

Friday, April 17 – 10:00-11:15 a.m.
Concurrent Session: Real Estate

PRESENTATION BY

**DUANE E. BENNETT
PORT ATTORNEY
SAN DIEGO UNIFIED PORT DISTRICT**

**AMERICAN ASSOCIATION OF PORT
AUTHORITIES
PORT ADMINISTRATION AND LEGAL ISSUES
SEMINAR**

SAMPLE RENTAL PROVISIONS

**BALTIMORE, MARYLAND
APRIL 15 – 17, 2009**

ASSIGNMENT - SUBLEASE

Lessee shall not, without the prior written consent of Lessor:

- (a) Assign or transfer the whole or any part of this Lease or any interest therein;
- (b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises and the brand of the hotel operating at the Leased Premises) the whole or any part of the Leased Premises;
- (c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;
- (d) Notwithstanding the provisions contained in Paragraph 8 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or
- (e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

Notwithstanding the foregoing, nothing herein shall be construed to prevent the occupancy of said Leased Premises by any employee or business invitee of Lessee. Further, Lessee shall not, without the prior written consent of Lessor:

- (a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, voluntary or involuntary, of any interest of a member's managing interests, limiting interests or membership interests;
- (b) Contract for the management or operation of the whole or any part of the Leased Premises; or
- (c) Permit the transfer of the Lease or possession of the Leased Premises by any changes in the respective interests of the parties comprising Lessee; provided, however, Lessor will grant consent for changes in the percentage ownership of Lessee among Lessee's members consented to by Lessor provided (1) the controlling person(s) or members of each of Lessee's members, which have been consented to by Lessor prior to the date of such requested consent, collectively retain a controlling interest in Lessee and (2) any person(s) having an interest in any member(s) of Lessee are (i) reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements - "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve consideration of personal taste or preference); and (ii) possess sufficient business experience and financial means according to the then-current standards for business experience and financial means that Lessor generally requires at the time of the request.

It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, members of the limited liability company, are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to maintain active control and supervision of the operations conducted on the Leased Premises.

In the event Lessee requests Lessor's consent to any Lease assignment, Lease transfer, Lease amendment, and/or sublease, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated. Consent shall be granted or denied within ninety(90) days of Lessor receiving the request for such transaction and all documents needed by Lessor to process such transaction.

In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment or transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor.

Notwithstanding, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 10 herein, **or** (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein.

In the event Lessor consents to any sublease, said consent shall be conditioned upon the following: (i) if, upon the effective date of any said consented-to sublease, the rent being paid for the sublease area is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent for the sublease area as long as said sublease is in effect; (ii) if deemed necessary by Lessor, a Lease amendment shall be executed which shall include new or revised lease provisions; and (iii) Lessee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Furthermore, as long as said sublease is in effect, rent for the sublease area shall be subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein.

In the event of a consented-to assignment or sublease, if the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the arbitration procedure described in Paragraph 3.2 herein, except that the award shall be effective and retroactive to the effective date of the assignment or sublease. Because of this provision, underpayment of rent, if any, shall be paid to Lessor within ten (10) days of the date that the market rent is determined by said arbitration procedure.

In determining whether to grant its consent to an assignment, transfer, or sublease, Lessor shall, at a minimum, consider whether the proposed assignee, transferee, or sublessee and its principals are (i) reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements - "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve consideration of personal taste or preference); and (ii) possess sufficient business experience and financial means to perform Lessee's obligations under this Lease, according to the then-current standards for business experience and financial means that Lessor generally requires of new and renewed lessees at the time of the request.

GENERAL INDEMNITY PROVISION

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this Paragraph that Lessee indemnify and hold harmless Lessor for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee or to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

ENVIRONMENTAL CONDITIONS PROVISIONS

- (a) Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.

- (b) Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of Material Safety Data Sheets ("MSDS") or other information requested by Lessor. Limited quantities of equipment, materials and supplies customarily used in connection with the construction of improvements and standard office, food service and janitorial supplies customarily used in places of business which contain chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.
- (c) Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.
- (d) Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises,

including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 42(d) regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

- (e) Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, or invitees, or generated by same during the term of this Lease, results in contamination of the Leased Premises, adjacent properties or the San Diego Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 42(e). To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 42(f). The obligations set forth in this Paragraph 42(e) shall survive any expiration or other termination of this Lease.
- (i) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions thereof, then: (A) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (B) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.
- (ii) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 42(e), whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of

Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

STORAGE TANKS

- (a) Underground Storage Tanks. No underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTs to HMMD and the Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs.

Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs.

Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

- (b) Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("SDRWQCB"), Lessor, and/or responsible agency, to conduct periodic inspections. Lessee also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefore, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from ASTS, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

ENVIRONMENTAL DISCLOSURES

Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent San Diego Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs and expenses.

ENVIRONMENTAL INDEMNITY PROVISION

Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum

contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:

- (i) Losses attributable to diminution in the value of the Leased Premises;
- (ii) Loss or restriction of use of rentable space(s) in the Leased Premises;
- (iii) Adverse effect on the marketing of any space(s) in the Leased Premises;
- (iv) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,
- (v) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.

Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

RENTAL DISPUTE PROVISION

Beginning with the Rental Period which commences _____ and at the commencement of each Rental Period thereafter as described in Paragraph 3(a) herein, the rent as specified in Paragraphs 3(b) and 3(c) herein shall be mutually agreed upon by Lessor and Lessee; provided, however, that (i) the Minimum Annual Rent agreed to at the commencement of each Rental Period shall not be less than 75% of the average total percentage rents paid during the last three accounting years of the immediately preceding Rental Period, (ii) the agreed-to Minimum Annual Rent shall be further adjusted in accordance with Paragraph 3.1 herein, and (iii) the percentage rental rates shall not be less than the percentage rental rates from the immediately preceding Rental Period.

In the event the parties cannot agree to the rent for a Rental Period, the rent for said Rental Period shall be determined by three arbitrators in accordance with Sections 1280 through 1294.2 of the California Code of Civil Procedure.

The parties agree that, after notice by either party to the other requesting arbitration, each party shall appoint one arbitrator within thirty (30) days. Notice of the appointment shall be given by each party to the other party when made. Should either party fail to appoint its arbitrator within said time period, then the party that has appointed its arbitrator may petition the Superior Court of the state of California, county of San Diego, to appoint the second arbitrator. The party making the application shall give the other party notice of its application. All costs, including attorney fees associated with the court=s appointment of the second arbitrator, shall be borne by the party which failed to appoint its arbitrator. The two arbitrators shall immediately choose a third arbitrator to act with them. If they fail to select a third arbitrator within thirty (30) days following the appointment of the second arbitrator, on application by either party, the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the state of California, county of San Diego, acting in his/her individual capacity. The party making the application shall give the other party notice of its application. All of the arbitrators shall be qualified real estate appraisers that are licensed to practice in the state of California.

By no later than thirty (30) days following the appointment of the third arbitrator, Lessor and Lessee shall each provide the other and each of the three arbitrators with (i) its rent proposal which shall consist of the Minimum Annual Rent and the percentage rental rates (and/or gallonage and/or flat rents if applicable) for the pending Rental Period under arbitration (the @Rent Proposal@) and (ii) its appraisal report prepared by a qualified real estate appraiser licensed to practice in the state of California. In Lessor=s and Lessee=s Rent Proposal, the Minimum Annual

Rent shall not be less than 75% of the average total percentage rent paid during the last three accounting years of the immediately preceding Rental Period and the percentage rental rates shall not be less than the percentage rental rates from the immediately preceding Rental Period. In the event, the Rent Proposal and the opinion of fair market rent expressed in the appraisal report differ, the Rent Proposal shall control. The appraisal reports shall consider: (1) the Leased Premises as if vacant of Lessee-owned improvements and available for new construction but with street access, utility services, and shoreline protection (if the Leased Premises are located on the waterfront) regardless of who paid for the installation of the street improvements, utility services and/or shoreline protection; (2) the Leased Premises as having all regulatory entitlements and development rights for the types of uses permitted in Paragraph 2 above which includes, but is not restricted to, the design, construction and size of the existing improvements; (3) the highest and best use of the Leased Premises as if available for new leasing purposes under optimal development assumptions that are consistent with the uses provided in Paragraph 2 herein and to the other terms, conditions and restrictions of the Lease; (4) as if held by a private party in fee simple with all of the rights to sell, lease or transfer the owner's interest, and shall disregard any limitation resulting from public ownership; and (5) as if offered for lease in the open market. No diminution in value shall be taken as a result of any existing Hazardous Materials, as herein described, or improvements, or lack of improvements, on the Leased Premises. The appraisers shall use and analyze only the market data that is found in the marketplace, such as is demanded and received by other lessors for the same or similar types of uses allowed on the Leased Premises, except that the appraisers shall not consider any economic concessions, incentives, discounts and the like in the determination of market rent. In all cases, the appraisal reports shall be based upon recognized real estate appraisal principles and methods unless otherwise specified in this Paragraph 3.2(b).

Within thirty (30) days following the selection of the third arbitrator, the three arbitrators shall conduct an arbitration hearing in the city of San Diego, California. The three arbitrators shall hear and consider the testimony of the Lessor and Lessee and their appraisal witnesses and any additional written information furnished by Lessor or Lessee. The amount and kind of evidence allowed and the rules of discovery and testimony shall be decided solely by the third arbitrator after consultation with the arbitrators appointed by the Lessor and Lessee.

The award determined by the arbitrators shall be effective and retroactive to the first day of the Rental Period under arbitration. The award shall be in writing and shall be made no later than fifteen (15) days following the arbitration hearing. The award shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The arbitrators shall not possess any right or authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. The arbitrators shall select whichever of the two Rent Proposals sets forth

the rent that the majority of the arbitrators believe is closest to the market rent for the Leased Premises for the Rental Period under arbitration. A unanimous decision of the three arbitrators is not required. Within ten (10) days of the date the award is made, the underpayment of the rent, if any, shall be paid by Lessee to Lessor, and the overpayment of the rent, if any, shall be credited to the next payment of rent owed by Lessee under this Lease following the award.

Lessor and Lessee shall each pay for its own attorney=s fees, transcriptions, and the cost of its appointed arbitrator. Lessor and Lessee shall equally share the third arbitrator=s fee and expenses and the cost of the hearing including, but not limited to, cost for using the facilities at which the hearing is conducted and the cost of the recorder of the testimony.