

DRAFT SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement”) is entered into between COMMONWEALTH AND HARBOR LLC (“Commonwealth”) and the CITY OF FULLERTON (“City”). Commonwealth and City are collectively referred to as the “Parties” or individually as a “Party” with reference to the following:

WHEREAS, Commonwealth is a limited liability company registered in the State of _____ and is the owner of the real property located at 100 N. Harbor Blvd., Fullerton, California 92832 (“the Premises”). Intimate Inns of California, Inc. DBA Florentine’s Tuscan Club (“Florentine’s”) entered into a “Site Lease Agreement and Encroachment Agreement” (the “Original Agreement”) with the City to allow Florentine’s to use certain portions of the City’s sidewalk area on Commonwealth Avenue adjacent to the Property (the “Encroachment Area”) for its business purposes, in November 2004. On July 18, 2017, the City and the Florentine’s entered into the “First Amendment to Encroachment License Agreement” (the “First Amendment”). The Original Agreement and the First Amendment will collectively be referred to as the “Agreement.” The Encroachment Area is approximately 384 square feet.

WHEREAS, Florentine’s closed in October of 2020. While some of the required rent was suspended for the period of May 2020 to September 2021, some of the rent for the leased area (approximately \$485 per month) has not been paid to the City.

WHEREAS, Commonwealth obtained building permits to substantially remodel the Premises, including the Encroachment Area. A dispute has arisen between the Parties as to Commonwealth’s right to use the Encroachment Area and the timing and costs to remove encroachments in the Encroachment Area and restore it to the public’s use.

WHEREAS, the City desires to have restored the full public right of way adjacent to the Premises, requiring removal of the Encroachment Area and maintains that Commonwealth as the owner of the Premises is obligated to do so. Commonwealth contends that it is not obligated to remove the encroachment or to bear the costs of doing so.

WHEREAS, the Parties desire to resolve the dispute by allowing Commonwealth to use the Encroachment Area after full sign off on all applicable building permits for the Premises and issuance of a Certificate of Occupancy, subject to Commonwealth’s obligation to remove the Encroachment at its own expense as provided herein.

NOW THEREFORE, and in consideration for the promises contained herein, and other good and valuable consideration, receipt of which is acknowledged by the execution of this Agreement, and to avoid litigation, it is agreed by and between the Parties as follows:

1. Commonwealth shall, by August 18, 2022, enter into a contract with an architectural firm/structural engineer/fire consultant or any appropriate project team to prepare the plans for removal of the encroachment and restoration of the public right of way of the entire Encroachment Area. Complete plans for the removal and restoration shall be submitted for review no later than October 18, 2022. City Staff shall review and provide corrections/

comments no later than November 30, 2022. The first review shall include review and approval/corrections as needed to allow Commonwealth to place orders for any specialized materials such as replacement windows. Orders for such specialized materials shall be placed no later than December 6, 2022. Any required resubmittal shall be due no later than December 22, 2022. Staff shall review and provide corrections/comments, if needed, no later than January 27, 2023. Any third submittal if required would add additional time to the review process. Demolition/Construction shall commence no later than March 6 20, 2023 and be completed no later than June 30, 2023.

2. Time to perform any deadline set forth herein may be extended due to unforeseen and uncontrollable delays, upon any reasonable request by Commonwealth to City. Any failure by City to meet the deadlines required of it in Paragraph 1 above shall automatically extend subsequent deadlines for the period of the City's delay.

3. Commonwealth shall bear the entire cost of design, materials, demolition and construction necessary to remove the encroachment and restore the Encroachment Area to its pre-encroachment condition. The City agrees to waive building fees and plan check and inspection fees, unless an unreasonable delay on the part of Commonwealth requires payment of outside plan checkers or inspectors to meet deadlines provided for herein.

4. Mario Marovic, as an individual, will provide a personal guarantee to ensure that the full costs would be met if there is any default in performance by Commonwealth and the City is required to complete the work.

5. Commonwealth will reapply for/reinstate its request for the updated CUP, excluding the Encroachment Area, by August __, 2022, without payment of a new CUP application fee. This Agreement is contingent upon the scheduling of the new CUP application before the Planning Commission on or before September 14, 2022, which will be the same application previously submitted and withdrawn by Commonwealth, with minor modifications made by applicant.

6. The City shall cause an agenda item to be placed on the City Council agenda recommending termination of the Agreement with all appropriate parties, including the Florentine's, to be notified in writing. Nothing in this agreement is intended to affect any rights that Commonwealth may have against the Florentine's. Commonwealth understands and agrees that no further notice or legal action is or shall be required to terminate Commonwealth's right to use the Encroachment Area as expressly contemplated by this Agreement.

7. Each Party hereto shall bear and pay its own attorneys' fees and costs in connection with the dispute giving rise to this settlement agreement and the negotiation and execution of this settlement agreement.

8. The City waives any right to past due rent from Commonwealth for the Encroachment Area. Commonwealth shall pay rent in the amount of Four Hundred Seventy Two and 27/100s Dollars (\$472.27) per month from September 1, 2022, and on the first of each month thereafter, until the Encroachment Area is completely restored to its pre-encroachment condition. Should rent not be received on time, City will provide notice to Commonwealth and an opportunity to cure any default.

9. The Parties wish to settle all differences among themselves arising out of or in any way concerning, connected with or pertaining to the facts, circumstances, events, documents and purported causes of action, which might or could be alleged in any litigation relating to the dispute between Commonwealth and the City.

10. It is understood by the Parties that the facts with respect to the issues settled between the Parties hereto may turn out to be other than, or different from, the facts now believed by the Parties to be true, and each of the Parties, therefore, expressly assumes the risk of the facts turning out to be different than they believe them to be, and each of the Parties agree that the foregoing terms shall in all respects be effective and not subject to termination or rescission because of any such mistaken belief.

13. In making this Agreement, no Party to this Agreement is admitting the sufficiency of any claims, allegations, assertions, contentions or positions of any other party, or the sufficiency of any defenses to any such claims, allegations, assertions, contentions or positions. The Parties hereto desire to resolve the dispute between them in an amicable fashion and have entered into this Agreement in good faith and with the desire to forever settle the dispute between them as set forth herein.

14. The Parties in consideration of the above-described settlement and as an inducement therefore, represent, covenant and agree as follows:

a. that the signatory for each of the Parties is competent to sign on behalf of and is fully authorized by the Party on whose behalf the signatory has executed this instrument;

b. that the consideration herein above recited is contractual and not mere recital;

c. that no inducements other than those stated in this agreement have been made to the Parties on behalf of any of the other Parties and that the Parties have relied solely and only upon their own judgment and the advice given to them by their attorney, whom the Parties have each selected for themselves;

d. that this instrument contains the entire, complete and final agreement between the Parties, and no other agreements, written or oral, express or implied, exist between the Parties concerning the subject matter of this instrument which are not incorporated herein;

e. that this instrument is not intended to be an admission of liability, which is expressly denied, on the part of each of the Parties, but is made solely for the purpose of compromise and settlement;

f. that the compromise and settlement which forms the basis of this agreement has been reached after thorough negotiation and bargaining and represents a final, mutually agreeable compromise;

g. this agreement may be signed in counterparts and shall be considered as if signed in one document.

h. this agreement shall be construed in accordance with, and shall be governed by, the

procedural and substantive law of the State of California.

i. the terms of this Agreement have been drawn by mutual cooperation of the Parties and shall not be construed for or against any party by reason of its participation or lack of participation in drafting this Agreement.

Executed this ____ day of August, 2022, at Fullerton, California.

Dated: _____

COMMONWEALTH AND HARBOR LLC

By: MARIO MAROVIC

Its:

Dated: _____

MARIO MAROVIC

An Individual, as to Personal Guarantee Only

Dated: _____

CITY OF FULLERTON

By: _____

Its: _____

Approved as to form and content:

Dated: _____

JONES & MAYER

Kimberly Hall Barlow
Attorneys for CITY OF FULLERTON