

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
REGARDING THE PURCHASE OF CERTAIN PROPERTY RIGHTS AND
INTERESTS FROM THE LESSEE/TENANT OF THE REAL PROPERTY
COMMONLY KNOWN AS TIN ROOF BISTRO, 3500 N. SEPULVEDA BOULEVARD,
MANHATTAN BEACH, CALIFORNIA, AND FURTHER IDENTIFIED AS LOS
ANGELES COUNTY TAX ASSESSOR'S PARCEL NUMBER 4138-020-014**

This PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS REGARDING THE PURCHASE OF CERTAIN PROPERTY RIGHTS AND INTERESTS FROM THE LESSEE/TENANT OF THE REAL PROPERTY COMMONLY KNOWN AS 3500 N. SEPULVEDA BOULEVARD, MANHATTAN BEACH, CALIFORNIA, AND FURTHER IDENTIFIED AS LOS ANGELES COUNTY TAX ASSESSOR'S PARCEL NUMBER 4138-020-014 (this "Agreement") is dated and entered into as of _____, 2018 ("Effective Date"), by and between TRB, LLC, a California limited liability company, dba The Tin Roof Bistro ("Seller"), and the CITY OF MANHATTAN BEACH, a municipal corporation ("Buyer"), and constitutes an agreement to compensate Seller for the impacts to its leasehold interest and regarding the parties' joint escrow instructions directed to First American Title Company ("Escrow Holder"). The Buyer and Seller will individually and collectively hereafter be referred to as "Party" or "Parties."

RECITALS

A. Seller leases a portion of the property identified as 3500 N. Sepulveda Boulevard, Manhattan Beach, California, and further identified as Los Angeles County Tax Assessor's Parcel Number 4138-020-014 ("Property"), and Seller occupies the portion of the building located thereon (the "Building"), identified as Suite 100.

B. Concurrently herewith, Buyer and Seller shall enter into that certain Right of Entry and Access Agreement – Due Diligence Activities, substantially in the form attached hereto as Exhibit E (the "Access Agreement"), which shall govern Buyer's access onto the Property and its due diligence investigations in connection therewith.

C. The Buyer's acquisition of certain rights from the Property is for a public purpose and use, being the construction and maintenance of the Sepulveda Bridge Widening Project (the "Project"). The Project is intended to provide a benefit to the residents of the City of Manhattan Beach (the "City"), and the general public, in that the Project will serve the public interest by decreasing traffic congestion on Sepulveda Boulevard. As a part of the Project, the Buyer seeks to acquire certain real and personal property rights from the Seller's leasehold interest in the Property ("Subject Leasehold Interest") that will be affected by the Buyer's acquisition of a (1) Permanent Highway Maintenance Easement (978 square feet), and (2) Temporary Construction Easement (1,744 square feet), collectively referred to hereafter as the "Subject Property Interests." The legal descriptions and maps of the Subject Property Interests are attached as Exhibit A, Exhibit B, Exhibit C and Exhibit D to this Agreement, and are incorporated into the Agreement by this reference.

D. The Project will not result in the displacement of any business or person from the Property. However, the Subject Leasehold Interest and the Building will be impacted by the Project.

E. Buyer is authorized to acquire real property by eminent domain for a public use, including public street purposes and all uses necessary or convenient thereto, pursuant to the authority conferred upon the City by California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Sections 1230.010 *et seq.* (Eminent Domain Law), including, but not limited to, Code of Civil Procedure Section 1240.410. The Seller also acknowledges that the Project is a public use for which the Buyer has the authority to exercise the power of eminent domain.

F. Seller is solely responsible for consulting Seller's tax advisor or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Seller's sale of any and all of Seller's rights in and to the Subject Leasehold Interest to Buyer. Buyer makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

G. Seller desires to be compensated for and Buyer desires to compensate Seller for the impacts to the Subject Leasehold Interest resulting from the Project, on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller agree, and hereby instruct Escrow Holder, as follows:

1. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Subject Leasehold Interest upon the terms and conditions set forth in this Agreement.

2. **Total Compensation.** The "Total Compensation" from Buyer to Seller represents the fair market value of the impacts to the Subject Leasehold Interest as a result of the Project, and is described as follows:

a. The sum of Fifty-Five Thousand, Five Hundred Fifteen Dollars (\$55,515.00) (the "Purchase Price"); and

b. The incorporation by Buyer of the following into the Project's contractor requirements (collectively, the "Buyer Work");

i. Within thirty (30) days of the execution of the Construction Contract (as hereinafter defined), but in no event prior to Closing, Buyer's contractor shall remove, demolish and haul away existing cabinets and lockers, which existing cabinets and lockers are identified as area "A" on the "Pre- and During-Construction Site Plan" attached hereto as Exhibit F. Buyer shall provide Seller with forty-five (45) days' notice (the "Relocation Notice") to relocate and remove Seller's items to the Temporary Storage Area (as hereinafter

defined) so that Buyer's contractor can begin the demolition of the existing cabinets and lockers in accordance with this Section 2(b)(i).

ii. Following the execution of the Construction Contract, but in no event prior to Closing, Buyer's contractor shall install a protected walkway in the temporary construction easement area, identified as area "B" on the Pre- and During-Construction Site Plan. The Buyer Work will generally encompass (1) installation of a protected walkway after cabinets and lockers have been removed; (2) clearing and grubbing of landscaping, irrigation systems, and other materials; (3) demolition and removal of the planters; (4) demolition and removal of the existing retaining wall; (5) demolition and removal of the concrete slab/patio; (6) forming and construction of the new retaining wall and associated foundations; and (7) reconstructing the patio/concrete slab.

c. The Purchase Price set forth above includes compensation to the Seller for Seller's performance of the following work (collectively, the "Seller Work"):

i. Furnish and install one hundred fourteen (114) linear feet of full height cabinets and lockers on the west side of the Building, depicted as area "A" on the "Post-Construction Site Plan" attached hereto as Exhibit G. Upon completion of the Buyer Work in this area, Buyer shall provide Seller with fifteen (15) days written notice to commence the Seller Work identified this Section 2(c)(i), which Seller Work shall be completed within one hundred twenty (120) days of Seller's receipt of said written notice.

ii. Subject to Section 3, furnish a temporary storage container to be located on the northeast corner of the Property (the "Temporary Storage Area") for a period of eighteen (18) months, in the area identified as area "B" on the Post-Construction Site Plan. Prior to the initiation of the Buyer Work set forth in Section 2(b)(i), Buyer shall provide Seller with fifteen (15) days written notice to commence the Seller Work identified in this Section 2(c)(ii), which Seller Work shall be completed within forty-five (45) days of the expiration of the fifteen days written notice. The calendar day following the date upon which Seller completes the Seller Work identified in this Section 2(c)(ii) shall be the commencement date of the Original Term (as hereinafter defined).

iii. Upon receipt of the Relocation Notice from Buyer in accordance with Section 2(b)(i), Seller shall relocate and remove its items from the existing cabinets and lockers to the Temporary Storage Area.

d. For purposes of this Agreement, "Construction Contract" means the contract for the street widening and improvements and bridge widening/seismic retrofitting along State Route (SR) - 1 between 33rd Street and Rosecrans Avenue.

3. **Temporary Storage Area Extension Option**. The Purchase Price includes compensation paid to Seller to furnish the Temporary Storage Area for a period of eighteen (18) months (the "Original Term"). Seller agrees that Buyer shall have the option to extend the Original Term (the "Extension Option") on a month-to-month basis, for up to an additional twelve (12) months ("Extension Period"). Buyer shall pay to Seller the amount of One Thousand Three Hundred Five Dollars (\$1,305) per each month of the Extension Period. Buyer shall

provide Seller with written notice of its election to exercise the Extension Option, specifying the length of the desired Extension Period, which in no event shall exceed twelve (12) months after the expiration of the Original Term, at least seven (7) days prior to the expiration of the Original Term. Payment in full for the Extension Period shall be made prior to the commencement of the Extension Period. The terms and conditions of this Section 3 shall survive the Closing.

4. **Escrow.**

a. **Opening of Escrow.** Buyer and Seller shall promptly deliver a fully executed copy of this Agreement to Escrow Holder, and the date of Escrow Holder's receipt thereof is referred to as the "Opening of Escrow". Seller and Buyer shall execute and deliver to Escrow Holder any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and close the transactions contemplated hereby, provided such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement. Such supplementary instructions, together with the escrow instructions set forth in this Agreement, as they may be amended from time to time by the parties, shall collectively be referred to as the "Escrow Instructions." The Escrow Instructions may be amended and supplemented by such standard terms and provisions as the Escrow Holder may request the parties hereto to execute; provided, however, that the parties hereto and Escrow Holder acknowledge and agree that in the event of a conflict between any provision of such standard terms and provisions supplied by the Escrow Holder and the Escrow Instructions, the Escrow Instructions shall prevail.

b. **Close of Escrow/Closing.** For purposes of this Agreement, the "Close of Escrow" or the "Closing" shall mean the date on which the Purchase Price has been paid in full to the Seller, but in no event shall the Closing occur later than sixty (60) days after the Opening of Escrow. Buyer's and Seller's failure to perform their respective obligations required to consummate the Closing hereunder, including, without limitation, the timely delivery by Buyer of the balance of the Purchase Price, shall constitute a material and non-curable default under this Agreement.

5. **Deposit of Funds in Escrow.** On or before one (1) business day prior to the Closing, Buyer covenants and agrees to deposit with Escrow Holder the Purchase Price plus Buyer's share of the expenses described in this Agreement by means of a confirmed wire transfer of immediately available funds through the Federal Reserve System or cashier's check.

6. **Deliveries to Escrow Holder.**

a. **Seller's Deliveries.** Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to the Closing Date (or other date specified) the following instruments and documents, the delivery of each of which shall be a condition to the Close of Escrow:

i. **Executed Agreement.** One (1) original of Seller's executed counterpart to this Agreement;

ii. **Access Agreement.** One (1) original of Seller's executed counterpart to the Access Agreement;

iii. Non-Foreign Certifications. One (1) original Non-Foreign Certification duly executed by Seller, substantially in the form of Exhibit H attached hereto; and

iv. Proof of Authority. Seller shall deliver to Escrow Holder such proof of Seller's authority and authorization to enter into this transaction as Escrow Holder may reasonably require.

b. Buyer's Deliveries. Buyer hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to the Closing Date the following funds, instruments and documents, the delivery of each of which shall be a condition to the Close of Escrow:

i. Purchase Price. The Purchase Price, and such additional funds, if any, necessary to comply with Buyer's obligations hereunder regarding credits, costs and expenses;

ii. Executed Agreement. One (1) original of Buyer's executed counterpart to this Agreement;

iii. Access Agreement. One (1) original of Buyer's executed counterpart to the Access Agreement; and

iv. Proof of Authority. Buyer shall deliver to Escrow Holder such proof of Buyer's authority and authorization to enter into this transaction as Escrow Holder may reasonably require.

7. Authorization to Disburse Funds. Escrow Holder is hereby authorized to disburse the Purchase Price, any other funds, and documents called for hereunder upon Seller's and Escrow Holder's receipt of the Relocation Notice; provided each of the following conditions has then been fulfilled:

a. Buyer shall have deposited with Escrow Holder the Purchase Price, escrow charges, and transfer tax, if any;

b. Escrow Holder shall have received Buyer's notice of approval or satisfaction of, or waiver of contingencies to, Buyer's obligations hereunder, as provided for below in Section 13;

c. Escrow Holder shall have received Seller's approval or satisfaction of, or waiver of contingencies to, Seller's obligations hereunder, as provided for below in Section 13;

d. Escrow Holder shall have received all of Seller's Deliveries and Buyer's Deliveries set forth in Section 6.

8. Escrow Charges and Prorations. Buyer will pay for the cost of any title or leasehold interest policy (the "Policy"), escrow costs, and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone, etc. If the Escrow fails to close

through no fault of either party or due to Buyer's election to terminate this Agreement, Buyer shall pay all escrow cancellation charges.

9. **Right of Entry and Access Agreement-Due Diligence Activities.** Seller shall grant to Buyer those certain rights of entry and access (collectively, the "Due Diligence Right of Entry") contained in the Access Agreement. During the Due Diligence Period (as defined the Access Agreement), Buyer may inspect the area of the Subject Leasehold Interest as necessary for the purpose of making inspections and other examinations of the Subject Leasehold Interest, including, but not limited to, the right to perform soil and geological tests of the Subject Leasehold Interest and an environmental site assessment thereof; provided, however, that notwithstanding anything to the contrary contained in this Agreement or in the Access Agreement, Buyer shall at no time have any right to access the interior of the Building. Buyer will provide forty-eight (48) hours telephonic notice to Seller before going on the area of the Subject Leasehold Interest. Buyer's physical inspection of the Subject Leasehold Interest shall be conducted during normal business hours. No invasive testing or boring shall be done by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld. Seller warrants that except for Seller and its tenants, no other person or entity has the right to occupy the Subject Leasehold Interest, or any portion thereof, and that the Due Diligence Right of Entry does not require the consent of any party not a signatory hereto other than the fee owner of the Property. Buyer hereby expressly agrees to indemnify and hold harmless Seller, its officers and agents from and against any and all claims, actions, costs and damages caused by the actions of Buyer, its engineers and/or agents at or on the Property or the Subject Leasehold Interest in the course of the inspections provided for in this Section 9, excluding, however, the mere discovery of preexisting conditions, and Buyer shall, at its sole cost and expense, promptly repair any damage to the Property caused by any of Buyer's inspections. Buyer shall provide Seller with a certificate of insurance naming Seller as additional insured covering any liability that shall arise by virtue of Buyer's inspections.

10. **Warranties and Representations of Seller.** Seller, where applicable, hereby represents and warrants to Buyer the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct in all material respects as of the Effective Date of this Agreement. If Seller acquires additional knowledge regarding the matters that are the subject of the warranties or representations contained in this Section 10 that would cause any of such warranties or representations to be incorrect in any material respect prior to the Close of Escrow, Seller shall give prompt written notice thereof to Buyer. Within ten (10) days following receipt of such notice, Buyer may elect to cancel this Agreement and receive a refund of the funds deposited in escrow, except for any escrow cancellation charges. As of the Close of Escrow, the warranties and representations contained in this Section 10 shall be true and correct in all material respects, subject to any matters disclosed in writing by Seller as provided in this Section and will survive the Close of Escrow:

- a. Seller is a tenant of the Property and owns the Subject Leasehold Interest.
- b. To Seller's actual knowledge, (i) Seller has disposed of its hazardous waste in accordance with all applicable statutes, ordinances, and regulations; and (ii) Seller has received no written notice of any pending or threatened action or proceeding arising out of the

condition of the Subject Leasehold Interest or alleged violation of environmental, health or safety statutes, ordinance or regulations on the Subject Leasehold Interest.

c. To Seller's actual knowledge, Seller has not received any written notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Subject Leasehold Interest are or have been in violation of any Environmental Laws as described below in Section 15, or informing Seller that the Subject Leasehold Interest is subject to investigation or inquiry regarding Hazardous Materials (as defined in Section 15 below) on the Subject Leasehold Interest or the potential violation of any Environmental Laws.

d. Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the performance of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein result in the breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Seller is a party or affecting the Subject Leasehold Interest.

e. To Seller's actual knowledge, there is no pending, threatened or potential litigation, action or proceeding against Seller, or any other party before any court or administrative tribunal that involves the Subject Leasehold Interest, or any portion thereof.

f. Seller has the full right and power to execute, deliver and perform its obligations under this Agreement, and when executed and delivered, Seller and all parties having an interest in the Subject Leasehold Interest, shall be lawfully bound by the terms of the Agreement. As a tenant of the Property, Seller has certain exclusive possessory rights concerning the Subject Leasehold Interest that may not appear on the title commitment or visible by physical inspection. Seller will not further encumber the Subject Leasehold Interest or allow the Subject Leasehold Interest to be further encumbered prior to the Close of Escrow.

g. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

h. To the fullest extent permitted by law, Seller will indemnify, defend and hold harmless Buyer, and its elected and appointed councilmembers, officials, officers, boards, commissions, consultants, agents, employees, and attorneys from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees, expert witness fees, disbursements and court costs) of every kind and nature whatsoever (collectively, "Claims") that may arise out of or result from the failure of the warranties or representations of Seller contained in this Section 10 to be true and correct in all material respects.

The indemnification provisions of this Section 10 shall survive the Close of Escrow for the longest period permitted by law.

11. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and shall survive the Close of Escrow:

a. **Power.** Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated by this Agreement.

b. **Requisite Action.** All requisite action has been taken by Buyer in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated by this Agreement. Consent of the City Council is required for Buyer to consummate the transaction contemplated by this Agreement.

c. **Individual Authority.** The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer and the members of Buyer, if any, have the legal power, right, and actual authority to bind Buyer to the terms and conditions hereof and thereof, subject to approval by the City Council.

d. **No Conflict.** Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor the occurrence of the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the breach of any terms, conditions or provisions of, or constitute a default under, any contract, instrument, partnership agreement, trust or other agreement or instrument to which Buyer is a party.

12. **Total Compensation: Buyer's Tender and Performance.**

a. Buyer's tender of the Purchase Price to Seller and Buyer's performance of the covenants described in Sections 2(b)(i) and 2(b)(ii) constitute an all-inclusive settlement and constitute the full and complete consideration, including specified monetary payments, of just compensation for the Buyer's acquisition of the Subject Leasehold Interest, specifically including any and all impacts to the Subject Leasehold Interest as a result of the Project. Buyer's tender of the Purchase Price to Seller and Buyer's performance of the covenants described in Sections 2(b)(i) and 2(b)(ii) also constitutes full and complete consideration, except to the extent resulting from Buyer's failure to perform the Buyer Work or Buyer's negligence or willful misconduct in the performance of the Buyer Work or in the construction and maintenance of the Project, for which Seller reserves all of its rights at law or in equity, for all claims arising in connection with or out of Buyer's acquisition of the Subject Leasehold Interest for the Project and construction of the Project in the manner proposed, including, but not limited to, claims for severance damages, cost-to-cure damages, inverse condemnation, de facto taking, precondemnation damages, improvements pertaining to the realty, attorneys' fees, interest, loss of rents, loss of profits, loss of business goodwill pursuant to Code of Civil Procedure Section 1263.510, temporary severance damages, temporary impacts related to the construction of the Project, and any other damages of every kind and nature suffered by Seller by reason of the Buyer's acquisition of the Subject Leasehold Interest, or the Project for which the Buyer is

acquiring the Subject Leasehold Interest, and all costs and expenses whatever in connection therewith.

b. Relocation Assistance and Benefits. The Buyer's acquisition of the Subject Leasehold Interest and construction of the Project, in the manner proposed, will not result in the displacement of any person or business on the Property. Accordingly, Buyer will have no further obligation to Seller, or any occupant of the Property, under any federal or state relocation laws or regulations, including, without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) ("Uniform Act"), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*) ("California Relocation Law"), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations).

c. This Agreement is a voluntary agreement and Seller, on the Close of Escrow, on behalf of Seller and its successors and assigns, fully releases Buyer, its elected and appointed councilmembers, officials, officers, boards, commissions, consultants, agents, employees, and attorneys, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of Buyer's efforts to acquire the Subject Leasehold Interest or any preliminary steps thereto and from any and all claims, demands, causes of action, obligations, liabilities or claims for further compensation relating to Buyer's purchase of the Subject Leasehold Interest.

d. Seller acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future resulting in the sale of the Subject Leasehold Interest as provided for herein. Nevertheless, Seller hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and except to the extent any such damage, loss, costs or expenses result from Buyer's failure to perform the Buyer Work or from Buyer's negligence or willful misconduct in its performance thereof or in the construction and maintenance of the Project, for which Seller reserves all of its rights and remedies at law or in equity, Seller hereby expressly waives any and all rights that Seller may have under California Civil Code Section 1542, or under any statute or common law or equitable principle of similar effect as these may relate to the releases described in this Section 12(d). California Civil Code Section 1542 provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Seller's Initials:



Buyer's Initials:

e. This Section 12 will survive the Close of Escrow.

13. **Contingencies.**

a. **Buyer's Contingencies.** For the benefit of Buyer, the Close of Escrow and Buyer's obligation to consummate the purchase of the Subject Leasehold Interest shall be contingent upon and subject to the occurrence of all of the following (or Buyer's written waiver thereof, it being agreed that Buyer can waive any or all such contingencies) on or before the Close of Escrow:

i. On the Closing Date, all representations and warranties made by Seller in Section 10 shall be true and correct in all material respects as if made on and as of the Close of Escrow (unless any change thereto was disclosed to Buyer and Buyer nevertheless elects to close).

ii. The delivery by Seller to Escrow Holder of all documents required pursuant to Section 6.

iii. The delivery to the Buyer of Seller's executed counterpart to the Access Agreement.

iv. Buyer's approval prior to the Close of Escrow of any environmental site assessment, soils or geological reports, or other physical inspections of the Subject Leasehold Interest that Buyer might perform prior to the Close of Escrow.

b. **Seller's Contingencies.** For the benefit of Buyer, the Close of Escrow and Seller's obligation to consummate the sale of the Subject Leasehold Interest shall be contingent upon and subject to the occurrence of all of the following (or Seller's written waiver thereof, it being agreed that Seller can waive any or all such contingencies) on or before the Close of Escrow:

i. On the Closing Date, all representations and warranties made by Buyer in Section 11 shall be true and correct in all material respects as if made on and as of the Close of Escrow (unless any change thereto was disclosed to Seller and Seller nevertheless elects to close).

ii. The delivery by Buyer to Escrow Holder of all documents required pursuant to Section 6.

iii. Buyer shall have acquired the Subject Property Interests prior to the Close of Escrow.

14. **Right of Termination.** Notwithstanding anything to the contrary contained herein, and without limiting any other right of termination for the benefit of Buyer contained herein, the Buyer shall have the right, in the exercise of its sole and absolute discretion, and upon written notice to Seller and Escrow Holder, to terminate this Agreement (a) at any time prior to the expiration of the Due Diligence Period for any reason or no reason whatsoever, and (b) at any time prior to the Close of Escrow upon the failure of any of the Buyer's contingencies described in Section 13. Upon such termination, all documents and monies deposited with Escrow Holder, less any escrow cancellation charges, shall be immediately returned to the depositing party.

Upon Buyer's termination of this Agreement, Buyer shall immediately restore the Property to its condition existing prior to Buyer's Entry (as defined in the Access Agreement).

15. **Certain Definitions.**

a. The term "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 *et seq.*; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; any substance defined as a "hazardous substance" in California Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

b. The term "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on, or prior to, the date hereof relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 *et seq.*; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local environmental statutes and ordinances, with implementing regulations and rules in effect on or prior to the date hereof.

16. **Evidence in Court Proceeding.** The Parties agree that the Purchase Price, or any inference of value of the Subject Leasehold Interest based on said Purchase Price, will not be admissible as evidence of the fair market value of the Subject Leasehold Interest in any eminent domain or other proceeding or litigation concerning the Subject Leasehold Interest or any portion of the Property.

17. **Destruction/Condemnation.** In the event that prior to the Close of Escrow, the Subject Leasehold Interest or any portion of the Subject Leasehold Interest is damaged by fire, earthquake, or other casualty, or are subject to a taking by a public entity, then Buyer shall have the right, by giving notice to Seller within fifteen (15) calendar days after receiving written notice of such damage or taking, to either (a) terminate this Agreement, in which case neither Party shall have any further rights or obligations hereunder, except that (i) Buyer shall be responsible for Escrow Holder's escrow cancellation fees and or charges relating to the Policy, and (ii) the Purchase Price and escrow funds deposited into Escrow by Buyer shall be refunded to Buyer less any such escrow cancellation fees or charges relating to the Policy, or (b) accept the Subject Leasehold Interest in its then condition and proceed with the Close of Escrow, and to receive an assignment of all of Seller's rights to any proceeds of insurance or condemnation awards payable by reason of such damage or taking to the extent relating to the Subject Leasehold Interest. If Buyer elects to proceed under the preceding clause (b), there shall be no adjustment in the Purchase Price and Seller shall not compromise, settle, or adjust any claims to such insurance or condemnation proceeds or awards. Seller agrees to give Buyer prompt written notice of any damage to or taking of the Subject Leasehold Interest promptly after Seller receives notice of same.

18. **AS-IS Sale and Purchase.** Buyer has not been induced by and has not relied (and will not rely) upon any written or oral representations, warranties or statements, whether express or implied, made by Seller or any of its agents, employees, or other representatives or by any broker or any other person or entity representing or purporting to represent Seller with respect to the Property or the Subject Leasehold Interest or any other matter affecting or relating to the transactions contemplated hereby, other than those expressly set forth in this Agreement. Buyer acknowledges and agrees that, except as expressly set forth in this Agreement, Seller makes no representations or warranties whatsoever, whether express or implied or arising by operation of law, with respect to the Property or the Subject Leasehold Interest and Seller is not bound by or liable in any manner for any oral or written statements, representations or information pertaining to the Property or the Subject Leasehold Interest furnished by any person or entity unless the same are specifically set forth herein. Without limiting the foregoing, Buyer acknowledges and agrees as follows:

a. **Buyer's Acknowledgement.** As a material inducement to Seller to enter into this Agreement and to convey the Subject Leasehold Interest to Buyer, Buyer hereby acknowledges and agrees that:

i. **AS-IS.** Except as otherwise expressly set forth in this Agreement, and subject to Seller's representation and warranties set forth in this Agreement, Buyer is purchasing the Subject Leasehold Interest in its existing condition, "AS-IS, WHERE-IS, WITH ALL FAULTS," and upon the Closing has made or has waived all inspections and investigations of the Subject Leasehold Interest and its vicinity which Buyer believes are necessary to protect its own interest in, and its contemplated use of, the Subject Leasehold Interest.

Buyer's Initials

ii. No Representations. Other than the express representations and warranties of Seller contained in this Agreement and the documents delivered by Seller at the Closing, neither Seller, nor any person or entity acting by or on behalf of Seller, nor any member, partner, officer, director, employee, agent, affiliate, successor or assign of Seller (or any of them) (collectively, the "Seller Parties") has made any representation, warranty, inducement, promise, agreement, assurance or statement, oral or written, of any kind to Buyer upon which Buyer is relying, or in connection with which Buyer has made or will make any decisions concerning the Subject Leasehold Interest or its vicinity including, without limitation, its use, condition, value, compliance with "Governmental Regulations," existence or absence of Hazardous Materials, or the permissibility, feasibility, or convertibility of all or any portion of the Subject Leasehold Interest for any particular use or purpose, including, without limitation, its present or future prospects for sale, lease, development, occupancy or suitability as security for financing. As used herein, the term "Governmental Regulations" means any laws (including Environmental Laws), ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, Hazardous Materials, occupational health and safety, handicapped access, water, earthquake hazard reduction, and building and fire codes) of any governmental or quasi-governmental body or agency claiming jurisdiction over the Property or the Subject Leasehold Interest.

Buyer's Initials

iii. No Implied Warranties. Excluding any representation or warranty set forth herein, and in any of the documents delivered by Seller at the Closing, Seller hereby specifically disclaims: (a) all warranties implied by law arising out of or with respect to the execution of this Agreement, any aspect or element of the Subject Leasehold Interest, or the performance of Seller's obligations hereunder including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (b) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Subject Leasehold Interest or other items conveyed hereunder, including, without limitation, the water, soil, and geology, the suitability thereof and of the the Subject Leasehold Interest or other items conveyed hereunder for any and all activities and uses which Buyer may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including but not limited to the presence of asbestos or other Hazardous Materials) or compliance with applicable Environmental Laws; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iii) the compliance of the property or other items conveyed hereunder or its operation with any governmental regulations.

Buyer's Initials

iv. Release. As of the Close of Escrow, Buyer and its elected and appointed councilmembers, officials, officers, boards, commissions, consultants, agents, employees, attorneys, affiliates, and successors or assigns (the "Buyer Parties") hereby fully and irrevocably release the Seller Parties from any and all claims that the Buyer Parties may have or thereafter acquire against the Seller Parties for any cost, loss, liability, damage, expense,

demand, action or cause of action ("Claims") arising from or related to any matter of any nature relating to, and condition of, the Subject Leasehold Interest including any latent or patent construction defects, errors or omissions, compliance with law matters, Hazardous Materials and other environmental matters within, under or upon, or in the vicinity of the Property or the Subject Leasehold Interest, any statutory or common law right Buyer may have to receive disclosures from Seller, including, without limitation, any disclosures as to the Subject Leasehold Interest's location within areas designated as subject to flooding, fire, seismic or earthquake risks by any federal, state or local entity, the need to obtain flood insurance, the certification of water heater bracing and/or the advisability of obtaining title insurance, or any other condition or circumstance affecting the Subject Leasehold Interest, its financial viability, use or operation, or any portion thereof. This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist in its favor which, if known by Buyer, would materially affect Buyer's release of the Seller Parties. In connection with the general release set forth in this Section 18(a)(iv), Buyer specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Buyer's Initials

Notwithstanding anything to the contrary set forth in this Section 18(a)(iv), the foregoing release is not intended to and does not cover (x) any claims arising from a breach of Seller's representations or warranties set forth in this Agreement, (y) any other breach by Seller of an express obligation of Seller under this Agreement which by its terms survives the Close of Escrow, and (z) claims that a third party may possess for acts that occurred prior to the Closing.

19. **Notices**. All notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one (1) business day following deposit with an overnight carrier service. A copy of all notices shall be sent to Escrow Holder. The parties will address such notices as provided below or as may be amended by written notice:

To Buyer: City of Manhattan Beach
 1601 Manhattan Beach Boulevard
 Manhattan Beach, California 90266
 Attention: Bruce Moe, City Manager

With a copy to: Richards, Watson & Gershon
 Attention: Quinn M. Barrow, City Attorney
 355 South Grand Avenue, 40th Floor
 Los Angeles, California 90071-3101

To Seller: Tin Roof Bistro
Attention: Mike Simms
3500 N. Sepulveda Boulevard
Manhattan Beach, California 90266

With a copy to: DLA Piper LLP
Attention: Mitchell C. Regensterif, Esq.
550 South Hope Street, Suite 2300
Los Angeles, California 90071

To Escrow Holder: First American Title Company
Attention: _____

20. **Further Documents.** Each Party shall, wherever and as often as it shall be requested by the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents, including further escrow instructions, as may reasonably be necessary in order to complete the sale, conveyance, and transfer herein provided and to do any and all other acts and to execute, acknowledge, and deliver any and all documents as may be requested in order to carry out the intent and purpose of this Agreement.

Among such "Further Documents" that Seller shall provide are pleadings or such other documents as are needed to evidence Seller's non-opposition to any eminent domain action that the Buyer finds it necessary to file in order to address any interests of parties other than Seller, e.g., Property tenants, related to the Buyer's acquisition of the Subject Leasehold Interest. An example of such a document might be a disclaimer of interest in any such condemnation action. Also, Seller shall provide subordination agreements from lenders holding security interests with priority over and to the real property interests being sought for purchase through the Agreement.

21. **Broker's Commissions.** Each of Seller and Buyer represents and warrants to the other Party that no brokers represented such Party in connection with the transaction contemplated by this Agreement. Each Party shall be solely responsible for the payment of any and all broker's commissions or similar compensation due to any broker representing such Party, if any, and such Party shall defend, indemnify and hold the other Party harmless from and against any and all claims for any broker's commissions or similar compensation that may be payable to any broker claiming it represented such Party in connection with this transaction. Each Party shall defend, indemnify, and hold the other Party harmless, from and against, any and all claims for any broker's commissions or similar compensation that may be payable to any other broker, finder or other person or entity based upon such Party's own acts. The provisions of this Section 21 shall survive the Close of Escrow.

22. **Miscellaneous.**

a. *Amendments.* Any amendments to this Agreement will be effective only when duly executed by both Buyer and Seller.

b. *Applicable Law.* This Agreement will be construed and interpreted under, and governed and enforced according to the laws of the State of California.

c. *Entire Agreement.* This Agreement supersedes any prior agreement, oral or written, and together with the exhibits hereto and any agreements delivered pursuant hereto, contains the entire agreement between Buyer and Seller, on the subject matter of this Agreement. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party, will be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof, Seller and Buyer acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no such agreement, statement, representation or promise that is not contained herein will be valid or binding on Seller, or Buyer.

d. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

e. *Time of Essence.* The Parties acknowledge that time is of the essence in this Agreement, notwithstanding anything to the contrary in the Escrow Holder's general Escrow instructions.

f. *Counterparts and Facsimile and Electronic Signatures.* This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes of this Agreement, facsimile and electronic signatures will be deemed to be original signatures.

g. *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

h. *Interpretation and Construction.* Each Party has reviewed this Agreement and each has had the opportunity to have its respective counsel and real estate advisors review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the Sections and subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

i. *Attorneys' Fees.* If either Party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees from the other party.

j. *Severability.* If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

k. *Exhibits.* The exhibits and schedules attached hereto are incorporated in this Agreement by reference herein.


[Signature page follows]

IN WITNESS WHEREOF, this Agreement is effective as of the day and year first written above.

SELLER

TRB, LLC,

a California limited liability company, dba
The Tin Roof Bistro

By: 
Mike Simms
Its: Authorized Representative

Dated: 5/11/18

BUYER

CITY OF MANHATTAN BEACH,
a municipal corporation

By: _____
Bruce Moe,
Its: City Manager

Dated: _____

ATTEST:

By: _____
Name: _____
Title: City Clerk

Approved as to form:

RICHARDS, WATSON & GERSHON


Quinn M. Barrow, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

PERMANENT HIGHWAY MAINTENANCE EASEMENT (978 SQUARE FEET)

EXHIBIT B

MAP

PERMANENT HIGHWAY MAINTENANCE EASEMENT (978 SQUARE FEET)

EXHIBIT C

LEGAL DESCRIPTION

TEMPORARY CONSTRUCTION EASEMENT (1,744 SQUARE FEET)

EXHIBIT D

MAP

TEMPORARY CONSTRUCTION EASEMENT (1,744 SQUARE FEET)

EXHIBIT E

RIGHT OF ENTRY AND ACCESS AGREEMENT – DUE DILIGENCE ACTIVITIES

RIGHT OF ENTRY AND ACCESS AGREEMENT-DUE DILIGENCE ACTIVITIES
[3500 N. Sepulveda Boulevard, Manhattan Beach, California, and further identified as Los Angeles County Tax Assessor's Parcel Number 4138-020-014]

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT – DUE DILIGENCE ACTIVITIES (this “Agreement”) is made and entered into as of _____, 2018 (the “Effective Date”), by and between **TRB, LLC**, a California limited liability company, dba The Tin Roof Bistro (“Grantor”), and the **CITY OF MANHATTAN BEACH**, a municipal corporation (“Grantee”).

RECITALS

A. Grantor is a lessee of a portion of the property identified as 3500 N. Sepulveda Boulevard, Manhattan Beach, California, and further identified as Los Angeles County Tax Assessor's Parcel Number 4138-020-014 (“Property”). The Grantee seeks to compensate Seller for the impacts to Seller's leasehold interest resulting from the Project (“Subject Leasehold Interest”). Refer to Exhibits “A” through “D”, “Legal Description of Subject Leasehold Interest” and “Map of Subject Leasehold Interest” pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions Regarding the Purchase of Certain Property Rights and Interests from The Lessee/Tenant of the Real Property Commonly Known as 3500 N. Sepulveda Boulevard, Manhattan Beach, California, and Further Identified as Los Angeles County Tax Assessor's Parcel Number 4138-020-014, dated on or about the date hereof (the “Purchase Agreement”).

B. Grantor and Grantee have entered into the Purchase Agreement whereby Grantee shall compensate Grantor for the impacts to the Subject Leasehold Interest.

C. Grantee has requested a right of entry upon and access to the Subject Property Interests (as defined in the Purchase Agreement) for the purpose of undertaking tests (including but not limited to testing for asbestos and lead), inspections and other due diligence activities (herein called the “Due Diligence Activities”), as well to conduct the Construction Activities (as hereinafter defined) in connection with the purchase of the Subject Leasehold Interest by Grantee pursuant to the Purchase Agreement.

D. Within thirty (30) days of the execution of the Construction Contract (as defined in the Purchase Agreement), but in no event prior to the Closing (as defined in the Purchase Agreement), Buyer's contractor shall commence the following (collectively, the “Construction Activities”): (1) installation of a protected walkway after cabinets and lockers have been removed; (2) clearing and grubbing of landscaping, irrigation systems, and other materials; (3) demolition and removal of the planters; (4) demolition and removal of the existing retaining wall; (5) demolition and removal of the concrete slab/patio; (6) forming and construction of the new retaining wall and associated foundations; and (7) reconstructing the patio/concrete slab.

E. Grantor has agreed to grant to Grantee, and Grantee has agreed to accept from Grantor, a non-exclusive, revocable license with respect to the Subject Leasehold Interest area to perform the Due Diligence Activities and the Construction Activities in accordance with the terms and provisions of this Agreement.

F. Grantor and Grantee desire to execute and enter into this Agreement for the purpose of setting forth their agreement with respect to the Due Diligence Activities and the Construction Activities and Grantee's entry upon the Subject Leasehold Interest area.

NOW, THEREFORE, for and in consideration of the above Recitals, the consideration set forth in the Purchase Agreement, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby covenant and agree as follows:

1. Incorporation of Recitals. The above Recitals are incorporated herein by this reference.

2. Access by Grantee.

a. Due Diligence Period. Subject to Grantee's compliance with the terms and provisions of this Agreement and the Purchase Agreement (including, without limitation the insurance requirements set forth in Section 4 hereof), during the period commencing upon the mutual execution of both the Purchase Agreement and this Agreement and ending not later than 5:00 p.m. on the business day immediately preceding the Closing (the "Due Diligence Period"), Grantee and Grantee's agents, employees, contractors, representatives and other designees (referred to below collectively as "Grantee's Designees") shall have the right to enter upon the Subject Leasehold Interest area for the purpose of conducting the Due Diligence Activities. Notwithstanding anything to the contrary contained in this Agreement, the Due Diligence Activities may only be conducted during the Due Diligence Period.

b. Subject to Grantee's compliance with the terms and provisions of this Agreement and the Purchase Agreement (including, without limitation the insurance requirements set forth in Section 4 hereof), during the period commencing on the business day immediately following the Closing and ending at 5:00 p.m. on the date that is eighteen (18) months thereafter (the "Construction Period"), Grantee's Designees shall have the right to enter upon the Subject Leasehold Interest area for the purpose of conducting the Construction Activities. Notwithstanding anything to the contrary contained in this Agreement, the Construction Activities may only be conducted during the Construction Period.

c. Grantee shall provide forty-eight (48) hours telephonic notice to Grantor before entering the Subject Leasehold Interest area.

d. Grantee expressly agrees as follows: (i) any activities by or on behalf of Grantee, including, without limitation, the entry by Grantee or Grantee's Designees onto the Subject Leasehold Interest area in connection with the Due Diligence Activities and the Construction Activities shall not damage the Subject Leasehold Interest area in any manner whatsoever or disturb or interfere with the rights or possession of Grantor outside of the Subject Leasehold Interest area, (ii) in the event the Subject Leasehold Interest area is altered or disturbed in any manner in connection with the Due Diligence Activities and the Construction Activities, Grantee shall immediately return the Subject Leasehold Interest area to substantially similar conditions existing prior to the commencement of the Due Diligence Activities and the Construction Activities, (iii) Grantee, to the maximum extent allowed by law, shall indemnify,

defend and hold Grantor harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Grantor as a result of, by reason of, or in connection with the Due Diligence Activities and the Construction Activities or any other entry by Grantee or Grantee's Designees onto the Subject Leasehold Interest area, and (iv) Grantee's contractor(s) shall provide Grantor with a certificate of insurance for the insurance required pursuant to Section 4, naming Grantor as additional insured covering any liability that shall arise by virtue of Grantee's Due Diligence Activities, Construction Activities or other inspections. Pursuant to this Agreement, Grantee and Grantee's Designees shall have the right to undertake environmental testing on the Subject Leasehold Interest area, including, but not limited to testing for asbestos and lead.

e. Notwithstanding anything to the contrary contained in this Agreement or in the Purchase Agreement, Grantee shall at no time have any right to access the interior of the Building (as defined in the Purchase Agreement).

3. Lien Waivers. Upon receipt of a written request from Grantor, Grantee will provide Grantor with lien waivers following completion of the Due Diligence Activities and Construction Activities, in form and substance reasonably satisfactory to Grantor and its counsel (if any), from each and every contractor, subcontractor, supplier, engineer, architect and surveyor who might have lien rights against the Subject Leasehold Interest area for work performed or commenced in connection with Grantee's Due Diligence Activities and Construction Activities. To the extent permitted by applicable law, Grantee hereby indemnifies Grantor from and against any claims or demands for payment, or any liens or lien claims made against Grantor or the Subject Leasehold Interest area as a result of Grantee's Due Diligence Activities and Construction Activities.

4. Insurance. Prior to entry onto the Subject Leasehold Interest area, Grantee shall, and shall cause all of Grantee's Designees performing the Due Diligence Activities and Construction Activities to, procure or maintain a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Grantor covering each of the Due Diligence Activities and the Construction Activities with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00, and upon request, to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured there under with respect to the Due Diligence Activities and Construction Activities. Such insurance shall be maintained in force throughout the term of this Agreement and the Purchase Agreement, whichever expires later.

5. Successors. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

6. Specific Rights And Privileges. By this document, Grantor does not hereby convey to Grantee any right, title or interest in or to the Subject Leasehold Interest area, but merely grants the specific rights and privileges set forth herein.

7. Notice to Tenant. Grantor declares that, other than Grantor, no tenant or third party has the right to occupy the Subject Leasehold Interest area. To the fullest extent permitted by law, Grantor will indemnify, defend and hold harmless Grantee, and its elected and appointed councilmembers, officials, officers, boards, commissions, consultants, agents, employees, and attorneys from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees, expert witness fees, disbursements and court costs) of every kind and nature whatsoever brought by any tenant or occupant of any portion of the Subject Leasehold Interest area, other than Grantor, that may arise out of, result from, or in any matter be related (directly or indirectly) to this Agreement.

8. Notices. Unless otherwise stated in this Agreement herein, all notices and demands will be given in writing by certified or registered mail, postage prepaid, and return receipt requested, or by overnight carrier. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with an overnight carrier service. A copy of all notices will be sent to Escrow Holder. The parties will address such notices as provided below or as may be amended by written notice:

GRANTEE:	City of Manhattan Beach 1601 Manhattan Beach Blvd, Manhattan Beach, California 90266 Attention: Bruce Moe, City Manager
COPY TO:	Richards, Watson & Gershon Attention: Quinn M. Barrow, City Attorney 355 South Grand Avenue, 40th Floor Los Angeles, California 90071-3101
GRANTOR:	Tin Roof Bistro 3500 N. Sepulveda Boulevard Manhattan Beach, California 90266
COPY TO:	DLA Piper LLP Attn: Mitchell C. Regenstreif, Esq. 550 South Hope Street, Suite 2300 Los Angeles, California 90071

9. Miscellaneous.

a. Authority to Bind Parties and Execute Agreement. Grantor and Grantee represent and warrant to one another that this Agreement constitutes a binding obligation on each of them and that the person executing this Agreement is authorized to execute the Agreement on behalf of the respective party and to bind it.

b. Governing Law. This Agreement is deemed to have been prepared by each of the parties hereto, and any uncertainty or ambiguity herein shall not be interpreted

against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

c. Amendment or Modification. This Agreement may be modified or amended only by a writing executed by all parties to this Agreement.

d. Partial Invalidity/Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance is, to any extent, deemed to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.

e. Successors-in-Interest and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and assigns of the parties hereto, and each of them.

f. Legal Representation. The parties herein, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each had the opportunity to be represented by independent counsel of their own choosing and the parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the parties not so represented; and, prior to executing this Agreement, each of the parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

g. Interpretation and Construction. Each party herein has reviewed this Agreement and each has had the opportunity to have its respective counsel and real estate advisors review and revise this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association wherever the context so requires. The recitals and captions of the sections and subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

h. Counterparts, Facsimile & Electronic Signatures. This Agreement may be executed in whole or in counterparts which together shall constitute the entire Agreement. Facsimile or electronic signatures/counterparts to this Agreement shall be effective as if the original signed counterpart were delivered.

i. Attorneys' Fees and Costs. Each of the parties herein shall bear its own attorneys' fees and costs, including, but not limited to expert fees, incurred in connection with negotiating this Agreement. If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees and costs from the other party.

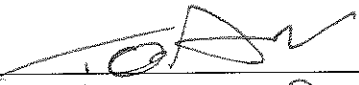
j. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and sealed, on the day and year first written above.

GRANTOR

TRB, LLC,
a California limited liability company,
dba The Tin Roof Bistro

Dated: 5/11/18

By: 
Name: Thomas M. Simms Jr.
Its: Authorized Representative

GRANTEE

CITY OF MANHATTAN BEACH,
a municipal corporation

Dated: _____

By: _____
Bruce Moe, City Manager

EXHIBIT F

PRE- AND DURING CONSTRUCTION SITE PLAN

EXHIBIT G
POST-CONSTRUCTION SITE PLAN

EXHIBIT H

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended ("**Code**") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee, _____, a _____ ("**Transferee**"), that withholding of tax under Section 1445 of the Code will not be required upon the transfer of a U.S. real property interest to the Transferee by _____, a _____ ("**Transferor**"), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Code;
3. The Transferor's U.S. employer identification number is _____; and
4. The _____ Transferor's _____ office _____ address _____ is _____;

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Dated: _____, 20__

"TRANSFEROR"

_____,
a _____

By: _____
Name: _____
Title: _____