTION 3. Section 3.3 shall be amended to require an annual audit, to read as follows:

"Profit Participation Rent. In addition to the payment of Base Rent, Tenant shall pay to Landlord a portion of the Net Operating Income (as defined below) received by Tenant from the operation or subleasing of the Tenant Parcels and the Buildings thereon ("Profit Participation Rent") as follows: (a) with respect to the period from the Date of Agreement to the Rent Commencement Date and for a forty-eight (48) month period following the Rent Commencement Date, no Profit Participation Rent shall be payable to Landlord; (b) with respect to each full calendar year thereafter (i.e., January 1 through December 31), twenty-five percent (25%) of the amount, if any, by which Net Operating Income for such calendar year exceeds the Threshold Amount shall be paid to Landlord as Profit Participation Rent; and (c) with respect to each partial calendar year thereafter, twenty-five percent (25%) of the amount, if any, by which prorated Net Operating Income exceeds the appropriately prorated Threshold Amount shall be

paid to Landlord as Profit Participation Rent. Profit Participation Rent shall be computed and paid as follows: within three (3) months following the end of each calendar year beginning with the calendar year described in clauses (b) and (c) of the preceding sentence and continuing for the balance of the Lease Term, Tenant shall pay to Landlord the amount of Profit Participation Rent then due Landlord attributable to the prior calendar year (or applicable portion thereof), and furnish to Landlord a statement (the "Profit Participation Rent Statement") setting forth in reasonable detail the amount of Net Operating Income and the calculation of Profit Participation Rent. On an annual basis, Tenant shall provide to Landlord an annual audit of that year's Profit Participation Rent, performed by a Certified Public Accountant, within two (2) months of the submission of the Profit Participation Rent Statement, at Tenant's cost, notwithstanding any statement to the contrary in this Agreement, including and not limited to Section 3.4. For example, if the Rent Commencement Date occurs on March 15, 2004, (6 months after first Certificate of Occupancy is issued) then no Profit Participation Rent shall be accrued until March 16, 2008 (beginning of the fifth year). If, at the end of calendar year 2008, the cumulative Project Costs equal \$7,000,000; Gross Revenue during calendar year 2008 equals \$2,000,000, and Operating Expenses (exclusive of Base Rent) during calendar year 2008 do not exceed \$500,000 (i.e., 25% of \$2,000,000), then the Profit Participation Rent which would be payable to Landlord by April 1, 2009 would be calculated as follows:

Prorated Gross Revenue \$1,594,520 (based on total 2008 Gross Revenue x 291/365)

Less Prorated 12% Return on \$7 mil. Project Costs \$(669,699)(i.e., 840,000 x 291/365)

Less Prorated Operating Expenses other than Base Rent (Note: Operating Expenses (exclusive of Base Rent) could exceed 25% of Gross Revenue as provided for in Section 3.5(b) <398,630> (i.e., 2,000,000 x .25 x 291/365)

Less Prorated Base Rent \$(192,140)

Net Operating Income \$334,051

Landlord's 25% of NOI Share \$83,513

The "Profit Participation Rent Audit" shall provide Landlord, including a CPA of its choice, with a statement of the actual costs and actual receipts for the preceding year, along with itemized receipts, invoices, or other supporting documentation in detail reasonably satisfactory to Landlord. Such records must be provided within ninety (90) days of Landlord's receipt of the statement setting forth in reasonable detail the amount of Net Operating Income. Landlord or the CPA shall reconcile the estimated amounts paid by Tenant for Profit Participation Rent with the actual charges incurred or receipts accrued and may submit demand(s) to adjust the Profit Participation Rent paid based on the Profit Participation Audit.

For purposes of calculating the Profit Participation Rent provided for hereunder, the Project Costs and Gross Revenue shall not be affected in any way by a sale, assignment of refinancing (except as may otherwise permitted by Section 3.5(d) below) of Tenant's interest under this agreement or any part thereof."

SECTION 4. 3.5(b)(xi) related to Operating Expenses is hereby amended to read as follows:

"(xi) Leasing commissions related to subsequent tenancies following the initial lease-up of the Buildings, except for leasing commissions paid to entities affiliated with Tenant, including but not limited to The Tolkin Group, Jonathan Tolkin, JT Trust, Jonathan Tolkin/JT Trust, Francine Cooper/Cooper Family Trust, and Glenn Loucks, on or after May 20, 2025."

SECTION 5. The first paragraph of 3.5(d) relating to the definition of 'Project Costs' is hereby amended to read as follows:

"As used herein, "Project Costs" means the total of all costs and expenses paid or incurred by Tenant and not reimbursed by Landlord, before the execution of this Lease in an amount not to exceed \$445,000 as well as those incurred after execution of this Lease arising out of or in connection with the acquisition, financing (to the extent set forth in clause (viii) or clause (ix) below), development, initial leasing, reconstruction, renovation, restoration, alteration, expansion or rehabilitation of the Tenant Parcels, the Buildings, the Tenant Common Areas, and/or the Public Parcels (but with respect to the Public Parcels, less the amounts Landlord reimburses to Tenant in accordance with this Agreement) from time-to-time in accordance with this Agreement, including without limitation:"

SECTION 6. Section 3.5(d)(xx) related to project costs is hereby amended to read as follows:

"(xx) All advertising, marketing and promotion costs associated with the construction of the Tenant Parcels and Buildings and the initial leasing activities, including leasing commissions. Pursuant to Section 3.5(b)(xi), any subsequent leasing activities including leasing commissions, and not including initial leasing commissions, are defined as Operating Expenses and thus shall not be included within 'Project Costs.'"

IN WITNESS WHEREOF, this Fourth Amendment to Disposition & Development Agreement & Ground Lease is entered into June__, 2025.

CITY OF MANHATTAN BEACH, a California
municipal corporation

METLOX, LLC,
a California limited liability company

By: _____
Talyn Mirzakhanian, City Manager

By: _____

ATTEST:

Liza Tamura, City Clerk

APPROVED AS TO FORM:

Quinn M. Barrow, City Attorney