

**RECORDING REQUESTED BY**  
**AND WHEN RECORDED RETURN TO:**

City of Brea  
1 Civic Center Circle  
Brea, CA 92821  
Attention: City Clerk

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[SPACE ABOVE FOR RECORDER'S USE ONLY]

*[This document is exempt from Recording Fees  
pursuant to California Government Code Section 27383]*

**ATTORNMEN T AGREEMENT**

This **Attornment Agreement** (this "**Agreement**"), dated as of April 5, 2016, is by and between the City of Brea, a California municipal corporation (the "**City**") and Nesbitt Partners Brea Venture, Ltd., a California limited partnership ("**Nesbitt**").

Herein, the City and Nesbitt are together referred to as the "**Parties**," with each being a "**Party**."

**Recitals**

A. The Brea Redevelopment Agency (the "**Former Agency**") was a redevelopment agency duly formed pursuant to the Community Redevelopment Law, set forth in Part 1 of Division 24 of the California Health and Safety Code ("**HSC**").

B. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231 (2011), the Former Agency was dissolved as of February 1, 2012, the Successor Agency was constituted as the successor entity to the Former Agency, and an oversight board of the Successor Agency (the "**Oversight Board**") was established.

C. AB X1 26 added to Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 the HSC. Such Parts 1.8 and 1.85, together with any amendments and supplements thereto enacted from time to time, are collectively referred to herein as the "**Dissolution Act**."

D. Pursuant to a Ground Lease dated March 7, 1989 (the "**Original Ground Lease**"), by and between the Former Agency, as tenant and the Brea Foundation, a California non-profit corporation, as landlord (the "**Foundation**"), the Foundation leased certain property (the "**Property**"), to the Former Agency. The Original Ground Lease has been amended by an Amendment #1 to Ground Lease, executed in June, 1989 (the "**Ground Lease Amendment**"). The Original Ground Lease and the Ground Lease Amendment (together, the "**Ground Lease**")

are recorded in the Official Records of the County of Orange (the “**County Official Records**”), as Document No. 89-420506 (recorded on August 8, 1989).

E. The Former Agency subleased the portion of the Property described on Appendix A (the “**Hotel Site**”) to Brea Hotel Joint Venture (“**BHJV**”) pursuant to a Ground Sublease dated in March 1989, and recorded in the County Official Records, as Document No. 89-142734 and subsequently re-recorded in the County Official Records as Document No. 90-077811 (the “**Original Hotel Sublease**”). The Original Hotel Sublease has been amended by a First Amendment to Ground Sublease, dated as of August 20, 1996 and recorded in the County Official Records, as Document No. 19960481163 (the “**First Hotel Sublease Amendment**”), and a Second Amendment to Ground Sublease, dated as of April 12, 2012, and recorded in the County Official Records, as Document No. 2012000286159 (the “**Second Hotel Sublease Amendment**”). The Original Hotel Sublease, as amended by the First Hotel Sublease Amendment and the Second Hotel Sublease Amendment, is referred to herein as the “**Hotel Sublease.**”

F. The Former Agency subleased the remainder of the Property (described on Appendix B) (the “**Retail Site**”) to BHJV pursuant to a Ground Sublease dated in March 1989, and recorded in the County Official Records, as Document No. 89-142735 and subsequently re-recorded in the County Official Records as Document No. 90-077812 (the “**Original Retail Sublease**”). The Original Retail Lease has been amended by a First Amendment to Ground Sublease, dated as of August 20, 1996 and recorded in the County Official Records, as Document No. 19960481164 (the “**First Retail Sublease Amendment**”), and a Second Amendment to Ground Sublease, dated as of April 12, 2012, and recorded in the County Official Records, as Document No. 2012000286633 (the “**Second Retail Sublease Amendment**”). The Original Retail Sublease, as amended by the First Retail Sublease Amendment and the Second Retail Sublease Amendment, is referred to herein as the “**Retail Sublease.**”

G. The Hotel Sublease and the Retail Sublease are collectively referred to herein as the “**Subleases,**” and individually referred to herein as a “**Sublease.**”

H. In 1995, BHJV assigned its interest in the Subleases to Nesbitt Partners Brea Venture, Ltd. (“**Nesbitt**”) pursuant to an Assignment and Assumption of Ground Subleases, dated November 18, 1995 and recorded in the County Official Records as Document No. 19950523067.

I. In 1996, the Foundation conveyed all of the Property (*i.e.*, both the Hotel Site and the Retail Site) to the City pursuant to a Quitclaim Deed, executed on August 20, 1996, and recorded on September 20, 1996 in the County Official Records, as Document No. 19960481161. The Foundation concurrently assigned all of its rights and interest in the Ground Lease to the City pursuant to an Assignment of Ground Lease executed on August 20, 1996 and recorded on September 20, 1996 in the County Official Records, as Document No. 19960481162.

J. Under the Ground Lease, the Former Agency (as succeeded by the Successor Agency), as tenant, is obligated to make rental payments to the City equal to the payments received by the Successor Agency from Nesbitt under the Subleases.

K. In furtherance of the winding down of the Former Agency's affairs, the City and the Successor Agency are entering into an Agreement Regarding Termination of Ground Lease and Assignment of Easements to terminate the Ground Lease, dated as of April 5, 2016 (the "**Ground Lease Termination Agreement**"), which is to be recorded in the County Official Records.

L. The City and Nesbitt are entering into the this Agreement, to provide that upon the termination of the Ground Lease, each of the City and Nesbitt will be bound by the terms and conditions set forth in the Sublease (including any incorporated terms of the Ground Lease as a direct lease between the City as landlord and Nesbitt as tenant (including but not limited to Nesbitt's payment of rent thereunder).

**NOW, THEREFORE, THE PARTIES, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS HEREIN, CONTAINED DO AGREE AS FOLLOWS:**

**Section 1. Representations and Covenants by Nesbitt.**

(a) Nesbitt hereby represents and warrants that it is currently not in default under the Subleases. No event has occurred and is presently continuing, and no condition currently exists, which with the passage of time will likely result in a default by Nesbitt under the Subleases.

(b) Nesbitt and its affiliates are obligated under loans (the "**Loans**") which are secured by, among other things, Nesbitt's subleasehold interests in the Property. Nesbitt hereby represents and warrants that neither Nesbitt nor any of its affiliates are currently not in default with respect to any of such Loans. No event has occurred and is presently continuing, and no condition currently exists, which with the passage of time will likely result in a default by Nesbitt or its affiliate with respect to such Loans.

(c) Nesbitt has obtained the consent of each Leasehold Mortgagee, as required by Section 9.7 of each Sublease, in connection with Nesbitt's execution and delivery of this Agreement. Nesbitt represents that, as of the date of this Agreement, the sole Lease Mortgagees are Starwood Property Mortgage Sub-2, L.L.C. and SPT CA Fundings 2, LLC.

(d) This Agreement and the Subleases, as modified by this Attornment Agreement, are each valid and binding contracts of Nesbitt, enforceable and effective in accordance with their terms.

(e) Nesbitt has entered into subleases with space tenants (the "**Tenants**") with respect to the Property and improvements thereon. Nesbitt hereby represents and warrants that: (i) set forth in Appendix C is a full and complete list of the Tenants related to each Property, and (ii) the Tenants' uses of their respective leased area do not conflict with the provisions of Subleases, and to the best of Nesbitt's knowledge, laws and regulations applicable to the use of the respective leased area.

(f) For Nesbitt's benefit, the City and the Successor Agency will execute and deliver an Estoppel Certificate and Agreement of Lessor (the "**Estoppel Certificate**"), in the

form set forth in Exhibit D to the Ground Lease Termination Agreement. Nesbitt represents and warrants that the final repayment of the Loans is currently scheduled to take place on April 9, 2019, subject to a right of one-year extension to April 9, 2020 (the “Scheduled Final Loan Payment Date”). Nesbitt covenants to promptly notify City in writing if either: (i) the repayment term of either Loan is extended past the Scheduled Final Loan Repayment Date, or (ii) the Loans are repaid in full or otherwise extinguished prior to the Scheduled Final Loan Payment Date.

(g) Nesbitt has not entered into and will not enter into any amendment or modification of the Loan Agreements in a manner that adversely affect Nesbitt’s ability to comply with the Subleases or the City’s rights thereunder without the City’s prior written consent.

(h) Nesbitt has procured and maintained all such insurance as required to be procured and maintained by it under Article 7 of each Sublease. Until the Loans have been paid in full, all policies of fire and extended coverage insurance with respect to the Property are, and will be, payable to an institutional trustee appointed by Lender (as defined by the Estoppel Certificate) and City, having the right to hold and disburse proceeds thereof in accordance with Paragraph 7.2 of each Sublease.

(i) For any consent of the Lender (as defined in the Estoppel Certificate) required in connection with Nesbitt’s or the City’s execution of any amendment or modification to a Sublease or the termination, cancellation or surrender of a Sublease, Nesbitt shall be responsible for obtaining the Lender’s consent before the Parties’ execution of such amendment or modification, or such termination, cancellation or surrender, of the Sublease.

(j) Nesbitt shall indemnify and hold the City and its officials, officers, employees and agents free and harmless from any and all claims, demands, expenses (including attorney’s expenses), liability, loss, damage or injury of any kind, that in any manner arise out of any breach of Nesbitt covenants or agreements set forth in this Section 2 or any false or misleading information contained in Nesbitt’s representations as stated herein.

**Section 2. Attornment.**

(a) Upon the termination of the Ground Lease, Nesbitt shall attorn to the City and recognize the City as the landlord under each of the Subleases. Nesbitt continues to be bound by the terms and conditions set forth in each Sublease (including any terms of the Ground Lease incorporated therein) as direct contracts and leases between the City as landlord and Nesbitt as tenant.

(b) Upon the termination of the Ground Lease, City shall recognize Nesbitt as the City’s tenant under the terms and conditions set forth in each Sublease.

**Section 3. Miscellaneous Provisions.**

(a) All notices and other communications provided under this Agreement may be in hard copy, electronic or telephonic form (including e-mail, fax or similar means) and shall be given to the party to whom sent at the address set forth below or other address, e-mail address,

fax number as such party may hereafter specify. Each such notice or communication shall be effective (i) if given by fax, e-mail or other electronic means, when such communication is transmitted to the specified address and an answerback or confirmation is received, (ii) if given by certified or registered mail, return receipt requested, on the date of receipt appearing on the return postal receipt for notices given by certified or registered mail, (iii) if given by hand delivery, when delivered at the specified address. The address for receipt of notices may be changed upon written notice delivered in a manner consistent with this section.

If to City:                      City of Brea  
   1 Civic Center Circle  
   Brea, CA 92821  
   Attn: City Manager  
   Tel: (714) 990-7711  
   Fax: (714) 990-2258

If to Nesbitt:                    Nesbitt Partner Brea Venture, Ltd  
   c/o Windsor Capital Group, Inc.  
   3000 Ocean Park Boulevard, Suite 3010  
   Santa Monica, CA 90405  
   Attn: Patrick M. Nesbitt, Jr., Managing Director  
   Tel: (310) 283-8010  
   Fax: (310) 566-1199

(b) This Agreement shall be governed by interpreted under, construed and enforced in accordance with, the laws of the State of California.

(c) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

(d) This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

**CITY OF BREA**

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**NESBITT PARTNERS BREA VENTURE, LTD.,**  
a California limited partnership

By: Nesbitt Alpha GP, LLC,  
a Delaware limited liability company,  
its general partner

By:  \_\_\_\_\_

Print Name: Patrick M. Nesbitt

Title: President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California    )  
County of Orange    )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

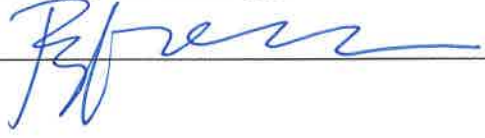
State of California )  
County of Los Angeles

On March 11, 2016, before me, Fatima Grape Forcier,  
(insert name and title of the officer)

Notary Public, personally appeared Patrick M. Nesbitt, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)





## **APPENDIX A**

### **Legal Description of Hotel Site**

THE LAND IN THE CITY OF BREA, COUNTY OF ORANGE, STATE OF CALIFORNIA,  
DESCRIBED AS FOLLOWS:

Parcel 1 in the City of Brea, as shown on a map filed in book 259, pages 35 and 36 of Parcel Maps, in the office of the County Recorder of the County of Orange County.

EXCEPT therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth shown below but with no right of surface entry, as provided in deed, depth 500 feet, recorded June 15, 1973 in book 10751 page 299, Official Records.

## **APPENDIX B**

### **Legal Description of Retail Site**

THE LAND IN THE CITY OF BREA, COUNTY OF ORANGE, STATE OF CALIFORNIA,  
DESCRIBED AS FOLLOWS:

Parcel 2 in the City of Brea, as shown on a map filed in book 259, pages 35 and 36 of Parcel Maps, in the office of the County Recorder of the County of Orange County.

EXCEPT therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth shown below but with no right of surface entry, as provided in deed, depth 500 feet, recorded June 15, 1973 in book 10751 page 299, Official Records.

**APPENDIX C**

**List of Subtenants and Related Sublease Dates**

Hotel Site: None

Retail Site:

<b>Suite</b>	<b>Tenant</b>	<b>Sublease Commencement Date</b>
260	ACSI	04/13/09
280	Pura Vida Farms	11/20/09
300	Diamond Billiards - Assumption	01/01/15
350	California Surgical Institute	11/15/07
380	XL Learning Center	06/15/02