GROUND LEASE AGREEMENT

HOTEL COMPONENT

by and between

COUNTY OF ORANGE

and

DPHP HOTELS, LLC

Dated as of _____, 2026

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GROUND LEASE AGREEMENT

DANA POINT HARBOR

(HOTEL COMPONENT)

THIS GROUND LEASE AGREEMENT ("**Lease**") is made and entered into as of the _____ day of _____, 2026 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**" or "**Lessor**"), as lessor, and DPHP HOTELS, LLC, a California limited liability company (together with its permitted successors and assigns, "**Lessee**"), as lessee. County/Lessor and Lessee may be referred to herein each, individually, as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, County is the fee owner of that certain real property (the "**Harbor Property**") located in the City of Dana Point and comprised of the land depicted on **Exhibit A-1** attached hereto, together with all the Improvements (as defined below) located thereon as of the commencement of the Existing Lease (as defined below); and

WHEREAS, County and Dana Point Harbor Partners, LLC, a California limited liability company ("**DPHP**") entered into that certain Option to Lease dated as of July 30, 2018 (the "**Option Agreement**"), pursuant to which County granted DPHP an option (the "**Option**") to lease the Harbor Property in its entirety, upon the terms and conditions more specifically provided in the Existing Lease (as defined below), including, without limitation, the redevelopment and renovation of the Harbor Property, all in accordance with the terms and provisions thereof; and

WHEREAS, upon exercise of the Option by DPHP, County and DPHP entered into that certain Master Ground Lease Agreement (the "**Original Existing Lease**") dated as of October 29, 2018 (the "**Original Effective Date**"), pursuant to which County leased the Harbor Property to DPHP in its entirety, upon the terms and conditions more specifically provided therein; and

WHEREAS, the Original Existing Lease was amended by that certain Tolling Amendment to Master Ground Lease Agreement dated as of April 21, 2020 ("**First Amendment**") and that certain Second Amendment to Master Ground Lease Agreement dated March 9, 2022 ("**Second Amendment**") (the Original Existing Lease, as amended, the "**Existing Lease**");

WHEREAS, the Harbor Property is comprised of multiple components, which include the Hotel Component; and

WHEREAS, the Hotel Component is located on that certain real property located in the City of Dana Point and comprised of the land described on **Exhibit A-2** attached hereto and depicted on **Exhibit A-3** attached hereto (the "**Hotel Property**"), together with all of the improvements located thereon as of the Effective Date; and

WHEREAS, DPHP has determined that, in order to facilitate the financing of the development of the Harbor Property, it is necessary to split the leasing of the Harbor Property

under the Existing Lease into two (2) leases, which cover the same Harbor Property: (a) one lease for the Commercial Core Component and Marina Component (as defined in the Existing Lease) (the "**Commercial Lease**"); and (b) one lease for the Hotel Component, being this Lease; and

WHEREAS, Lessee is an Affiliate of DPHP and was formed by the members of DPHP in order to facilitate the financing of the development of the Hotel Component, so that this Lease, combined with the Commercial Lease, shall comprise the same entire Harbor Property originally leased to DPHP under the Existing Lease; and

WHEREAS, for financing purposes, as of the Effective Date, Lessee and Lessor desire to enter into this Lease, pursuant to which Lessor is willing to lease the Hotel Property, together with all the improvements currently located thereon as of the Effective Date, to Lessee pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. DEFINITIONS AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "AAA" shall have the meaning set forth in Subsection 5.16.

1.1.2 "ABATEMENT PERIOD" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.3 "ACCOUNTING YEAR" shall have the meaning set forth in Section 15.7.

1.1.4 "ACTUAL COST" shall mean (a) the out-of-pocket costs and expenses actually incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (b) costs incurred in connection with appraisals, (c) the reasonable value of services actually provided by County's in-house counsel, and (d) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.5 "ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1(b).

1.1.6 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Subsection 4.3.

1.1.7 "AFFILIATE" means, with respect to any person (which is used herein includes an individual, trust or entity), which directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person.

1.1.8 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.3.1(a).

1.1.9 "ALTERATIONS" means, with respect to the Hotel Property, the construction of any alterations or modifications to the Improvements located on the Hotel Property or the construction of any new Improvements on the Hotel Property, at any time during the Term, excluding the Redevelopment Work.

1.1.10 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2(d).

1.1.11 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.12 "ANNUAL RENT" shall have the meaning set forth in Subsection 4.2.

1.1.13 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.

1.1.14 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.1.15 "APPLICABLE REDEVELOPMENT COSTS" mean, with respect to the Hotel Component, all reasonable market standard out-of-pocket Hard Costs paid to third parties for the construction of the Redevelopment Work on the Hotel Component, including the profit, overhead and general conditions paid to the general contractor that is responsible for the construction of the Redevelopment Work for the Hotel Component; provided, however, if such general contractor or other third party is an Affiliate of Lessee, then Lessee must be able to demonstrate to County's reasonable satisfaction (which may entail, for example and without limitation, providing County with competitive pricing from unaffiliated third parties, if requested by County), that such amounts are not in excess of then-current competitive market-based rates for comparable quality of work. If County determines that Lessee paid any of its Affiliates any amount in excess of the foregoing limitations, then 120% of such excess shall be deducted from Applicable Redevelopment Costs. For example, if Lessee paid an Affiliated general contractor $2,500,000 for work that it is determined could have been performed, if competitively priced, for $2,000,000, then the Applicable Redevelopment Cost associated with such work shall be

$1,900,000 (*i.e.*, 20% of $2,500,000 = $600,000, which amount is then subtracted from the original $2,500,000).

1.1.16 "APPROVED PROPOSAL SUBMITTALS" shall have the meaning set forth in Section 5.1.

1.1.17 "APPROVED RETAIL SUBLEASE" shall have the meaning set forth in Subsection 12.1.3.

1.1.18 "AS-BUILT PLANS" shall have the meaning set forth in Subsection 5.8.7.

1.1.19 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 12.2.

1.1.20 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Orange, California, or its designee.

1.1.21 "AWARD" shall have the meaning set forth in Subsection 6.1.3.

1.1.22 "BASE PERIOD" shall have the meaning set forth in **Exhibit F**.

1.1.23 "BENEFICIAL INTEREST" shall have the meaning set forth in Subsection 4.3.1(b).

1.1.24 "BMP FACT SHEETS" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.25 "BMPs" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.26 "BOARD" shall mean the Board of Supervisors for the County of Orange.

1.1.27 "BREAKWATER" shall have the meaning set forth in Subsection 3.2.2(f).

1.1.28 "BRIDGE STRUCTURE" shall have the meaning set forth in Subsection 10.7.

1.1.29 "BUSINESS DAY" shall have the meaning set forth in Section 16.6.

1.1.30 "CAD FILES" shall have the meaning set forth in Subsection 5.8.7.

1.1.31 "CALCULATION NOTICE" shall have the meaning set forth in Subsection 4.3.6(b)

1.1.32 "CASp" shall have the meaning set forth in Section 10.11.

1.1.33 "CASp REPORT" shall have the meaning set forth in Section 10.11.

1.1.34 "CDP" shall mean the Dana Point Harbor Hotels Project, Coastal Development Permit (CDP19-0017), as amended from time to time.

1.1.35 "CERTIFICATE OF OCCUPANCY" means a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval required for legal use and occupancy of any of the Improvements.

1.1.36 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.3.1(c).

1.1.37 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.3.1(d).

1.1.38 "CHIEF REAL ESTATE OFFICER" shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Lessee, such other person as may be designated by the Board.

1.1.39 "CITY" shall mean the City of Dana Point, California.

1.1.40 "CLAIMS" shall have the meaning set forth in Subsection 8.1.

1.1.41 "CO DATE" means the date of the issuance of a Certificate of Occupancy for the Select Service Hotel and/or the Full Service Hotel, as applicable.

1.1.42 "COASTAL ACT" shall mean the California Coastal Act of 1976, as codified in Public Resources Code, Section 30000 et seq., as amended from time to time.

1.1.43 "COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.44 "COMPONENT" means each of three (3) portions of the Harbor Property including the Commercial Core, Hotel and Marina (both Wet Marina and Dry Marina), the boundaries and location of which are identified on **Exhibit A-2**, subject to the reasonable consent of the County.

1.1.45 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.

1.1.46 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.

1.1.47 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index for Los Angeles- Long Beach-Anaheim, California [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)], as published from time to time by the U.S Bureau of Labor Statistics or, in the event such index is no longer published or otherwise available, such replacement index as is published by the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.1.48 "CONSTRUCTION CHANGE DIRECTIVE" shall have the meaning set forth in Subsection 5.7.3.

1.1.49 "CONSTRUCTION SCHEDULE" shall have the meaning set forth in Subsection 5.3.2.

1.1.50 "CONTROLLING INTEREST" shall have the meaning set forth in Subsection 12.2.4.

1.1.51 "COST" shall have the meaning set forth in Subsection 1.1.80(b)(13).

1.1.52 "COUNTY" shall have the meaning set forth in the preamble to this Lease. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Hotel Property and not the County in its capacity as a land use or other governmental approval authority.

1.1.53 "COUNTY INDEMNIFIED PARTY" and "COUNTY INDEMNIFIED PARTIES" shall have the meaning set forth in Section 8.1.

1.1.54 "COUNTY OPTION" shall have the meaning set forth in Subsection 12.2.4.

1.1.55 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 12.2.4.

1.1.56 "COUNTY PARTIES" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.57 "CREO OFFICE" shall mean the Office of the Chief Real Estate Officer, County Executive Office, Orange County.

1.1.58 "DAMP" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.59 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.

1.1.60 "DPHP" shall have the meaning set forth in the Recitals to this Lease.

1.1.61 "DRB SPECIFICATION" shall have the meaning set forth in Subsection 5.16.

1.1.62 "EFFECTIVE DATE" shall have the meaning set forth in the preamble to this Lease.

1.1.63 "ENCUMBRANCE" shall have the meaning set forth in Subsection 13.1.1(2).

1.1.64 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1(2) and 13.1.1(3).

1.1.65 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or, in the event such index is no longer

published or otherwise available, such substitute index that is generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.1.66 "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1(4).

1.1.67 "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1(c).

1.1.68 "EVENT(S) OF DEFAULT" shall have the meaning set forth in Section 14.1.

1.1.69 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.3(c).

1.1.70 "EXCLUDED DEFAULTS" shall have the meaning set forth in Subsection 13.3.3.

1.1.71 "EXCLUDED IMPROVEMENTS" shall have the meaning set forth in Subsection 1.2.5.

1.1.72 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.3.1(e).

1.1.73 "EXISTING LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.74 "EXTENDED TIME" shall have the meaning set forth in Section 16.8.

1.1.75 "FINAL CO DATE" shall have the meaning set forth in Section 7.1.

1.1.76 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.4.3.

1.1.77 "FINANCING EVENT" shall have the meaning set forth in Subsection 13.1.1(1).

1.1.78 "FIRST OFFER NOTICE" shall have the meaning set forth in Section 11.13.

1.1.79 "FORCE MAJEURE" shall mean any inability of a Party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other natural disaster, civil disturbance, war, organized labor dispute (if unrelated to the specific business practices of Lessee or its Sublessees, or its or their respective contractors, agents, representatives, or consultants), freight embargo, financial crisis, governmental order or other unforeseeable event beyond the reasonable control of the Party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Redevelopment Work for the Hotel Property, a delay in such construction caused unforeseen

financial crisis, or by a hidden and unforeseeable condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Hotel Property which Lessee was unaware of and could not reasonably have foreseen as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Redevelopment Work, Force Majeure shall also include (a) Unreasonable County Action, as defined in and subject to the terms and conditions of Section 5.7 of this Lease; (b) unforeseen financial crisis that results in an inability to obtain appropriate financing in the reasonable discretion of Lessee, and (c) any delays resulting from legal challenges under the California Environmental Quality Act or otherwise that are brought by third parties that challenge or appeal any governmental approvals or entitlements that are required to be obtained by Lessee before Lessee can commence the Redevelopment Work, an injunction or restraining order against the performance of the Redevelopment Work issued pursuant to a court action, or a delay in processing any approvals or permits by the California Coastal Commission resulting from the failure of the California Coastal Commission to timely respond to a submittal or application or to take action in connection therewith; provided that (i) the plaintiff seeking such injunction or restraining order is not Lessee or any Affiliate of Lessee, (ii) the injunction or restraining order is not being sought as a result of any act or omission which would be a default by Lessee under this Agreement, (iii) Lessee shall diligently pursue and shall exhaust all commercially reasonable efforts to accomplish (x) the defense of such legal challenge to a final, non-appealable judgment regardless of whether Lessee is a named party in the action, (y) the removal of any such restraining order or injunction, as applicable, and/or (z) the response or other action required of the California Coastal Commission, and (iv) in no event shall any delay or series of delays resulting from the circumstances described in this clause (b) result in a delay, when taken in the aggregate, of more than three (3) years.

1.1.80 "FORECLOSURE TRANSFER" shall have the meaning set forth in Subsection 13.2.1(a).

1.1.81 "FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1(b).

1.1.82 "FULL SERVICE HOTEL" means the full service hotel to be constructed on the Hotel Property, comprised of approximately 130 rooms and designed to provide a full range of guest services and amenities such as meeting rooms, wedding and social event venue lawn, a pool and jacuzzi, a poolside cabanas, poolside bar, fitness center, and rooftop restaurant and lounge. It shall include the completed hotel and any replacement, modification, or enhancement of the hotel or its amenities, provided the hotel continues to operate as a full-service hotel consistent with the intent of this Lease.

1.1.83 "GOVERNMENTAL AUTHORITIES" or "GOVERNMENTAL AUTHORITY" shall mean the City, County, State, United States of America, California Coastal Commission and/or any other local, state or federal governmental or quasi-governmental entity with jurisdiction over the Hotel Property.

1.1.84 "GROSS RECEIPTS" shall mean, with respect to the Hotel Component, the aggregate of (A) for any portion of the Hotel Component which is subject to an arms-length

Sublease to a person or entity which is not an Affiliate of Lessee, all money (including, without limitation, "alternative" currencies, such as cryptocurrency and its equivalent), cash receipts, or other things of value received by Lessee, whether for cash or credit, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax reimbursements, percentage rent payments, lease payments and fees and commissions made or earned by Lessee, and (B) for any portion of the Hotel Component on which Lessee or an Affiliate of Lessee operates a business or enterprise, or generates income from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Hotel Component, whether delivery of items sold is made from the property or not, whether services are actually performed or not, all money, cash receipts, or other things of value received by Lessee, including but not limited to sales, fees and commissions made or earned by Lessee, from rentals (other than rentals generated from Subleases and covered under Subsection 1.1.93(A) above) and the rendering or supplying of services and the sale of goods, wares or merchandise, hotel room revenues and resort fees, each of which shall be calculated in accordance with the accounting method described in the penultimate sentence of Section 15.1 except as herein otherwise provided and subject to County's reasonable verification rights (such operation described within this Subsection 1.1.93(B)) being referred to herein as a "**Lessee Business Operation**"). There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in Subsection 1.1.93(b)(11) below), insurance and taxes, except as otherwise set forth herein. Notwithstanding the foregoing, and for the avoidance of doubt:

(a) Gross Receipts shall include, among other things, the following items:

(1) entry, rental, license and other fees of any nature or kind charged by Lessee (including but not limited to deposits accepted by Lessee upon the application of such deposit to a transaction or the forfeit of such deposit and excluding any deposit under a Sublease to the extent addressed in (b)(2) below);

(2) sales of merchandise, goods, wares, products, food, beverages and services;

(3) gift certificates at the time sold;

(4) any sums deposited into any coin-operated vending machine or other device maintained on the Hotel Property, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others, and regardless of what percentage thereof Lessee is entitled to receive except for pay telephones and newspaper racks;

(5) any commission or surcharge received by Lessee from the operation of any automatic teller machines on the Hotel Property;

(6) if pay telephones are owned by Lessee, gross receipts shall be the gross amount deposited or charged for use of the telephones or if pay telephones are

owned and operated by a third party, gross receipts shall be the commission or payment received by Lessee;

(7) for newspaper racks gross receipts shall be the commission or payment received by Lessee from racks owned and operated by a third party;

(8) all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty;

(9) all rentals, license fees and similar sums received in connection with any advertising on the Hotel Property via signage, billboards, and similar;

(10) all rebates, kickbacks, credits (hidden or otherwise), and similar received by Lessee in consideration for granting rights in the Hotel Property or any portion thereof; and

(11) all other rents received by Lessee by any Sublessee, concessionaire or licensee of Lessee on the Hotel Property, subject to the exclusions set forth hereinbelow.

(b) Gross Receipts shall not include any of the following items (provided, however, that excluding the amount of the following items from Gross Receipts may not be double counted as a credit towards or offset against the amount of items that are to be included in Gross Receipts):

(1) direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes (other than boater possessory interest tax to the extent received by Lessee), transient occupancy taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement;

(2) security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application;

(3) goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Hotel Property;

(4) an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash

refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Hotel Property; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

(5) sales of fixtures, equipment or property which are not Lessee's stock in trade;

(6) receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

(7) interest earned by Lessee on funds arising from the Hotel Property or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

(8) tips and gratuities paid to employees;

(9) receipts from vending machines used solely by employees of the business operation;

(10) fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this Subsection 1.1.93(a)(10) in connection with a particular business operation shall not exceed the actual charges for such matters;

(11) interest or other charges paid by customers of Sublessees for the extension of credit; or

(12) payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered, actual or estimated allocation of electricity provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Hotel Property; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity (i.e. the Sublessee is not also separately charged for electricity paid for hereunder). For the purpose of this Subsection (12), the "**Cost**" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's bill that is allocable to the Sublessee based on such Sublessee's submetered, actual or estimated consumption of electricity, and in paying the portion of any third party meter or submeter reading and service charge to each meter or submeter that is actually read and a direct allocation of the meter or submeter service charge to each such submeter that is serviced. County shall have the right to reasonably challenge the legitimacy or amount of any Cost. The terms and provisions of this Subsection (12) shall also be applicable to other submetered or estimated utility charges, such as water, gas, telephone, internet, sewer and trash, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(13) Bad debt losses shall not be deducted from Gross Receipts unless the obligation being converted to a bad debt loss was previously included in Gross Receipts.

(c) Chief Real Estate Officer, with the reasonable consent of Lessee, Auditor-Controller and County Counsel may further reasonably interpret the definition of Gross Receipts from time to time, provided that Lessee's consent shall not unreasonably prevent County from verifying, auditing, or enforcing the proper calculation of Gross Receipts with such interpretations to be a guideline in implementing Subsection 4.2.2(a) of this Lease.

1.1.85 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Subsection 4.3.1(f).

1.1.86 "HARBOR PROPERTY" shall have the meaning set forth in the Recitals to this Lease.

1.1.87 "HARD COSTS" means those costs listed in Classifications 01 through 16 of the Construction Specifications Institute (1995 edition), together with contingency earned or awarded to the general contractor, insurance, contractor fees and bonds, but in no event may such amounts be duplicative.

1.1.88 "HAZARDOUS SUBSTANCES" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including without limitation, the County acting in its governmental capacity, the State, or the United States government, including, without limitation, the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws.

1.1.89 "HOTEL COMPONENT" means the Component of the Harbor Property identified as the Hotel on **Exhibit A-3** including, without limitation, the hotel currently known as the "Dana Point Marina Inn" and associated amenities.

1.1.90 "HOTEL DEEMED COMPLETION DATE" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.91 "HOTEL CAPITAL RESERVE FUND" shall have the meaning set forth in Subsection 5.17.1.

1.1.92 "HOTEL FRANCHISOR" shall have the meaning set forth in Subsection 15.3.1.

1.1.93 "HOTEL PROPERTY" shall have the meaning set forth in the recitals to this Lease.

1.1.94 "IMMEDIATE FAMILY" shall have the meaning set forth in Subsection 4.3.1(e)(4).

1.1.95 "IMPROVEMENT PROJECT" shall have the meaning set forth in Subsection 5.5.

1.1.96 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems (including, without limitation, all utility lines, transformer vaults and other utility facilities existing on the Hotel Property as of the Effective Date or that are constructed or installed by Lessee upon the Hotel Property, to the extent not owned by a utility company or other third party provider), docks, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Hotel Property, whether existing as of the Effective Date or as constructed by Lessee, any Sublessee, or otherwise, as the case may be.

1.1.97 "IMPROVEMENT COSTS" shall mean the total actual out-of-pocket cost to the Lessee of planning, designing, financing and constructing the Redevelopment Work in accordance with the Final Plans and Specifications, as of the applicable calculation date. The Improvement Costs shall include all Hard Costs and Soft Costs (without duplication) incurred in connection with the Redevelopment Work, including but not limited to: costs of grading and site preparation; costs of construction and required onsite and offsite improvements, including architectural, engineering and design fees, reproduction costs, and development, permit, and inspection fees charged by any public agency incurred and paid by the lessee; general contractor's fee; premium for performance or completion bonds; title insurance premiums and endorsement costs; survey costs; hazardous materials remediation costs; construction loan interest actually paid by Lessee; consulting and professional fees (including without limitation legal, accounting, environmental and financial consulting fees) paid to third parties with respect to the design and construction of the Redevelopment Work; all ad valorem property taxes and assessments imposed with respect to the Hotel Property; insurance premiums; and costs of securing the Redevelopment Work. Notwithstanding the foregoing, Improvement Costs shall (i) exclude any such costs to the extent such costs are reimbursable by tenants under Subleases, whether paid or accrued and (ii) be reduced by any monetary contributions from the County including without limitation contributions towards the cost of constructing parking structures or other improvements included in the Redevelopment Work.

1.1.98 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.99 "INITIAL CURE PERIOD" shall have the meaning set forth in Subsection 13.6.3(b)(1)).

1.1.100 "INSTITUTIONAL LENDER" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate

mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least $2,000,000,000 and capital/statutory surplus or shareholder's equity of at least $500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender). Institutional Lender shall mean and include the Affiliates of such Institutional Lender without regard to such Affiliate's total assets or shareholder equity. Institutional Lender shall not include any so-called "sovereign wealth funds" unless otherwise approved by County in its sole discretion.

1.1.101 "INTERIM MILESTONE(S)" shall have the meaning set forth in Subsection 5.3.2.

1.1.102 "INTERIM MILESTONE DATE" shall have the meaning set forth in Subsection 5.3.1.

1.1.103 "LATE FEE" shall have the meaning set forth in Subsection 4.2.3(e).

1.1.104 "LCP" means the Dana Point Local Coastal Program Amendment 1-08, as amended from time to time.

1.1.105 "LEASE" shall have the meaning set forth in the preamble above.

1.1.106 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.107 "LESSEE" shall have the meaning set forth in the preamble to this Lease and Subsection 16.5.

1.1.108 "LESSEE BUSINESS OPERATION" shall have the meaning set forth in Subsection 1.1.84.

1.1.109 "LESSEE SALE PRICE" shall have the meaning set forth in Subsection 12.2.4.

1.1.110 "LESSEE'S DELIVERABLES" shall have the meaning set forth in Subsection 5.4.1.

1.1.111 "LESSEE'S FINAL SUBMITTALS" shall have the meaning set forth in Subsection 5.4.3.

1.1.112 "LIP" shall have the meaning set forth in Subsection 10.2.2(b)(3).

1.1.113 "LOAN AMOUNT" shall have the meaning set forth in Subsection 4.3.1(g).

1.1.114"MAJOR SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.

1.1.115 "MAJOR SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.

1.1.116 "MARINA INN" shall mean the Dana Point Marina Inn Hotel which is located on the Hotel Property as of the Effective Date.

1.1.117 "MATERIAL MODIFICATION" shall mean, with respect to the Hotel Component, an Alteration or any modification, revision or other change to the Redevelopment Work, for the Hotel Component with respect to which any one of the following applies: (a) for purposes of the Redevelopment Work, the modification(s), individually or in the aggregate, result in a decrease in the previously approved Budget for the Hotel Component by more than ten percent (10%) (provided any decreases to the Required Cost Amount for the Hotel Component shall require the County's prior written consent, in its sole and absolute discretion); (b) for purposes of Alterations, the total estimated cost of the same, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, exceeds ten percent (10%) of the Improvement Costs for the Hotel Component, adjusted to reflect the percentage change in the ENR Index from the date on which the Redevelopment Work for the Hotel Component was substantially complete until the date on which Lessee calculates the total estimated cost of the Alterations; (c) the proposed Alteration or modification is structural in nature; (d) the proposed Alteration or modification is not in compliance with the Permitted Uses under this Lease; (e) the proposed Alteration or modification, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, (i) reduces the total interior square footage of the Improvements within the Hotel Component by more than five percent (5%), (ii) reduces the number of parking spaces within the Hotel Component by more than five percent (5%), except for a corresponding reduction in the number of parking spaces required for the Improvements within the Hotel Component (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the interior square footage of the Improvements within the Hotel Component or changes in the Applicable Law regarding the number of parking spaces required for the Improvements within the Hotel Component (without variance), or (iii) (A) reduces the number of guest rooms for the Select Service Hotel below 136 rooms, or (B) would result in a reduction of five percent (5%) or more of the number of guest rooms originally permitted by the Governmental Authorities for the Full Service Hotel; (f) for purposes of the Redevelopment Work, the proposed modification would, by itself or when taken with other proposed modifications, result in a delay to the Construction Schedule therefor by more than one hundred eighty (180) days in the aggregate; and (g) the proposed Alteration is a new building, structure, dock, anchorage facility, parking area or roadway, other than those contemplated by the Redevelopment Work. Notwithstanding anything to the contrary contained in this Lease: (1) Material Modifications under subsections (a) and (f) above shall be subject to the County's review and approval in the sole and absolute discretion of the Chief Real Estate Officer, and otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease, and (2) all other Material Modifications to the Redevelopment Work or Alterations, as applicable, shall, in all instances in this Lease, be subject to the County's review and approval of the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed, and shall otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease.

1.1.118 "MEMORANDUM" shall have the meaning set forth in Section 17.15.

1.1.119 "MINIMUM STANDARDS" shall mean the requirements set forth on **Exhibit G** attached hereto, as modified by County or the CREO Office from time to time in a

manner consistent with commercially reasonable standards applicable to other comparable hotel projects in the County.

1.1.120 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1(a).

1.1.121 "MS4" shall have the meaning set forth in Subsection 10.2.2(a)(4).

1.1.122 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.123 "NPDES" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.124 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.8.7.

1.1.125 "OFFERED PROPERTY" shall have the meaning set forth in Section 11.13.

1.1.126 "OPERATING COVENANT EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.127 "OPERATING YEAR" shall mean each twelve (12) month period beginning on the earlier of the Full Service Hotel Operation Date or the Select Service Hotel Operation Date.

1.1.128 "OPTION" shall have the meaning set forth in the Recitals to this Lease.

1.1.129 "OPTION AGREEMENT" shall have the meaning set forth in the Recitals to this Lease.

1.1.130"ORIGINAL EFFECTIVE DATE" shall have the meaning set forth in the Recitals to this Lease.

1.1.131"ORIGINAL EXISTING LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.132 "OWNERSHIP INTERESTS" shall have the meaning set forth in Subsection 13.1.1(1).

1.1.133 "PA/DSS" shall have the meaning set forth in Section 11.7.

1.1.134 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.135 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.5.4(b).

1.1.136 "PCI/DSS" shall have the meaning set forth in Section 11.7.

1.1.137 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.

1.1.138 "PERCENTAGE SHARE" shall have the meaning set forth in Subsection 4.3.1(h), 4.3.4(a) and 4.3.4(b).

1.1.139 "PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.5.4(a).

1.1.140"PERMITTED EVENTS" shall have the meaning set forth in Section 11.9.

1.1.141 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.142 "POST TERM PERSONAL PROPERTY REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.

1.1.143 "PRELIMINARY PLANS" shall have the meaning set forth in Subsection 5.4.2.

1.1.144 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.145 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.146 "PROPERTY MANAGER" shall have the meaning set forth in Section 11.2.

1.1.147 "PROPOSED TRANSFER" shall have the meaning set forth in Subsection 12.2.4.

1.1.148 "PURCHASE MONEY NOTE" shall have the meaning set forth in Subsection 4.3.2(c).

1.1.149"RECEIVING WATERS" shall have the meaning set forth in Subsection 10.2.2(a)(4).

1.1.150 "RECORDS" shall have the meaning set forth in Subsection 15.1.

1.1.151 "RECOVERY PLAN" means, with respect to the Hotel Property, a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Redevelopment Work for the Hotel Property in order to enable Contractor to: (a) achieve Interim Milestones as proposed in the Recovery Plan and approved by the CREO for the Hotel Property by the applicable Interim Milestone Date; and/or (b) achieve the CO Date for the Select Service Hotel and/or the Full Service Hotel, as applicable, on or before the applicable Required

Construction Completion Date. The Recovery Plan shall be submitted consistent with the terms of Subsection 7.3.1.

1.1.152 "RECOVERY PLAN NOTICE" shall have the meaning set forth in Subsection 5.7.3 of this Lease.

1.1.153 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.154 "REQUIRED CONSTRUCTION COMMENCEMENT DATE" means March 6, 2028, for the Select Service Hotel, and, if built, March 7, 2030 for the Full Service Hotel.

1.1.155 "REQUIRED CONSTRUCTION COMPLETION DATE" means August 4, 2032 for the Select Service Hotel, and, if built, August 4, 2032 for the Full Service Hotel. ~~Need~~

1.1.156 "REQUIRED COST AMOUNT" means Eighteen Million Dollars ($18,000,000.00) for the development of one (1) hotel, and Ninety Million Dollars ($90,000,000.00) for the development of two (2) hotels.

1.1.157 "REQUIRED COST ADJUSTMENT DATE" shall have the meaning set forth in Section 5.2.

1.1.158 "RIGHT OF FIRST OFFER" shall have the meaning set forth in Section 11.13.

1.1.159 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.160 "SELECT SERVICE HOTEL" means the select service hotel to be constructed, if at all, on the Hotel Property, and comprised of approximately 169 rooms and related amenities.

1.1.161 "SOFT COSTS" means architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, permits and fees, testing and inspection costs, financing costs, interest reserves or interest accrual required by or in connection with Lessee's initial construction financing, legal, accounting and insurance (including title insurance) relating to the Redevelopment Work, but in no event may such amounts be duplicative.

1.1.162 "STATE" shall mean the State of California.

1.1.163 "STORMWATER PERMITS" shall have the meaning set forth in Subsection 10.2.2(b)(2).

1.1.164 "SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.

1.1.165 "SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.

1.1.166 "SUBSTANTIAL COMPLETION" means the completion of the Redevelopment Work or other work of Improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.167 "TERM" shall have the meaning set forth in Section 2.1.

1.1.168 "TIDELANDS GRANT" shall have the meaning set forth in Subsection 1.2.2.

1.1.169 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 17.3.

1.1.170 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.171 "UNAUTHORIZED BOAT BROKERAGE" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.172 "UNINSURED LOSS" shall have the meaning set forth in Section 10.4.

1.1.173 "UNREASONABLE COUNTY ACTION" shall have the meaning set forth in Subsection 5.7.2(a).

1.1.174 "UTILITY EASEMENT" shall have the meaning set forth in Subsection 1.2.4.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, as successor-in-interest to DPHP, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Hotel Property for the Term and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 As-Is. Except as provided in Subsection 1.2.3, Lessee accepts the Hotel Property in its present condition notwithstanding the fact that there may be certain defects in the Hotel Property, whether or not known to either Party as of the Effective Date. Lessee represents that, pursuant to the Option Agreement, its Affiliate DPHP was afforded a reasonable opportunity to conduct a thorough due diligence investigation of the Hotel Property prior to DPHP's exercise of the Option and that, prior to the Original Effective Date, DPHP performed all investigations of the Hotel Property that it deemed necessary or appropriate in order to evaluate the condition of the Hotel Property and the viability of the Hotel Property for Lessee's intended purposes. Lessee hereby accepts the Hotel Property on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Hotel

Property, including without limitation: (a) the quality, nature, adequacy and physical condition and aspects of the Hotel Property, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (b) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (c) the existence, quality, nature, adequacy and physical condition of utilities serving the Hotel Property, (d) the development potential of the Hotel Property, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Hotel Property for any particular purpose, (e) the zoning, entitlements or other legal status of the Hotel Property, and any public or private restrictions affecting use or occupancy of the Hotel Property, (f) the compliance of the Hotel Property with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the applicable Governmental Authorities ("Applicable Laws"), including, without limitation, the Coastal Act and relevant provisions of the Americans with Disabilities Act, (g) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Hotel Property, the adjoining or neighboring properties, or ground or other subsurface waters, (h) the quality of any labor and materials used in any Improvements, (i) the condition of title to the Hotel Property, and (j) the economics of the operation of the Hotel Property.

1.2.2 Tidelands Grant. This Lease and the rights and privileges granted Lessee in and to the Hotel Property are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California), as amended from time to time ("**Tidelands Grant**"). Nothing contained in this Lease or in any document related hereto shall be construed to imply (a) the conveyance to Lessee of rights in the Hotel Property which exceed those owned by the County, or (b) any representation or warranty, either express or implied, relating to the nature or condition of the Hotel Property, or County's interest therein.

1.2.3 Title. Subject to the limitations set forth in this Section 1.2, County represents that County owns fee title to the Hotel Property and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the Hotel Property, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Hotel Property pursuant to the terms and conditions of this Lease.

1.2.4 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to: (a) all encumbrances, reservations, licenses, easements and rights of way existing as of the Effective Date and disclosed to Lessee, whether in the County Documents, referenced in this Lease or otherwise, in, to, over or affecting the Hotel Property for any purpose whatsoever; (b) any other encumbrances, reservations, licenses, leases, easements and rights of way consented to by Lessee in writing; (c) all matters of record (including, without limitation, the Tidelands Grant); and (d) the right of County and/or City to install, construct, maintain, service and operate such existing or new sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements (each, a "**Utility Easement**") as may be reasonably required

across, upon or under the Hotel Property, together with the right of County and/or City to convey such easements and transfer such rights to others; provided, however, that no new Utility Easement shall be located within the Project without the prior written consent of Lessee, which consent shall not be unreasonably withheld, unless the same is necessary for County to comply with its obligations under this Lease, in which case Lessee's consent shall not be required (and in such case, no such Utility Easement shall be located within the footprint of any then-existing building located on the Hotel Property). Furthermore, for the avoidance of doubt, County hereby reserves for itself, its invitees, licensees, tenants and the general public, and Lessee shall not prevent, obstruct or materially interfere in any way with, the free flow and passage of: (i) vehicles upon and across all streets and roadways as the same may exist from time to time at the Hotel Property, (ii) pedestrians upon and across all sidewalks, walkways, pathways and other access ways as the same may exist from time to time at the Hotel Property, and (iii) vessels within the waterways of the Hotel Property, excluding temporary obstructions or interference that are necessary for construction, operational, or development activities being conducted by Lessee pursuant to, and in accordance with, the terms and conditions of this Lease; provided that any such temporary obstructions or interference shall not pose a health, safety, or security threat to the public, nor shall the same be permitted to remain in place longer than the permitted duration of the underlying construction, operational, or development activity to which it relates as required under this Lease.

1.2.5 Excluded Improvements. Notwithstanding anything to the contrary set forth in this Lease, the "Hotel Property" shall not include the MS4 (including, without limitation, any sewer or storm drain) or other improvements, whether existing as of the Effective Date or installed thereafter, which have been dedicated to (and such dedication has been accepted by) the City or County ("**Excluded Improvements**"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such Excluded Improvements, if any.

1.2.6 Lease Bifurcation. Notwithstanding anything to the contrary in this Lease or any other documents delivered or executed in connection herewith, from and after the Effective Date, until the expiration of the Term, in the event that it is necessary in order to secure financing or refinancing, that the Full Service Hotel and the Select Service Hotel require a separate ground lease to facilitate or accomplish financing or refinancing, Lessee shall have the right, by written notice to the County, to bifurcate this Lease into two (2) separate leases: one for that portion of the Hotel Property comprising the Full Service Hotel, in substantially the same form as is attached hereto as Exhibit D-1; and one for that portion of the Hotel Property comprising the Select Service Hotel, in substantially the same form as is attached hereto as Exhibit D-2, so long as (i) the legal fees and costs reasonably incurred by the County to review and advise the Landlord on the replacement ground leases are fully reimbursed by the Lessee to the County; (ii) each portion of the Premises demised under the ground leases shall constitute a separate legal parcel under Applicable Laws, and (iii) Lessee provides evidence of financing to County, along with a budget and pro forma for each ground lease showing the viability of each separate component. County and Lessee shall reasonably cooperate regarding any modifications to the component's ground lease reasonably necessary to accomplish financing. Lessee shall prepare and present the proposed form of each ground lease, insubstantially the form attached hereto as Exhibit D-1 and Exhibit D-2, concurrently with its written request and all supporting documentation to County to enter into the ground leases in place of this Lease and each shall be red-lined to show how the ground lease varies in form and content from the lease attached hereto. Such ground leases shall be executed

by the Chief Real Estate Officer on behalf of the County. Such bifurcation shall not be deemed an Assignment, a Change in Ownership, a Change in Control, a Sublease or a Transfer and shall not be subject to the provisions of Section 4.3 or Article 12. Such bifurcation shall be deemed an Excluded Transfer. County and Lessee agree to use commercially reasonable efforts and all due diligence, recognizing that time is of the essence, to execute and deliver such leases, and upon such execution and delivery of both leases, this Lease shall terminate and be of no further force or effect.

1.2.7 Quarterly Reporting. Lessee will submit to the County a quarterly written report continuing through the term of the Lease, as more fully outlined below ("**Quarterly Report**"). Each Quarterly Report shall cover operations and redevelopment activities for the Hotel Property for the applicable quarter and shall be prepared in a clear and reasonably detailed format.

Each Quarterly Report shall include, at a minimum, updates regarding: (a) leasing and licensing activity, including material changes in occupancy; (b) revenues and expenditures in a reasonable summary form, including identification of material changes, as necessary; (c) progress of development and capital improvement activities, including schedule status, entitlements, substantial compliance, permitting, construction, and approvals; and (d) any other additional information reasonable requested by the Chief Real Estate Officer relating to the operation or redevelopment of the Hotel Property.

The Quarterly Report will be submitted to the Chief Real Estate Officer prior to the end of the months of April, July, October and January, delivered via email in a single consolidated document, and maybe combined with Quarterly Reporting for other Components of the Harbor Property.

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease shall be sixty-six (66) years ("**Term**") (subject to adjustment of the Term consistent with Section 8.3 hereof) and shall commence on the Effective Date. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on [66 YEARS]. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. For the avoidance of doubt, and by way of example, Lease Year 1 as used in this Lease shall mean and refer to the calendar year in which the Effective Date occurs, with the following calendar year being Lease Year 2 and so on.

2.1.1 In the event that the Lessee pursues the Alternative Hotel Component pursuant to Subsection 5.3.6, below, the Term of this Lease shall automatically revert to the Term of the Original Existing Lease, and the Effective Date of this Lease shall automatically revert to the Original Effective Date, without further action of the Parties. This reversion may be documented by the Parties in an amendment to this Lease, executed by the Chief Real Estate Officer on behalf of the County.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing, or hereafter constructed by Lessee, upon the Hotel Property, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.3.1 County's Election to Receive Improvements. All Improvements located on, in, or under the Hotel Property (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Hotel Property as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee upon the expiration of the Term or earlier termination of this Lease. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, (b) permit a Sublessee to exercise a right under its Sublease to remove any so-called Sublessee "trade-dress" items installed in or on the interior of space subleased to such Sublessee, provided that Lessee shall be responsible for repairing (or causing its Sublessee to repair) any damage to the Improvements incurred in connection with the removal of such items; or (c) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Hotel Property, any signage identifying Lessee (as opposed to other signage used in the operation of the Hotel Property and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Hotel Property for the Permitted Uses.

2.3.2 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Personal Property Removal Period described below), Lessee shall remove, at its sole cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Hotel Property or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property prior to the expiration of the Term, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Hotel Property or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof. County shall be under no obligation to Lessee to effectuate any such sale of furniture, equipment and other personal property, or, in the case of a sale, to obtain any required level of compensation therefor. Notwithstanding the foregoing, (i) Lessee shall have the right, exercisable by delivering written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the removal of the personal property and surrender the Hotel Property to County pursuant to Lessee's obligations under this Subsection 2.3.2 to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Personal Property Removal Period**"); and (ii) all of Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Hotel Property) shall be applicable during the Post Term Personal Property Removal Period, including without limitation, Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Personal Property Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post

Term Personal Property Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Personal Property Removal Period shall be paid by Lessee, in one lump sum prior to the commencement of the Post Term Personal Property Removal Period.

3. USE OF THE HOTEL PROPERTY.

3.1 Specific Primary Use. Subject to Subsection 3.2.2(h) below:

3.1.1 The Hotel Property and the Improvements thereon shall be used by Lessee solely for the operation and management of hotels, hospitality and related amenities including the following uses and services: (a) hotel, restaurant and limited retail; (b) filming or other television or motion picture activities; (c) catering, banquet and event activities and meeting rooms; (d) spa and recreational activities normally found in first class hotels; (e) ancillary bar, lounge and rooftop venues normally found in first class hotels; (f) cleaning and laundry service, gift shop, resort retail sales, magazine stand, barber or beauty services, travel services, airline ticket services and, subject to the limitations in Subsection 3.2.2(h) below, automobile rental; (g) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (h) boater services facilities and operations, including support buildings for marina users and guest services associated with harbor operations; (i) rental and provision of non-motorized recreational equipment, including paddleboards, surfboards, kayaks, bicycles, and similar recreational amenities; (j) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (k) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

3.1.2 All of the aforementioned uses, as they relate specifically to the Hotel Property, shall be referred to herein as the "**Permitted Uses**" of the Hotel Property. Except as specifically provided herein, the Hotel Property shall not, without the prior written consent of the Chief Real Estate Officer in the Chief Real Estate Officer's sole and absolute discretion, be used for any purpose other than the Permitted Uses. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Hotel Property, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Hotel Property, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Hotel Property be permitted to be operated or maintained in a manner that renders the Hotel Property or any part thereof a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Hotel Property and Improvements as set forth in this Lease, the following uses of the Hotel Property are expressly prohibited:

(a) The Hotel Property shall not be used or developed in any way which violates any Applicable Law, the CDP, the LCP or the Tidelands Grant.

(b) The Hotel Property shall not be used or developed in any way in a manner inconsistent with the Permitted Uses.

(c) No condition shall be permitted to exist upon the Hotel Property which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Hotel Property which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Hotel Property.

(d) Without the prior written reasonable approval of Chief Real Estate Officer, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "**antennae**") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Hotel Property, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain Chief Real Estate Officer's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further that the prior approval by the Chief Real Estate Officer shall not be required for (i) any satellite dish or communication antennae installed as an incident to the use of subleased space for purposes other than the operation of a satellite or communications business, and that is not greater than eighteen inches (18") in diameter and is screened from general view and (ii) the erection of cellular towers by Lessee or its designees provided it is approved by the City and is screened from general view or incorporated into an architectural element of the Improvements.

(e) No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Hotel Property, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as may be necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

(f) No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Hotel Property, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Hotel Property, including, without limitation, into subsurface waters, provided, however, (i) Hazardous Substances may be stored or used on the Hotel Property, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws, and (ii) Lessee shall have no responsibility for Hazardous Substances released on or under the Hotel Property as a result of defects or deficiencies in the Excluded Improvements or the existing breakwater adjacent to the Hotel Property identified on **Exhibit H** attached hereto (the "**Breakwater**"), or drainage from

the existing drainage channel which empties into the harbor that does not originate from the Hotel Property (except to the extent caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees), or boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor. This Subsection 3.2.2(f) shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Hotel Property or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Hotel Property, and (II) with respect to Hazardous Substances that did not originate at or from the Hotel Property, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees (collectively, the "**Lessee Parties**").

(g) No portion of the Hotel Property shall be used for the sale or lease, or for the display, storage or exhibition for sale or lease, of new or used boats or watercraft ("**Unauthorized Boat Brokerage**"), provided, however, that special events located on all or part of the Hotel Property which involve the sale, lease, display, storage or exhibition of new or used boats or watercraft, shall not be deemed an Unauthorized Boat Brokerage.

(h) In addition to the foregoing restrictions, and without limiting the same, notwithstanding anything in this Lease to the contrary, Lessee shall not lease or permit the use of any portion of the Hotel Property for the following: (i) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building); (ii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (iii) any mortuary; (iv) any establishment selling or exhibiting pornographic materials (except for so-called "adult" material customarily offered on an incidental basis only in first-class hotels, bookstores and/or video stores normally found in first class shopping centers); (v) any massage parlor (which shall not include therapeutic massage normally found in first class shopping centers, such as Massage Envy), topless club or "strip joint"; (vi) any heavy manufacturing, refining, smelting, agricultural or mining operation; (vii) any automobile repair business; (viii) any automobile rental business or automobile dealership which maintains its automobile inventory on-site; (ix) any use which is a public or private nuisance, or (x) any uses prohibited under County ordinances.

3.3 Active Public Use.

3.3.1 The Parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Dana Point Harbor by and for the benefit of the public, without discrimination as to race, gender, religion, or sexual orientation, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will (a) operate the Hotel Property and Improvements located thereon fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, "**Operating**

Covenant Exceptions")) to accomplish these objectives and consistent with the operation of other comparable facilities or businesses within the County, (b) not to abandon or vacate the Hotel Property at any time, and (c) use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days and Hours of Operation. All Improvements on the Hotel Property shall be open every day of the year in a manner consistent with the following:

3.4.1 Guest Rooms, Front Desk, and Security: These operations shall be maintained 24 hours per day, 7 days per week, without exception.

3.4.2 Amenities and Commercial Spaces: Restaurants, bars, pools, spas, retail shops, and other amenity spaces may operate during hours typical for first-class Southern California hotels, marinas, and associated commercial amenities.

3.4.3 Temporary Closures: Lessee may temporarily close any portion of the Property for health or human safety reasons, or while such portions are undergoing construction, Renovation, Alterations, or Redevelopment Work, without violating this section.

3.4.4 Holiday Closures: Non-essential amenities and commercial spaces may follow holiday closures customary to Dana Point Harbor operations. Essential operations, including guest rooms, front desk, and security, must remain open during such holidays.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs, flags and banners which are placed on, or are visible from, the exterior of any Improvements shall be consistent with the Permitted Uses, comply with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations) and the Local Coastal Program (Section 8.5.3), including requirements for size, placement, style, illumination, materials, and protection of scenic views and shall only be of such size, design, wording and color as shall have been specifically submitted to and approved in writing in advance by the City through the applicable entitlements for the applicable Improvement Project. Because the currently approved Dana Point Harbor Sign Program applies only to the Commercial Core Component, any signage for the Hotel Property or other areas not yet covered by an adopted Sign Program shall require prior written approval from the CREO Office, which approval shall be limited to confirmation that the proposed Sign Program complies with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations), the Local Coastal Program (Section 8.5.3), and City approvals. Any sign, banner, flag, or similar item that is inconsistent with the Permitted Uses, the applicable Sign Program, LCP sign requirements, or CREO Office approved design may be removed by the CREO Office at Lessee's sole cost if not removed within thirty (30) days following delivery of written notice to Lessee.

3.6 Compliance with Agreements and Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses, permits or approvals related to or affecting the use, operation, maintenance, repair or improvement of the Hotel Property and/or Improvements. Without limitation of the foregoing, Lessee shall comply with (a) all

conditions and requirements of the CDP, LCP and Tidelands Grant, (b) all conditions and requirements set forth in any development agreement(s) entered into by and between Lessee and the City and/or other public agencies with respect to the Redevelopment Work, and (c) all public access requirements of the LCP. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Hotel Property and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other retail, commercial, hospitality, restaurant, marina and public park facilities in Orange County, and delivered in writing to Lessee, provided such rules and regulations do not materially and adversely impact Lessee's operations or materially increase Lessee's expenses.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The Parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County, except as set forth in Subsection 10.7 below. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Hotel Property and Improvements, including without limitation the parking areas included within the Hotel Property.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid prior to delinquency, directly to the applicable utility providers, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Hotel Property.

4.1.2 Taxes and Assessments. Lessee shall pay before delinquency all lawful taxes, assessments, fees, and charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Hotel Property for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Hotel Property. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option, Lessee's exercise thereof, or the execution of this Lease. Lessee shall have the right to contest the amount of any assessment imposed against the Hotel Property or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee; and provided further, Lessee shall pay under protest such assessment pending the outcome of such proceedings so long as neither the tax parcel nor the Hotel Property are in danger of being forfeited. County shall not be required to join in any proceedings to contest any assessment unless the provisions of any law, rule or regulation require such proceedings to be brought by or in the name of the County, in which event the County shall join in such proceedings or permit the same to be brought in its name. Lessee will defend, indemnify and save harmless County from any Claims related to such proceedings in

accordance with Section 8.1 below. **In accordance with Section 107.6 of the California Revenue and Taxation Code, Lessee is specifically informed, and hereby acknowledges and agrees, that the Hotel Property and any fixtures, equipment, or other improvements installed or constructed thereon shall be subject to possessory interest taxes and assessments, and that such taxes and assessments shall be paid by Lessee prior to delinquency. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax**.

4.1.3 No Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by Applicable Law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

4.2 Rental Payments; Payment; Adjustments. Throughout the Term, Lessee shall pay to County (a) the Annual Minimum Rent described in Subsection 4.2.1 below, and (b) the Percentage Rent described in Subsection 4.2.2 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent.

(a) Initial Annual Minimum Rent; Payment. During the Term, Lessee shall pay to County, for the Hotel Property, the minimum rent set forth on **Exhibit F** attached hereto (subject to adjustment pursuant to Subsection 4.2.1(b) below) (the "**Annual Minimum Rent**"). Provided that Tenant faithfully performs all of the terms and conditions of this Lease and there is no Event of Default, the Annual Minimum Rent for the Hotel Property will be abated during the period (the "**Abatement Period**") beginning on the commencement of demolition of the existing Marina Inn for the Redevelopment Work for the Hotel Property and ending on the applicable CO Date for either the Select Service Hotel or the Full Service Hotel, and such date shall be referred to in this Lease as the "**Hotel Deemed Completion Date**" for the applicable Hotel. For purposes hereof, the date upon which the commencement of the Redevelopment Work has occurred will be the first date that visible construction activity for demolition of the existing Marina Inn (as opposed to the delivery of goods and materials or erection of fencing) has occurred ("**Commencement of Construction**"). Lessee shall provide written notice to County of the Commencement of Construction and the CO Date promptly upon the occurrence thereof. Annual Minimum Rent for each Lease Year shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent for such Lease Year (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is less than a full calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

(b) Adjustments to Annual Minimum Rent. The Annual Minimum Rent for the Hotel Property shall be adjusted as set forth on **Exhibit F** attached hereto.

4.2.2 Percentage Rent. Except as provided in Section [4.2.2(e) below, beginning in the fifth (5th) Operating Year of the applicable Hotel, Lessee shall pay to County, an amount ("**Percentage Rent**") for any given month equal to (i) the aggregate of all amounts set forth below in Subsection 4.2.2(a), to the extent Gross Receipts are generated from the Hotel Property, less (ii) (A) the Annual Minimum Rent payable by Lessee for the Hotel Property during such month, and (B) all amounts required to be paid by Lessee to reimburse to any tenant at the Hotel Property whose tenancy predates the Effective Date a security deposit, to the extent the required amounts are not transferred to Lessee by County as of the Effective Date.

(a) Categories of Percentage Rent. Gross Receipts from each transaction, sale or activity of Lessee (or from any Sublessee pursuant to Subsection 4.2.2(c)) on, from or within the Hotel Property, or as a result of operations from the Hotel Property (e.g., internet sales), shall be reported under one or more of the following percentage categories, as applicable:

(1) SIX PERCENT (6%) of Gross Receipts from the existing Marina Inn hotel room revenue commencing from the Original Effective Date through the date the same is permanently closed to the public. Thereafter, (x) THREE PERCENT (3%) of Gross Receipts from the Full Service Hotel room revenue and TWO AND FOUR TENTHS PERCENT (2.4%) of Gross Receipts from the Select Service Hotel room revenue, as applicable, commencing on the FOURTH (4th) anniversary of the Select Service Hotel Operation Date or Full Service Hotel Operation Date, as applicable, and continuing through the eighteenth (18th) anniversary of the Effective Date, and (y) FOUR PERCENT (4%) of Gross Receipts from the Full Service Hotel room revenue and THREE AND TWO TENTHS PERCENT (3.2%) of Gross Receipts from the Select Service Hotel room revenue, as applicable, thereafter;

(2) TWO PERCENT (2%) of Gross Receipts from other hotel operations, including, but not limited to hotel parking, banquet events, restaurants, lounges, bars, rooftop venues, spa services, resort fees and other hotel services and activities commencing on the Effective Date;

(b) Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be included in the calculation of Gross Receipts.

(c) Sublessees in Business. Subject to Subsection 1.1.84(b)(13) above, if a Sublessee directly pays any common area maintenance payments, common area operating expense or real property tax reimbursements in lieu of reimbursement of such expenses under its lease for the space it occupies, then such costs and expenses shall be added to and included in the Gross Receipts under the applicable provision in Subsection 4.2.2(a) above.

(d) No Expansion of Permitted Uses. Lessee acknowledges that (i) Article 3 of this Lease provides for the Permitted Uses of the Hotel Property and that the Percentage Rent categories listed in Subsection 4.2.2(a) above may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses, and (ii) the Percentage Rent categories set forth in Subsection 4.2.2(a) above are intended merely as a guideline in determining the appropriate categories for charging Percentage Rent.

(e) Performance Payment. In the event that, in any of its first, second, third or fourth Operating Years, the Full Service Hotel achieves a net operating income (calculated pursuant to generally accepted accounting principles on an annual basis) that is more than one hundred fifteen percent (115%) of the NOI forecasted on the proforma approved by the County as part of its approval of the hotel construction financing ("**Proforma NOI**") for the Full Service Hotel for such Operating Year, Lessee shall pay to County, as performance percentage rent ("**Performance Percentage Rent"),** in addition to Annual Minimum Rent for such period, twenty percent (20%) of the amount by which actual net operating income exceeds the one hundred fifteen percent (115%) threshold. Lessee shall report any Performance Percentage Rent due for first, second, third or fourth Operating Years at the end of the applicable Operating Year. By way of example, if the Proforma NOI in Operating Year 3 of the Full Service Hotel is $4,000,000 and the actual net operating income in Operating Year 3 of the Full Service Hotel is $6,000,000 (which is 150% of the Proforma NOI), Lessee shall pay to County the Annual Minimum Rent for Operating Year 3 applicable to the Full Service Hotel in the amount of $145,000, *plus* $280,000, which is twenty percent (20%) of the amount by which actual NOI exceeds 115% of the Proforma NOI. As used herein, **"NOI"** means, for any applicable period, the total Gross Receipts derived from the ownership and operation of the Full Service Hotel (including, without limitation, room revenue, food and beverage revenue, and other ancillary income), **less all operating and fixed expenses** incurred in the ordinary course of operating the Full Service Hotel, including without limitation administrative and general expenses, payroll, information and telecom, utilities, maintenance and repairs, capital expenditures and FF&E reserves, property taxes, insurance, sales and marketing, equipment rentals and leases, rent payable under this Lease, franchise fees and management fees; **provided, however, that NOI shall exclude** (i) debt service (including principal and interest), (ii) federal, state, and local income taxes, (iii) depreciation and amortization,), (v) financing costs, and (vi) any non-recurring, extraordinary, or non-operating income or expenses.

(f) New Categories of Percentage Rent.

(1) If, with the prior written approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently a Permitted Use and as to which there is no specific Percentage Rent category set forth in Subsection 4.2.2(a) above applicable to such additional or related use, then concurrent with the approval by County or Chief Real Estate Officer of such specific additional use, Chief Real Estate Officer and Lessee shall negotiate in good faith to establish the specific Percentage Rent to be applied to such use.

(2) If, without the prior written approval of Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease, then Lessee shall pay to County SEVENTY-FIVE PERCENT (75%) of Gross Receipts generated by such non-permitted use as Percentage Rent therefor.

4.2.3 Payment and Late Fees.

(a) Monthly Minimum Rent Payment. Monthly Minimum Rent shall be paid by Lessee to County in advance on or before the first (1st) day of each calendar month during the Term. Concurrently with each payment of Monthly Minimum Rent, Lessee shall deliver to County a statement setting forth the amount of Monthly Minimum Rent being paid hereunder which statement shall separately set forth the amount of Monthly Minimum Rent being paid for each sub-component (i.e., the Full Service Hotel and Select Service Hotel sub-components) as more particularly described on **Exhibit F** attached hereto.

(b) Percentage Rent; Reporting and Payment. On the last business day of each month during the Term, Lessee shall, with respect to the Hotel Property, (i) deliver to the County a separate report (in a form acceptable to County, and signed by Lessee) summarizing (A) the total Gross Receipts generated from operations on the Hotel Property during the preceding calendar month (including Gross Receipts generated by Sublessees, if reported under its Sublease, and Gross Receipts generated in connection with any Lessee Business Operation), including such backup as County may reasonably require from time to time, and shall include a breakdown of Gross Receipts by sub-component as described in Subsection 4.2.3(a) above, and (B) the amount of Percentage Rent resulting therefrom (including by sub-component, as applicable, and Performance Percentage Rent, if applicable), and (ii) concurrently with its delivery of such report to the County, pay to County a sum equal to the total of the percentages listed in Subsection 4.2.2 above generated from operations on the Hotel Property for such previous month, less the installment of Monthly Minimum Rent applicable to the Hotel Property and paid to County for such previous month. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.3(c) below. Lessee agrees to and shall comply with, and shall cause all Sublessees (other than those described in Subsection 4.2.2(c)) to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 15 of this Lease.

(c) Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Annual Minimum Rent otherwise due under this Subsection 4.2.3 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete

after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent.

(d) Delivery of Payments; No Statements. All payments under this Lease shall be made via wire transfer to the following:

Bank Name:	Wells Fargo Bank
Account Name:	OCCR Dana Point Harbor
Routing / ABA:	121000248
Account #:	4121802219
Lease Name:	Dana Point Harbor

The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) days' written notice to Lessee. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

(e) Late Fees; Interest. In the event any payment under this Lease is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") equal to five percent (5%) of the delinquent amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, such late charge shall be waived to the extent Lessee cures such failure within five (5) business days following Lessee's receipt of written notice from County that the same was not received when due. Any unpaid rent due, together with any Late Fees thereon, shall bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 13 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Hotel Property shall be limited to a maximum of three (3) years.

4.3 Payment Upon Changes of Ownership & Financing Events. Except as otherwise provided in this Subsection 4.3, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer), or (b) a Financing Event, Lessee shall pay to County (i) an administrative charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**"), plus (ii) in the event the proposed Change of Ownership or Financing Event is consummated, a Percentage Share, subject to the remaining provisions of this Section 4.3. Notwithstanding

anything herein to the contrary, Excluded Transfers shall not be deemed to create an obligation to pay County a Percentage Share and no Percentage Share shall be payable in connection with (A) the initial construction financing obtained in connection with the Redevelopment Work, (B) the initial capitalization of Lessee with the closing of the initial hotel construction financing for purposes of performing the Redevelopment Work (Initial capitalization means the one-time equity contributions and direct funding made by Lessee or its Affiliates solely in connection with, and on or before the closing of, the initial Hotel Construction Financing for purposes of completing the Redevelopment Work, and shall not include any related-party (but not member) loans or refinancings occurring after the closing of the Hotel Construction Financing), (C) in the event that all or any portion of the proceeds of a Financing Event are reinvested in the Hotel Property and Improvements, in which case Lessee shall provide all documentation of the use of such proceeds to the County for review and audit, if deemed necessary in the reasonable discretion of the County and such reinvestment shall be limited to Improvements previously approved by the County (which approval shall not be unreasonably withheld, conditioned, or delayed), or (D) in the event that the Loan Amount is equal to or less than the amount of (i) existing loans being paid off in connection with such Financing Event, *plus* (ii) reasonable and customary costs, fees and expenses of an Institutional Lender incurred by Lessee attributable solely to such Financing Event, excluding Lessee's internal and administrative costs and fees related to the Financing Event, which shall be documented and provided to the County in advance of the Financing Event as a condition to such Financing Event being considered an Excluded Transfer. In the event only a portion of the proceeds from a Financing Event are reinvested pursuant to part (C) of the preceding sentence, only such portion of the proceeds shall be exempt from Percentage Share. For any portion of Financing Event proceeds that Lessee asserts are reinvested in the Hotel Property and Improvements, Lessee shall: (a) reinvest such proceeds within twelve (12) months after the closing of the Financing Event; (b) provide the County, within sixty (60) days of each expenditure, with documentation reasonably acceptable to the County verifying such reinvestment, including invoices, contracts, and proof of payment; and (c) identify the total reinvested amount so the exempt portion may be calculated. Only amounts actually reinvested in County-approved Improvements shall be excluded from the Percentage Share. The provisions of this Section 4.3 shall apply to all transfers of Beneficial Interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of this Section 4.3, and the principles set forth herein, shall apply to any transfer or series of transfers (except those excluded pursuant to this Lease), whether or not structured for the purpose of avoiding the obligation to pay a Percentage Share set forth in this Section 4.3 and which, when viewed together, would otherwise constitute a Change of Ownership.

4.3.1 Definitions. For purposes of this Lease:

(a) "**Aggregate Transfer**" shall mean the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute Beneficial Interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than Excluded Transfers) occurring since the later of (i) the Effective Date, or (ii) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided,

however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

(b) "**Beneficial Interest**" shall mean the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the Beneficial Interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

(c) "**Change of Ownership**" shall mean (i) any transfer by Lessee of a thirty-two percent (32%) or greater direct ownership interest in the Lessee's leasehold estate under this Lease, (ii) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a thirty-two percent (32%) or greater direct ownership interest in such Major Sublease, (iii) any transaction or series of related transactions not described in Subsections 4.3.1(c)(i) or (ii) which constitute an Aggregate Transfer of thirty-two percent (32%) or more of the Beneficial Interests in Lessee or a Major Sublessee, and/or (iv) a Change of Control of Lessee or a Major Sublessee.

(d) "**Change of Control**" shall mean any transaction whereby person(s) or entity(ies) in the aggregate acquire(s): (i) a Beneficial Interest in Lessee or a Major Sublessee possessing the voting power (other than voting rights accruing only in the event of a default, breach or event of noncompliance) holding the majority of the voting control of Lessee (whether by merger, consolidation, reorganization, combination, sale or transfer of the Lessee's equity interests (such as membership, stock or partnership interests), voting agreement, proxy, power of attorney or otherwise); or (ii) all or substantially all of the Lessee's assets determined on a consolidated basis.

(e) "**Excluded Transfers**" shall mean Changes of Ownership resulting from the following:

(1) those transactions listed in Section 4.3 (A), (B), (C) and (D);

(2) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that

is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or to a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure), including transfers to such transferring partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 4.3.1(e)(4) below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

(3) a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(4) a transfer of ownership interests in Lessee or in constituent entities of Lessee (A) to a member of the "**immediate family**" of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (B) to a trust for the benefit of a member of the immediate family of the transferor, or (C) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.3.1(e)(4) is the result of gift, devise, intestate succession or operation of law, but expressly excluding any such transfers that are the result of a sale of such ownership interest.

(5) a transfer of a Beneficial Interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

(6) a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership;

(7) any transfer to the County resulting from a Condemnation by County;

(8) any assignment of the Lease by Lessee to a parent, or wholly-owned subsidiary or Affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest or Change of Control of Lessee;

(9) the first Financing Event that occurs to refinance the initial construction loan;

(10) the entering into this Lease by County and Lessee; or

(11) the bifurcation of this Lease into two leases (each of which may have a new lessee): one lease for the Select Service Hotel Component and one lease for the Full Service Hotel Component, all in accordance with the terms and conditions of this Lease.

(f) "**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (without deduction for costs or any other amounts), but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair market value of the interests transferred; provided, if Lessee and County are unable to agree upon such fair market value, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.

(g) "**Loan Amount**" shall mean the gross principal amount of any Financing Event after the Effective Date.

(h) "**Percentage Share**" shall mean the applicable amount determined pursuant to Subsection 4.3.4 of this Lease.

4.3.2 Determining Value of Changes of Ownership and Financing Events Under Certain Scenarios.

(a) Changes of Ownership Involving Multiple Assets. For purposes of determining the Gross Transfer Proceeds from a transaction or event that involves both a Change of Ownership and also the transfer of other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the ratio of the fair market value of the Beneficial Interest in the Lease being transferred relative to the value of the total consideration payable for all the assets being transferred. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.

(b) Financing Events Involving Multiple Assets. For purposes of determining the Percentage Share from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the ratio of (i) the fair market value of

the Beneficial Interest in the Lease, to (ii) the aggregate fair market value of the assets securing such financing, including the Beneficial Interest in the Lease. The fair market value of such Beneficial Interest in the Lease will be the value attributable to such fair market value by the lender involved in such Financing Event, or, failing any such lender valuation, then in accordance with the procedure set forth in Subsection 4.3.3.

(c) Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration in the manner prescribed in Subsection 4.3.3.

4.3.3 Determination of Fair Market Value.

(a) Agreement on Fair Market Rental Value; Amendment. In the event the County and Lessee are required to determine the fair market value hereunder (including that of any Component) and the County and Lessee are unable to agree upon the fair market value within thirty (30) days from the end of the applicable response period, if any, or from the date that such fair market value determination is required to be made hereunder if no response period is specified (the "**Outside Agreement Date**") using their best good-faith efforts, then fair market rental value shall be determined in accordance with Subsection 4.3.3(b) below. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

(b) Disagreement on Fair Market Rental Value; Arbitration. If County and Lessee fail to reach agreement on or prior to the Outside Agreement Date, then, unless the Parties agree otherwise in writing, the determination of fair market value shall be arbitrated as follows:

(1) Within ten (10) days after the Outside Agreement Date, each Party, at its own cost and by giving notice to the other Party, shall appoint an independent California MAI licensed real estate appraiser and a member of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, who has no financial interest in County or Lessee, who has no ongoing relationship with County or Lessee and who has at least ten (10) years' experience in appraising fair market values of comparable facilities or businesses within the County and, to the extent available, within the Dana Point and neighboring beach-city sub-market, to appraise and determine the fair market value. If, in the time provided, only one (1) Party shall give notice of appointment of such an appraiser, the single appraiser appointed shall determine the fair market value.

(2) If each Party appoints an appraiser within the allotted timeframe, the two (2) appraisers shall independently, and without consultation, prepare a written determination of the fair market value within thirty (30) days after their appointment taking into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3(a) above. Each appraiser shall seal its respective determination after completion. After both determinations are completed, the resulting estimates of fair market value shall be opened simultaneously and compared. If, in the time provided, only one (1) appraiser shall submit a written determination of fair market value, the fair market value shall be the fair market value determined by said single appraiser.

(3) If the values of the two appraisers appointed by the Parties differ, and the Parties do not otherwise then agree as to the determination of fair market value within ten (10) days following the opening of the appraisals, then the two (2) appraisers shall designate a single appraiser, who shall be qualified under the same criteria as set forth hereinabove for qualification of the initial two (2) appraisers, except that the third appraiser shall not have been previously engaged by County or Lessee for any purpose. If the two (2) appraisers have not agreed on the appraiser after ten (10) days, either County or Lessee, by giving ten (10) days' written notice to the other Party, may apply to the then Presiding Judge of the Superior Court of Orange County, acting in his or her private and nonjudicial capacity, for the selection of a single appraiser who meets the qualifications set forth in this subsection above. The third appraiser shall make an appraisal of the fair market value, taking into account into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3(a) above. Within thirty (30) days after selection and without consultation with the first two (2) appraisers, the third party appraiser shall select the fair market value of one of the initial two (2) appraisers that the third appraiser determines is closest, on a dollar basis, to the fair market value determined by the third appraiser. Each Party may submit written material to the third appraiser, with a copy to the other Party, on the issue of fair market value. Such third appraiser shall provide written notice to County and Lessee of its determination of fair market value, and such determination shall be binding upon County and Lessee.

(4) Each Party shall pay the fees and expenses of its own appraiser, and fifty percent (50%) of the fee of the third appraiser, if applicable.

(5) The appraisers shall have no power to modify the provisions of the Lease, and their sole function shall be to determine the fair market rental value in accordance with this subsection.

4.3.4 Determining Percentage Share.

(a) Upon a Change of Ownership. In the event of a Change of Ownership, the "**Percentage Share**" shall be one percent (1%) of the Gross Transfer Proceeds from such Change of Ownership.

(b) Upon a Financing Event. With respect to a Financing Event, the "**Percentage Share**" shall be an amount equal to one percent (1%) of the Loan Amount of such Financing Event.

(c) Limitations; No Duplication. Notwithstanding any contrary provision of this Subsection 4.3.4, in the calculation of Gross Transfer Proceeds and Loan Amount derived from a Financing Event taking place concurrently with a Change of Ownership, the Percentage Share shall be based on the greater of the Gross Transfer Proceeds and the Loan Amount.

(d) Calculating Percentage Share. Before any Change of Ownership or Financing Event for which Percentage Share may be due, Lessee shall provide County with its detailed calculation of the Percentage Share. No Change of Ownership or Financing Event shall occur until agreement is reached on the calculation of Percentage Share; provided, however, that a Change of Ownership or Financing Event shall be permitted to occur without such agreement as long as County and Lessee make mutually acceptable arrangements for the preservation of any additional Percentage Share (plus interest at the Interest Rate) that might be due to County over and above that reflected in the Lessee's calculation should any such dispute be resolved in favor of County. Percentage Share shall be due and payable concurrently with the Change of Ownership or Financing Event giving rise to the obligation to pay Percentage Share (or, with respect to any disputed amount, upon resolution of the dispute) and, in the situation of a Change of Ownership, shall be the joint and several obligation of the transferee and transferor.

4.3.5 Determining Gross Transfer Proceeds.

(a) Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.3.1(c)(ii), Subsections 4.3.4(a) and 4.3.4(b) shall apply (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee, a percentage of which is passed through to County under any provision of this Lease (other than payment of Percentage Share), shall be disregarded in the computation of Gross Transfer Proceeds.

(b) Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in Subsections 4.3.4(a) through 4.3.4(c) above (e.g., a transfer of a Beneficial Interest in Lessee or a Major Sublessee), Subsections 4.3.4(a) through 4.3.4(c) shall apply to such Change of Ownership (as applicable).

4.3.6 Payment of Administrative Charge and Percentage Share.

(a) Deposit Towards Administrative Charge. A deposit of Ten Thousand Dollars ($10,000) toward the Administrative Charge shall be due and payable by Lessee to County upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Percentage Share shall be due and payable in accordance with Subsection 4.3.6(d) below. If County disapproves the proposed transaction then, within thirty (30)

days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under this Section 4.3. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay to County the balance of the Administrative Charge otherwise allowable under Section 4.3 within thirty (30) days after receipt of the notice from County setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice.

(b) Calculation of Payment. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Percentage Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation of the transaction), Lessee shall present (or cause to be presented) to County its calculation of the Percentage Share (if any) anticipated to be derived therefrom ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Percentage Share. Within sixty (60) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Percentage Share set forth therein. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the amount of the Percentage Share in respect thereof, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that, at the closing of the transaction (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Percentage Share, and (ii) Lessee shall deposit the disputed portion of the Percentage Share into an interest bearing escrow account for the mutual benefit of Lessee and County (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed to the Party entitled thereto following the final resolution of the dispute by a court of competent jurisdiction, or earlier settlement of the dispute by the Parties.

(c) Party Responsible for Payment. With respect to a Change of Ownership giving rise to the Administrative Charge and Percentage Share, the obligation to pay the Administrative Charge and Percentage Share shall be the joint and several obligation of the transferee and transferor.

(d) Timing for Payment. The Percentage Share and the balance of the Administrative Charge not already deposited with the County in accordance with Subsection 4.3.1(e)(10) above, if any, shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an

Excluded Transfer) or Financing Event giving rise to the obligation to pay such amounts, regardless of whether or not money is transferred by the parties in connection with such consummation.

(e) Remedies Upon Failure to Make Timely Payment. Any Percentage Share, or part thereof, not paid when due shall be subject to a late fee of five percent (5%) of the amount due, together with interest on such Percentage Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a good faith dispute as to the correct amount of the Percentage Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Percentage Share and, at the closing of the transaction, deposits the disputed portion thereof in an interest bearing escrow account with an escrow holder reasonably acceptable to both Parties and in an escrow opened for the mutual benefit of Lessee and County (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Percentage Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Percentage Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.3.1(c)(ii) above, the Percentage Share shall be payable to County as and when the Lessee's proceeds from the Gross Transfer Proceeds (or the value thereof) are received by Lessee. In the event that the Administrative Charge or Percentage Share is not paid when due with respect to the Beneficial Interest in this Lease, then such failure shall constitute an Event of Default under this Lease and the County shall have the remedies set forth in Subsection 14 hereof in addition to the remedies provided in this Subsection 4.3.6(e).

4.4 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County, Lessee shall provide County with an updated schedule listing the names and mailing addresses of (a) all shareholders, partners, members and other holders of equity or Beneficial Interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (b) all shareholders, partners, members and other holders of equity or Beneficial Interests in any of the constituent shareholders, partners, members or other holders of equity or Beneficial Interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a ten percent (10%) or greater Beneficial Interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a ten percent (10%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review all such information so obtained. Lessee agrees to use its commercially reasonable and diligent efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of ten percent (10%) or greater Beneficial Interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Following the Effective Date, Lessee shall perform certain redevelopment and renovation work with respect to the Hotel Component (collectively, the "**Redevelopment Work**") as set forth for the Hotel Component in the County-approved Conceptual Plans, Budget, Construction Schedule, Marketing Plan, Financial Plan and Management Plan attached to this Lease as **Exhibit B** (collectively, the "**Approved Proposal Submittals**"). For the avoidance of doubt, the Redevelopment Work shall mean that redevelopment and renovation work set forth in the Approved Proposal Submittals applicable to the Hotel Component only, and not any work applicable to any other portion of the Harbor Property which is not the Hotel Property. Lessee shall perform the Redevelopment Work for the Hotel Component in accordance with (a) the Approved Proposal Submittals, as same may be revised from time to time in accordance with this Lease, (b) the Final Plans and Specifications, as same may be revised from time to time in accordance with this Lease, (c) all governmental permits and conditions for approval thereof including, without limitation, the LCP and CDP, (d) Lessee's obligations under this Lease, (e) all Applicable Laws, and (f) consistent with the Permitted Uses set forth in Article 3 above.

5.2 Cost of Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). With respect to the Hotel Component, Lessee shall expend on the Redevelopment Work for the Hotel Component not less than the Required Cost Amount applicable to the Hotel Component; provided, however, only Applicable Redevelopment Costs will apply towards the Required Cost Amount. Lessee acknowledges and agrees that (a) the Required Cost Amount for the Hotel Component is not the maximum amount that Lessee is required to expend for Applicable Redevelopment Costs on the Hotel Component, and (b) Lessee shall be required to perform the Redevelopment Work for the Hotel Component in accordance with the requirements and standards set forth in this Article 5 even if the Applicable Redevelopment Costs necessary to do so exceed the applicable Required Cost Amount. Applicable Redevelopment Costs shall not include any soft costs, including without limitation: (i) architectural, design and engineering fees; (ii) governmental permit fees; (iii) project oversight and management fees; (iv) costs for furniture, fixtures and equipment; (v) accounting, legal and insurance costs incurred in connection with the Redevelopment Work; or (v) construction loan fees, costs or interest. The Applicable Redevelopment Costs shall also exclude the Option Price and Extension Fee (as such terms are defined in the Option Agreement), syndication fees and costs, and any imputed cost or value of the existing Improvements as of the Original Effective Date. The Required Cost Amount for the Hotel Component will be increased as of the date that construction of the Redevelopment Work for the Hotel Component commences (each, a "**Required Cost Adjustment Date**") by the same percentage increase in the Consumer Price Index during the period from the Original Effective Date through and until the month during which a Required Cost Adjustment Date occurs.

5.3 Schedule of Redevelopment Work.

5.3.1 Subject to Sections 5.3.2 and 5.7 below, Lessee shall, with respect to the Hotel Component, (a) commence the Redevelopment Work no later than the applicable Required Construction Commencement Date for the Hotel Component, (b) achieve each Interim Milestone

by the date (the "**Interim Milestone Date**") set forth for the same in the Construction Schedule for the Hotel Component, and (c) achieve the CO Date for the Select Service Hotel and/or the Full Service Hotel, as applicable, no later than the applicable Required Construction Completion Date for the Select Service Hotel and/or the Full Service Hotel. Following Commencement of Construction of the Redevelopment Work for the Hotel Component, Lessee shall diligently continue performance of such Redevelopment Work through completion thereof in accordance with the Construction Schedule, as same may be amended from time to time with the approval of Chief Real Estate Officer pursuant to Subsection 5.3.2 below.

5.3.2 A schedule for the commencement, performance and completion of the Redevelopment Work for the Hotel Component (each, a "**Construction Schedule**") is included in the Approved Proposal Submittals. The Construction Schedule includes, with respect to the Hotel Component: (a) the Required Construction Commencement Date for the Hotel Component, (b) the anticipated CO Date for each of the Select Service Hotel and the Full Service Hotel, (c) the Required Construction Completion Date and (d) all interim milestones between the Required Construction Commencement Date and Required Construction Completion Date (collectively, "**Interim Milestones**" and each, an "**Interim Milestone**") that Lessee and County reasonably agree are relevant to tracking the likelihood that the Redevelopment Work for the Hotel Component will be completed by the applicable anticipated CO Date for the Select Service Hotel and the Full Service Hotel, as applicable. Lessee shall not make any Material Modifications to the Construction Schedule without the prior written approval of Chief Real Estate Officer obtained in accordance with the procedure set forth below in this Subsection 5.3.2. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested Material Modifications to the Construction Schedule within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PROPOSED CHANGE(S) TO THE CONSTRUCTION SCHEDULE. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH CHANGE(S) TO THE CONSTRUCTION SCHEDULE."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to the Construction Schedule in writing within said additional twenty (20) day period shall be deemed approval of the same. Concurrently with any disapproval of such proposed change by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to the proposed change together with its proposed modification that will be necessary to obtain Chief Real Estate Officer's approval. Chief Real Estate Officer's approval of any changes to the Construction Schedule shall not relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Redevelopment Work

on or before the respective required dates for such commencement and completion set forth in Subsection 5.3.1 above.

5.3.3 Lessee acknowledges that the principal inducement to County to enter into this Lease is the timely commencement, performance and completion by Lessee of the Redevelopment Work. If Lessee fails to comply with its obligations under this Article 5 to commence and complete the Redevelopment Work for the Hotel Component by the applicable Required Construction Commencement Date and Required Construction Completion Date, respectively (as such dates may be extended pursuant to the provisions of this Article 5 or Section 5.7 below), then such failure shall be deemed an Event of Default giving rise to County's remedies under Section 14.3 below.

5.3.4 Lessee acknowledges that certain private enterprises operating on property leased from County adjacent to the Hotel Property may require access to their properties via the Hotel Property at all times during the course of the Redevelopment Work. Lessee shall schedule the Redevelopment Work in such a way as to minimize interruption with such private business enterprises.

5.3.5 Lessee shall continue to use commercially reasonable and diligent efforts to procure financing. Notwithstanding the foregoing, in the event Lessee is unable to procure reasonable financing for the proposed Hotels contemplated in the current plan for the Redevelopment Work by the date by the date which is twelve (12) months before the Required Construction Commencement Date for the Select Service Hotel on commercially reasonable terms, despite Lessee's commercially reasonable and diligent efforts to do so, the failure to (a) commence the Redevelopment Work on the Select Service Hotel, if built, or the Full Service Hotel no later than the applicable Required Construction Commencement Date for the Property, (b) achieve each Interim Milestone on the Select Service Hotel, if built, or the Full Service Hotel by the applicable Interim Milestone Date set forth for the same in the Construction Schedule for the Property, or (c) achieve the CO Date for the Select Service Hotel, if built, or the Full Service Hotel no later than the applicable Required Construction Completion Date for the Property shall not constitute a default of this Lease. In the event that Lessee determines that it is unable to procure reasonable financing in accordance with the foregoing, Lessee shall provide written notice to County that it was unable to obtain financing for the Property on commercially reasonable terms and upon request by the Chief Real Estate Officer shall meet and confer with the Chief Real Estate Officer regarding Lessee's determination and its efforts to obtain financing, but such obligation to meet and confer shall in no event be deemed an approval right by County of Lessee's determination of such inability.

5.3.6 In the event Lessee is unable to procure financing for the Property on commercially reasonable terms by either (a) the date which is twelve (12) months before the Required Construction Commencement Date for the Select Service Hotel or (b) within six (6) months of the vesting of "Final Entitlements" for the Select Service Hotel, Lessee shall commence a repair and maintenance program of the Marina Inn including interior, exterior, lobby, guest rooms and common areas to the extent exempt from Coastal Commission approval or approved by the Coastal Commission on commercially reasonable terms (such repair and maintenance program, the "**Alternative Hotel Component**"). Prior to moving forward with the Alternative Hotel Component, Lessee shall provide written notice to County that it was unable to obtain financing

for the Property on commercially reasonable terms and upon request by the Chief Real Estate Officer shall meet and confer with the Chief Real Estate Officer regarding Lessee's determination and its efforts to obtain financing, but such obligation to meet and confer shall in no event be deemed an approval right by County of Lessee's determination of such inability. The initial phase of the Alternative Hotel Component shall have a minimum budget of $8,000,000 and shall include replacing all guest room furniture and public area furniture and carpet; repainting the interior and exterior of the Marina Inn; replacing existing wallpaper, window coverings, plumbing fixtures older than five (5) years, decorative light fixtures older than five (5) years, the lobby front desk, all interior hard surfaces as needed (tile, stone, counter tops, etc.), kitchen equipment older than five (5) years, public hard surface flooring older than five (5) years, and exterior awnings; updating landscaping, pool fencing if needed, and roofing if needed; and replacing or repairing pool equipment and accessories and existing exterior windows and doors (such work, collectively, the "**Initial Repair**"). Thereafter, Lessee shall conduct a repair program as follows (each a "**Subsequent Hotel Repair**"): Six (6) years following the Initial Repair and every six (6) years thereafter, Lessee shall replace all soft goods including window coverings, wall paper and carpet and shall paint the interior as needed. Twelve (12) years following the Initial Repair and every twelve (12) years thereafter, Lessee shall replace and/or refurbish all guest room case goods, public area case goods, and decorative light fixtures where needed and shall paint the exterior as needed. Eighteen (18) years following Initial Repair and every eighteen (18) years thereafter, Lessee shall replace or refurbish all interior hard surfaces (tile, stone, counter tops, etc.), HVAC systems, kitchen equipment, plumbing fixtures, and pool equipment and accessories and update the landscaping. All work performed to complete the Initial Repair and any Subsequent Hotel Repair(s) shall result in hotel accommodations that achieve a level commensurate with institutional grade hotel developments in the Southern California area. In the event Lessee institutes the foregoing repair and maintenance program of the Marina Inn *(e.g.* Initial Repair and any Subsequent Hotel Repair(s)) and the scope of the Redevelopment Work shall be appropriately modified to conform with such program. For purposes of this paragraph, the entitlements shall be deemed final entitlements (the "**Final Entitlements**") only when all time periods and statutes of limitations for filing or adopting any action, lawsuit, challenge, appeal, moratorium or referendum have expired without any action, lawsuit, challenge, appeal, moratorium or referendum having been filed or adopted have expired.

5.3.7 In the event that the Lessee pursues the Alternative Hotel Component pursuant to Subsection 5.3.6, above, the Term of this Lease shall automatically revert to the Term of the Original Existing Lease, and the Effective Date of this Lease shall automatically revert to the Original Effective Date, without further action of the Parties.

5.4 Plans and Specifications.

5.4.1 Schematics and Narrative. Prior to the Effective Date, , as required by the Existing Lease, DPHP submitted to the Chief Real Estate Officer schematic plans together with a narrative description and construction cost estimate summary which clearly delineating the nature, size, configuration and layout of the Improvements to be constructed by Lessee as part of the Hotel Component (collectively, "**Lessee's Deliverables**"). Any subsequent Material Modifications to Lessee's Deliverables previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.1.

5.4.2 Preliminary Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Lessee's Deliverables pursuant to Subsection 5.4.1 and in accordance with the deliverables schedule set forth in the Construction Schedule for the Hotel Component, , Lessee shall, with respect to the Hotel Component, submit to Chief Real Estate Officer six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Redevelopment Work the Hotel Property (collectively, the "**Preliminary Plans**"). The Preliminary Plans for the Hotel Property shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the Lessee's Deliverables for the Hotel Property previously approved by Chief Real Estate Officer and be consistent, in all material respects, with the Lessee's Deliverables, the Approved Proposal Submittals previously approved by Chief Real Estate Officer for the Hotel Property, or otherwise include a detailed explanation of the reasons for all material deviations from the Approved Proposal Submittals. Lessee shall identify on all documents submitted with the Preliminary Plans to the CREO Office, all Material Modifications and other difference in the scope, size, configuration, arrangement or motif of the designed Improvements from those described in the previously approved Lessee's Deliverables. The Preliminary Plans shall be of a detail and scope that is typically associated with design development drawings. Chief Real Estate Officer shall have thirty (30) days from the receipt within which to approve or reasonably disapprove the Preliminary Plans submitted for the Hotel Component, provided that it shall be reasonable for the Chief Real Estate Officer to disapprove said preliminary plans on the grounds that, among other things, they include Material Modifications to the applicable Lessee's Deliverables, Construction Schedule or Construction Budget previously approved by Chief Real Estate Officer in accordance with this Section 5.4, or otherwise do not reflect a natural evolution from the previously approved Lessee's Deliverables. Chief Real Estate Officer shall have thirty (30) days following receipt of Preliminary Plans for the Hotel Component or any subsequent change to the Preliminary Plans for the Hotel Component, within which to approve or disapprove such Preliminary Plans or Material Modification in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PRELIMINARY PLANS FOR THE HOTEL COMPONENT OR ANY MATERIAL MODIFICATIONS TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH PRELIMINARY PLANS FOR THE HOTEL COMPONENT ANY SUBSEQUENT CHANGE TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT."

Failure of Chief Real Estate Officer to approve or disapprove such submitted Preliminary Plans for the Hotel Component or any such submitted change to the Preliminary Plans for the Hotel Component in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or

delayed. Any subsequent Material Modifications to the Preliminary Plans previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.2.

5.4.3 Final Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Preliminary Plans for the Hotel Component, Lessee shall submit for approval by Chief Real Estate Officer six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Redevelopment Work for the Hotel Component, together with one (1) set of appropriate structural computations, identical to those requested or required by the Chief Real Estate Officer incident to the issuance of building permits under the relevant provisions of the Orange County Building Code (collectively, "**Lessee's Final Submittals**"). Lessee shall file duplicate copies of Lessee's Final Submittals with the CREO Office, together with the necessary and appropriate applications for building permits. Lessee shall clearly identify in the Lessee's Final Submittals all differences in the scope, size, configuration, arrangement or motif of the Redevelopment Work from those described in Lessee's Preliminary Plans previously approved for the Hotel Component. Chief Real Estate Officer shall have thirty (30) days after receipt of Lessee's Final Submittals for the Hotel Component within which to approve or disapprove such submission, and Chief Real Estate Officer may disapprove such submission only on the grounds that (a) they do not reflect a natural evolution from or that they materially differ from Lessee's Preliminary Plans previously approved for the Hotel Component, or (b) any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Chief Real Estate Officer as a part of the previously approved Lessee's Preliminary Plans do not meet the requirements for the Improvements set forth in this Article 5. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.3 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S FINAL SUBMITTALS. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF LESSEE'S FINAL SUBMITTALS."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to Lessee's Final Submittals in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed.

Concurrently with any disapproval by Chief Real Estate Officer of Lessee's Final Submittals or any subsequent Material Modification thereto, County shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Chief Real Estate Officer's reasons for objecting Lessee's Final Submittals or Material Modifications thereto. Chief Real Estate Officer's approval shall not be required of any non-Material Modification. Any subsequent Material Modifications to any previously approved Lessee's Final Submittals (the "**Final Plans**

and Specifications") shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.3.

5.5 Conditions Precedent to the Commencement of Construction. Lessee shall not commence any Redevelopment Work or Alterations (including, without limitation, grading or other construction-related activities) (each, an "**Improvement Project**") until each and all of the following conditions have been satisfied; provided, however, County acknowledges that the Redevelopment Work for the Hotel Property may be performed in phases and accordingly, Lessee may commence with the Redevelopment of the Select Service Hotel upon satisfaction of all such conditions applicable to the hotel, even if all conditions applicable to the commencement of the Full Service Hotel have not been satisfied.

5.5.1 Permits and Other Approvals. Lessee shall have (a) provided the CREO Office with reasonably satisfactory evidence that Lessee has met all requirements of applicable Governmental Authorities for the commencement of the applicable Improvement Project, and (b) obtained, and furnished the CREO Office with copies of, all permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the commencement of such Improvement Project. With respect to the Redevelopment Work, commencing on the Effective Date and continuing on or before the fifteenth (15th) day of each calendar month thereafter until the commencement of such work, Lessee shall provide County with a written status report documenting Lessee's efforts to obtain all required permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the Redevelopment Work. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

5.5.2 Selection of Improvement Project Professionals. Chief Real Estate Officer shall have provided Lessee with written approval of (a) Lessee's choice of general contractor(s), architect(s) of record, and all licensed engineers of record (including civil and structural) for the Improvement Project, and (b) the terms and conditions of the form contracts to be entered into by and between Lessee and such contractors, architects and engineers with respect to the Improvement Project.

5.5.3 Approval of Improvement Project Contracts. Chief Real Estate Officer shall have provided Lessee with written approval of all contracts to be entered into between Lessee and all general contractor(s), architect(s), licensed engineer(s) of record (including civil and structural) approved pursuant to Subsection 5.5.2 above.

5.5.4 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have purchased and furnished County with copies of the following corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the Commencement of Construction of the applicable Improvement Project, which bonds (or other security) must be in form and content reasonably satisfactory to County or provide evidence of construction financing and cash deposits in an amount equal to not less than one hundred percent (100%) of the amount of all Hard Costs for the applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above:

(a) For each applicable Improvement Project, a corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State, with a coverage limit of not less than one hundred percent (100%) of the amount of all Hard Costs for the current applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above. The Performance Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld. The Performance Bond shall name Lessee as principal, said issuer as surety, County as obligee and any Encumbrance Holder as additional obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvement Project.

(b) For each applicable Improvement Project, a corporate surety payment bond, issued by a surety company licensed to transact business as such in the State, with Lessee as principal, said company as surety, County as obligee and any Encumbrance Holder as additional obligee, with a coverage limit of not less than one hundred percent (100%) of the total construction cost anticipated to be incurred in connection the Improvement Project, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the construction of the Improvement Project or for labor used thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld.

In the event that construction is performed by a licensed general contractor on behalf of Lessee in accordance with this Lease, and provided that such contractor provides County with a bond or bonds compliant with this Subsection and are in all material respects reasonably satisfactory to County and otherwise compliant with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required above.

5.5.5 Alternative Security. If Lessee elects not to provide the Payment Bonds and/or the Performance Bonds as set forth above, then Lessee shall provide County any of the following alternative security for each applicable Improvement Project: (a) a completion guaranty, in form and substance reasonably acceptable to Chief Real Estate Officer, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Chief Real Estate Officer, to comply with the terms of such guaranty in view of the potential financial responsibility involved, or (b) a letter of credit on such terms and issued by such bank as Chief Real Estate Officer may approve in Chief Real Estate Officer's sole discretion, in an amount equal to one hundred percent (100%) of the anticipated construction costs for the Improvement Project, and allowing County to draw thereon to complete construction of the Improvement Project if (i) same is not completed by Lessee prior to the required completion date set forth in the applicable construction contract, or (ii) an Event of Default has occurred under this Lease and remains uncured following the expiration of any applicable cure periods under this Lease; or any combination of the above and the bonds described in Subsection 5.5.2 above. In addition, Chief Real Estate Officer shall have the authority to accept in lieu of the Payment Bonds, so- called "Subguard" insurance in such amount, on such terms and issued by such carrier as Chief Real Estate Officer may require in Chief

Real Estate Officer's sole discretion. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co- beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.5.5 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County and opining that the applicable Improvement Project does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.5.2 above.

5.5.6 Evidence of Financing. Lessee shall have provided County with evidence that it has access to sufficient financial resources, whether in the form of debt or equity, to complete construction of the Improvement Project within the applicable time periods approved for such construction work and such evidence shall be subject to the approval of Chief Real Estate Officer in Chief Real Estate Officer's reasonable discretion. Without limiting the generality of the foregoing, Lessee shall deliver to the CREO Office, for Chief Real Estate Officer's review and approval, copies of all notes, guaranties, construction loan and/or permanent loan commitments, as applicable, evidence of equity commitments, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Hotel Property. With regard to the Redevelopment Work, Lessee acknowledges and agrees that, prior to commencing with the Redevelopment Work, it shall be required to satisfy this condition with respect to the Hotel Component. Lessee shall keep County apprised of the status of its discussions and negotiations with the potential sources of Lessee's funding for the Improvement Project, including the identity of the sources (for both construction and permanent financing) that Lessee is considering for the Hotel Component from time to time.

5.5.7 Environmental Requirements. Lessee acknowledges that the Select Service Hotel and Full Service Hotel projects are governed by an approved Environmental Impact Report ("**EIR**") and a certified Coastal Development Permit ("**CDP**"). Prior to Commencement of Construction, Lessee shall provide evidence that all Redevelopment Work for each hotel is consistent with the scope, assumptions, and mitigation measures set forth in the applicable EIR and CDP approvals.

If Lessee proposes any development, redevelopment, or renovation plans that would materially change the scope of the approved Redevelopment Work as analyzed in the applicable EIR or CDP, Lessee shall, at its sole cost and expense, submit to the CREO Office an environmental analysis sufficient to determine whether additional environmental review under CEQA is required, including any supplemental or subsequent environmental review, and shall not proceed with such changes unless and until required environmental approvals are obtained.

5.6 County Cooperation. County, in its proprietary capacity, shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work and Alterations, as applicable. Such cooperative efforts may include the County's joinder in any application for such approval, consent, permit or variance, where joinder therein by the County is required or helpful; provided, however, that such cooperation by County shall be at Lessee's sole cost and expense, and Lessee shall reimburse County for the Actual Cost incurred by the County in connection with

such joinder or cooperative efforts within two (2) business days after Lessee's receipt of written demand from County. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code, (b) such approvals in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the Redevelopment Work and Alterations on the Hotel Property, or the operation and use of such Improvements, (c) the County's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease, and (d) the County's duty to cooperate shall be limited to those items or matters that the County has otherwise approved or consented to in accordance with the terms of the Lease, to the extent the County's approval or consent is required.

5.7 Delays in Commencement and Completion of Redevelopment Work.

5.7.1 Force Majeure. Following Commencement of Construction of the Redevelopment Work for the Hotel Property, Lessee shall thereafter diligently pursue the completion of the Redevelopment Work for the Hotel Property by the applicable Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in commencing construction, achieving an Interim Milestone for the Hotel Property by the applicable Interim Milestone Date, or completing the Redevelopment Work for the Hotel Property, and in each case such delay is due to Force Majeure, then the Required Construction Commencement Date, Interim Milestone Date and/or the CO Date for the Select Service Hotel and/or Full Service Hotel, as applicable, shall be extended by the period of the delay caused by such Force Majeure, but only to the extent that a Force Majeure event actually causes a delay in the commencement and/or completion of construction (as applicable). Notwithstanding the foregoing, any extension of time in the Construction Schedule as a result of a Force Majeure event shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Chief Real Estate Officer in writing of the commencement of such delay within ten (10) days after Lessee's discovery of the Force Majeure event. Lessee and Chief Real Estate Officer shall discuss and attempt to agree on the length of time of any entitled delay due to a Force Majeure event. If they are unable to agree within thirty (30) days after County's receipt of written notice from Lessee of the occurrence of a Force Majeure event, then the length of permitted change to the Construction Schedule shall be determined by arbitration pursuant to Section 5.16 below.

5.7.2 Unreasonable County Action.

(a) In the case of the Redevelopment Work, the definition of Force Majeure shall also include delays in the commencement and completion of the Redevelopment Work due to Unreasonable County Action. For the purposes of this Lease, "**Unreasonable County Action**" means any of the following that occurs after the Effective Date: (i) the County's failure to provide required joinder, if any, as fee title owner of the Hotel Property, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Redevelopment Work for the Hotel Component after same have been approved by the CREO Office; or (ii) County's failure, within a reasonable time following receipt of written notice from Lessee requesting same, to take such actions, in its

proprietary capacity and at no cost or expense to County, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Redevelopment Work; or (iii) the taking by the County of actions in its proprietary capacity, without Lessee's consent, which are in conflict with County's obligations under this Lease and actually delay the receipt of any permits or approvals required for the Redevelopment Work; or (iv) the County's failure to comply with the time periods imposed upon the County under Section 5.4 above. Nothing contained in Section 5.6 above, this Section 5.7 or any other provisions of this Lease shall be construed as obligating the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. County's failure to expedite County's customary regulatory permit or approval process shall not be deemed an Unreasonable County Action. Notwithstanding anything to the contrary in this Section, Unreasonable County Action will only entitle Lessee to an extension of time, if (A) within five (5) days following Lessee's discovery of the alleged Unreasonable County Action, Lessee notifies the CREO Office in writing of the specific conduct comprising the alleged Unreasonable County Action, and the next opportunity, if any, for County to rectify such alleged conduct, and (B) County fails to cure the alleged Unreasonable County Action by the cure date set forth in such notice. If Lessee fails to deliver such notice to the CREO Office, then notwithstanding any contrary provision of this Section 5.7, Lessee shall not be entitled to any extension for any delay caused by an alleged Unreasonable County Action that occurred prior to the date of Lessee's notice described in this Subsection (a).

(b) Within ten (10) business days following the CREO Office's receipt of a notice alleging Unreasonable County Action, Chief Real Estate Officer shall meet with Lessee or its authorized representative in order to determine whether any Unreasonable County Action has occurred and, if so, how such Unreasonable County Action can be rectified and the duration of the delay caused by such Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred and that County can and will take rectifying action, then Lessee shall be entitled to an extension of the applicable Construction Schedule dates actually impacted by such Unreasonable County Action, subject to the length of such extension not exceeding the actual amount of delay directly caused by the Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Chief Real Estate Officer shall establish the length of the delay likely to be caused by the Unreasonable County Action and the applicable Construction Schedule dates will be extended accordingly.

(c) If, within ten (10) business days following the CREO Office's receipt of Lessee's notice alleging Unreasonable County Action, Chief Real Estate Officer and Lessee have not agreed in writing as to whether delay due to Unreasonable County Action has occurred or the length of such delay, then the matter shall be determined by arbitration pursuant to Section 5.16 below.

5.7.3 Recovery Plans. If progress of the Redevelopment Work for the Hotel Component falls materially behind schedule and the Chief Real Estate Officer reasonably determines that Lessee is in jeopardy of not achieving the CO Date for the Select Service Hotel or

the Full Service Hotel, as applicable, on or before the applicable Required Construction Completion Date, then County may issue a written notice (each a "**Recovery Plan Notice**") to Lessee identifying areas of concern and requiring that Lessee provide a Recovery Plan detailing the measures to be implemented by Lessee in order to recover any lost time in the Construction Schedule. Lessee shall, within fifteen (15) days after receipt of a Recovery Plan Notice, provide a Recovery Plan to County. Within thirty (30) days after County's receipt of a Recovery Plan from Lessee, County shall instruct Lessee in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto required by County (a "**Construction Change Directive**"). Upon Lessee's receipt of the Construction Change Directive, Lessee shall instruct its contractors to implement the Recovery Plan as soon as reasonably possible and any additional costs associated with implementation of the Recovery Plan shall be borne by Lessee. Lessee's failure (a) to provide a Recovery Plan within the time requirements provided for in this Subsection 5.7.3, or (b) to implement immediately a Recovery Plan upon receipt of a Construction Change Directive to do so, shall each be a material breach of this Agreement.

5.8 Manner of Construction.

5.8.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein including, without limitation, the Redevelopment Work and Alterations, shall be accomplished by Lessee with due diligence, in a first-class workmanlike matter, with good and sufficient materials and in compliance with all Applicable Laws and Lessee's obligations under this Lease. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience to the general public (including without limitation owners and tenants of neighboring properties and slips) caused by such work and shall make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County, its employees, contractors and agents harmless from and against all Claims arising out of or in connection with the performance of such work, except to the extent that such Claims are caused by the willful misconduct or active or sole gross negligence of County, its employees, contractors or agents. Lessee shall, during the course of such work, (a) utilize such measures customarily used in connection with commercial construction projects to control dust, noise and other undesirable consequences of construction work, and (b) use commercially reasonable efforts to minimize the materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.8.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Hotel Property to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Hotel Property and other persons.

5.8.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.8.4 Compliance with Insurance, Construction Documents and Laws; Issuance of Permits. With respect to any and all construction work on the Hotel Property, including without limitation the Redevelopment Work and Alterations, Lessee shall (a) not commence such work until after satisfaction of the conditions set forth in Section 5.5 and providing County with evidence of its compliance with the insurance requirements for such work set forth in Article 9 below, (b) complete such work in substantial compliance with applicable construction documents submitted to and approved by County in accordance with the review and approval procedures set forth in Sections 5.3 and 5.4, and (c) cause such work to be performed in compliance with all required permits and Applicable Laws then in effect, including, without limitation, the LCP and CDP. Lessee shall have the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for such work and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.8.5 Notice to Chief Real Estate Officer; Damage to County Improvements. Lessee further agrees to keep the CREO Office apprised of the progress of the Redevelopment Work and any Alterations so that Chief Real Estate Officer may timely inspect the Hotel Property to assure proper safeguarding of any County-owned improvements existing on or around the Hotel Property, including but not limited to seawalls and neighboring properties. If any County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Hotel Property to make such repairs at Lessee's sole cost and expense, in which event Lessee shall reimburse County for all Actual Costs incurred by County in making such repairs within two (2) business days after Lessee's receipt of written demand from County.

5.8.6 Rights of Access. Representatives of the County shall, following reasonable advance written notice to Lessee, have the right to access the Hotel Property and the Improvements thereon, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of construction work being performed. Lessee shall have the right to have a representative present to accompany the representatives of County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage to person or property, County shall have the right to enter upon the Hotel Property immediately and without notice to or accompaniment by Lessee. In addition, ~~to the extent~~provided that neither Lessee ~~or~~nor any Lessee Parties ~~are not~~is using meeting or banquet rooms ~~or spaces~~ at the Hotel Property for Lessee's or Lessee Parties activities~~, and such meeting rooms~~ or ~~spaces are not reserved for use by any third party~~business operations, the County may request to use such ~~meeting~~ rooms ~~or spaces~~ for County sponsored meetings consistent with any other applicable policies and procedures for ~~the~~ Lessee's facility~~.~~ for meeting and banquet rooms. Such requests shall be made in writing no more than six (6) times per calendar year and shall be made no more than thirty (30) calendar days in advance, unless Lessee permits an earlier reservation in its reasonable discretion, but in no event shall such usage be on weekends, state/federal holidays, nor in June, July, August, or December. Lessee shall not unreasonably withhold or delay approval of County's request for use of rooms nor shall such use by County interrupt Lessee's use of the Hotel Property. County's access to and use ~~shall~~of meeting and banquet rooms be at no cost to County ~~or Lessee~~for room usage, and County is

responsible for other costs consistent with applicable policies for use of meeting or banquet rooms by others, unless otherwise negotiated between County and Lessee. If a paying third-party requests use of the room, after County's reservation, the Lessee shall notify the County and County shall move its use to an alternate time or location upon agreement of Lessee. Notwithstanding the above, the Lessee reserves the right to cancel, in its reasonable discretion, any County meeting or banquet room use if the Lessee determines that there is a negative impact to its business or Lessee Parties by such use. To the extent that an Encumbrance Holder objects to this provision and provides such objection in writing, County's right to use meeting and banquet rooms under this provision shall be cancelled.

5.8.7 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work or any Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Orange a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, (a) two (2) sets of records drawings and specifications of the Improvements (or such portions thereof as affected by the work and for which as-build plans are customarily prepared), prepared accordance with industry standards and delivered in AutoCad, Revit, or other mutually accepted CAD format and/or BIM format, together with PDF copies for general reference (the "**As-Built Plans**"); (b) a digital storage device or secure electronic transfer, containing the As-Built Plans in a format compatible with County's then current computer aided design and mapping systems, including CAD files and any available native files, with copies of all CAD Files converted to Acrobat Reader (*.pdf format)) ("**CAD Files**"), and (c) a final statement of construction costs for the construction of such Improvements, reasonably detailed by trade and major cost category, all of which may be accomplished by digital delivery.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Redevelopment Work or Alterations shall provide, in form and content satisfactory to County, that (a) all plans and drawings prepared by such architects, design professionals or contractors relating to the Hotel Property will be deemed "work for hire" and owned by Lessee, (b) such plans and drawings are assigned by Lessee to County as security for Lessee's performance hereunder, and (c) upon the termination of this Lease for any reason, ownership of such plans and drawings will be deemed vested in County.

5.10 Alterations; Prior Approval Required. Lessee shall not make any Alterations that constitute a Material Modification without the prior written approval of Chief Real Estate Officer, the standard for which approval shall be as set forth in Subsection 1.1.116 above. Notwithstanding anything in this Article 5 to the contrary, all Alterations shall be made and performed by Lessee subject to the terms and conditions of Sections 5.4 through 5.6, inclusive, as well as Sections 5.8 through 5.14, inclusive. For the avoidance of doubt, prior to, and as a condition precedent to any rights under this Lease to commence construction of any Alterations, Lessee shall submit to the CREO Office, for Chief Real Estate Officer's approval, the plans, specifications, budget, schedule and other materials listed above in Section 5.4 pertaining to such Alterations.

5.11 Permitted Alterations. For the avoidance of doubt, no Alteration which is: (a) required by a Governmental Authority in connection with obtaining such Governmental Authority's approval of the applicable Alteration or (b) required to be performed by Lessee in order to comply with Applicable Laws, shall require the prior approval of County unless the same

would otherwise constitute a Material Modification as set forth in Subsection 1.1.116 above. Prior to commencing any Alteration involving an expenditure in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) or where the aggregate cost of Alterations performed within any twelve (12) month period exceeds $250,000, Lessee shall (i) provide County with written notice of such anticipated Alteration(s) (including a description of the work to be done, the dollar amount of the Alterations already performed by Lessee during the immediately preceding twelve (12) month period, the estimated budget for the proposed Alterations, and copies of the permits obtained for such work), and (ii) upon completion of such work, furnish to County a copy of As-Built Plans and CAD Files reflecting the work performed.

5.12 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Hotel Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Hotel Property or County.

5.13 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Hotel Property any notices which County may deem necessary for the protection of County, the Hotel Property and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days' prior written notice of the commencement of any work to be done on the Hotel Property in order to enable County timely to post such notices.

5.14 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Hotel Property and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Hotel Property and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any Claims on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. In the event any lien is recorded on the Hotel Property, Lessee shall, within twenty (20) days after receipt of notice thereof, furnish a bond which, in accordance with the provisions of Applicable Law, results in the removal of such lien from the Hotel Property.

5.15 Capital Reserve Fund for Hotel Component.

5.15.1 Commencing on the applicable Hotel Deemed Completion Date and continuing thereafter through the balance of the Term, Lessee shall establish and maintain a capital replacement reserve fund with a reputable financial institution reasonably acceptable to the Chief Real Estate Officer (the "**Hotel Capital Reserve Fund**") and shall deposit into said fund a minimum of the following amounts: (i) for Operating Year 1, one percent (1%) of Gross Receipts

derived from the Hotel Property for said year; (ii) for Operating Year 2, two percent (2%) of Gross Receipts derived from the Hotel Property for said year; (iii) for Operating Years 3 through 5, three percent (3%) of Gross Receipts derived from the Hotel Property for each such year; (iv) for Operating Years 6 through 10, four percent (4%) of Gross Receipts derived from the Hotel Property for each such year; and (v) beginning in Operating Year 11 and continuing for each subsequent Operating Year through the balance of the Term, five percent (5%) of Gross Receipts derived from the Hotel Property for each such year. All interest and earnings on funds deposited into the Hotel Capital Reserve Fund shall be kept in said fund but shall not be credited against the minimum deposits required hereunder. For purposes hereof, "**Operating Year**", as applicable, shall mean each calendar year following the applicable Hotel Deemed Completion Date.

5.15.2 Within thirty (30) days after the close of each Operating Year during the Term, Lessee shall submit to Lessor (a) evidence certified by Lessee's Chief Financial Officer or an independent account, that Lessee has deposited the required minimum amount in the Hotel Capital Reserve Fund for the previous Operating Year (based upon Lessee's accounting for Gross Receipts that is due at that time), (b) an itemization of all withdrawals from and expenditures of funds deposited into the Hotel Capital Reserve Fund in the preceding Operating Year and the purpose thereof, and (c) the balance remaining in the Hotel Capital Reserve Fund at the time the annual report is prepared. County shall have the right to review, verify, and request clarification of the annual report, and Lessee shall provide supporting documentation upon reasonable request.

5.15.3 The Hotel Capital Reserve Fund shall not be pledged or encumbered, except to (i) a permitted Encumbrance Holder, (ii) a Property Manager (as defined below), or (iii) or to an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J** (each, a "**Hotel Franchisor**"), and all funds shall be used only for capital expenditures for additions, replacements, renovations, or significant upgrades of or to the Improvements on the Hotel Property, including fixtures and equipment, that have a useful life of not less than five (5) years which benefit the Hotel Property and maintain the Select Service Hotel or Full Service Hotel in first-class condition consistent with the operation, maintenance, and appearance of professionally managed, institutional-grade hotels in Southern California, and in conformance with the Minimum Standards set forth in this Lease. All expenditure shall be approved in advance by the Chief Real Estate Officer, which approval(s) shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee acknowledges that its responsibility to maintain, repair, and replace the Hotel and related Improvements as required hereunder shall not be limited or restricted based on the amount of funds held from time to time in the Hotel Capital Reserve Fund.

5.15.4 Upon the expiration or earlier termination of this Lease, all funds in the Hotel Capital Reserve Fund shall first be allocated to any repairs, maintenance, replacements, and renewals necessary to place the Hotel in the physical condition required by this Lease, as reasonably determined by County, and any excess shall be the sole property of Lessee. County may direct the use of such funds to complete these obligations, including engaging contractors if Lessee fails to perform. Any excess remaining after such use shall be the sole property of Lessee.

5.15.5 Notwithstanding anything to the contrary in this Subsection 5.15, in the event a permitted Encumbrance Holder, Property Manager or Hotel Franchisor requires that Lessee maintain a capital reserve fund for the Select Service Hotel or Full Service Hotel at the Hotel

Property (a "**Replacement Reserve Fund**"), such Replacement Reserve Fund, to the extent that it is equal to or greater than the Replacement Reserve Fund, shall satisfy the requirement of Lessee to open and maintain the Hotel Capital Reserve Fund hereunder and the Hotel Capital Reserve Fund shall not be required while a Replacement Reserve Fund exists. In the event that a Replacement Reserve Fund is in place after the opening of the Hotel Capital Reserve Fund, Lessee shall be entitled to disburse any and all funds held in the Hotel Capital Reserve Fund to the Replacement Reserve Fund and close the Hotel Capital Reserve Fund thereafter. Any Replacement Reserve Fund shall be subject to the same annual reporting, audit, and fund-use requirements set forth herein for the Hotel Capital Reserve Fund.

5.16 Expedited Arbitration. Given the importance of completing the Redevelopment Work in accordance with the Construction Schedule, the Parties acknowledge and agree that it will be in both Parties' best interests to submit to expedited binding arbitration in accordance with the procedures set forth in this Section 5.16, all disputes between the Parties concerning the reasonableness of the Chief Real Estate Officer's withholding of approvals required pursuant to this Article 5 with respect to the Redevelopment Work. Therefore, if Lessee delivers written notice to County disputing the reasons for any denial or withholding of such approvals, then either Party shall have the right to submit such dispute to expedited, binding arbitration before an arbitrator selected by the Parties in accordance with the American Arbitration Association's (the "**AAA**") Dispute Resolution Board Guideline Specification, Section 1.02 (D) (the "**DRB Specification**"), dated December 1, 2000. As soon as reasonably possible following the Effective Date, the Parties shall initiate the procedure to nominate an arbitrator in accordance with the DRB Specification and with no direct or indirect affiliation with either Party, with the intention that such arbitrator shall, to the extent reasonably possible, be the arbitrator appointed to decide on all disputes between the Parties to be decided by arbitration pursuant to this Section 5.16. When evaluating claims regarding the reasonableness of the County's withholding any approval, the arbitrator shall be instructed to give primary consideration to the Parties' intent as reflected by the provisions set forth in this Lease and may consult with, or seek information from, either or both Parties, or any other persons with special knowledge or expertise relating to the dispute in question including, without limitation, any architect or contractor engaged to perform work at the Hotel Property. The arbitrator shall be instructed to adjudicate solely on the reasonableness of the County's denial of approval, and to deliver written notice of his/her findings to both Parties as soon as reasonably possible. The arbitrator's determination as to the reasonableness of a denial of approval shall be final and binding on the Parties. Each Party shall be responsible for one-half (1/2) of (a) the Arbitrator's fees and costs, and (b) costs associated with renting a venue for the arbitration. If two or more disputes exist at the same time that are the subject of arbitration in accordance with this Section 5.16, then the Parties shall use their commercially reasonable best efforts to cause all such disputes to be arbitrated in one arbitration proceeding, rather than successive proceedings or concurrent but separate proceedings.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "**Condemnation**" means (a) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise,

and (b) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Hotel Property; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.3 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Hotel Property, any Improvements on the Hotel Property or any interest in this Lease by Condemnation, the rights and obligations of the Parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Hotel Property are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Hotel Property or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Hotel Property is rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Hotel Property shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the Hotel Property could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5 below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Hotel Property as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Hotel Property is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Hotel Property not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Hotel Property not so taken to the fair market value of the entire Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Hotel Property which remains after the Partial Taking bears to the fair market value of the entire Hotel Property immediately prior to the Partial Taking. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waivers. Each Party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either Party to petition the Orange County Superior Court to terminate this Lease in the event of a Partial Taking of the Hotel Property.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Hotel Property and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, the Chief Real Estate Officer and Lessee shall promptly meet and negotiate in good faith to resolve any dispute. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (a) the then value of County's interest in the Hotel Property (including its interest hereunder), and (b) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market

value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments. In case of a Condemnation described in this Subsection 6.7.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Subsection 6.7.1 above.

6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of: (i) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Hotel Property (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term, plus (ii) the present value of the portion of the Hotel Property (with the Improvements thereon) subject to the taking from and after the expiration of the Term, or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Hotel Property (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term; and then,

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Hotel Property plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then,

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Hotel Property, determined as of the date of such taking, less payments made under paragraph "Second" above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4; and then,

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Lease, and such total Condemnation or Partial Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment to Lessee of all sums held by County or third parties in the Security Deposit.

6.7.4 Disputes. Any dispute under this Article 6 concerning the fair market value of the Hotel Property or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the Parties, shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to One Hundred Thousand Dollars ($100,000.00) until such time as the Redevelopment Work for the Hotel Property has been completed and the later of the CO Date for the Select Service Hotel or the CO Date for the Full Service Hotel has occurred (the "**Final CO Date**"). Following the Final CO Date, such sum shall be reduced to Forty Thousand Dollars ($40,000.00), As long as no Event of Default by Lessee then exists under the Lease, such sum shall be reduced to Zero Dollars ($0.00) upon the date which is ten (10) years following the Final CO Date. The Security Deposit shall secure Lessee's performance of all the terms, covenants, and conditions of this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, (b) any other Events of Default of Lessee under this Lease, and (c) any other amounts or damages to which County is entitled under this Lease. The Security Deposit shall be applied at the discretion of County, and may be commingled by County with County's other funds. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer, in County's sole discretion. To the extent the Security Deposit is cash, a letter of credit or other non-interest bearing form, no interest shall accrue or be paid thereon. However, if the Security Deposit is in a form of a certificate of deposit, savings deposit, or is otherwise interest bearing, then as long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease. Regardless of the form of the Security Deposit, all or any portion of the principal sum thereof shall be available unconditionally to Chief Real Estate Officer for correcting any default or breach of this Lease by Lessee and Lessee's successors or assigns, or for payment of expenses

incurred by County as a result of an Event of Default hereunder by Lessee or Lessee's successors or assigns, as set forth herein.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 14.1.2, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

7.4 Waivers. Lessee hereby waives the provisions of California Civil Code Section 1950.7, and all other provisions of Applicable Law, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

8. INDEMNITY; RELEASE; LEASE CHALLENGE.

8.1 Indemnification. Except to the extent caused by the willful misconduct or active or sole gross negligence of any County Indemnified Party, from and after the Original Effective Date, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County, the Board, and their respective, officers, elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, tenants, licensees, invitees, successors and assigns (collectively, "**County Indemnified Parties**" and each individually, "**County Indemnified Party**") and the Hotel Property, from any and all claims, costs, losses, demands, damages, expenses (including, without limitation, expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County) or liability (collectively, "**Claims**"), to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Hotel Property or the Improvements by Lessee or its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, including any occurrence in or on the Hotel Property or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees,

contractors, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any Applicable Law, (d) the performance of the Redevelopment Work, the Renovation Work or any Alterations by Lessee or Lessee's agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, or (e) challenges to the approval of this Lease brought by any party, including any agency with oversight of public tidelands ("**Lease Challenge**"). The obligation of Lessee to so relieve, defend, indemnify, protect, and save harmless the County Indemnified Parties shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. If any County Indemnified Party or the Hotel Property is named as co-defendant in a lawsuit that is the subject of this Article 8, Lessee shall immediately notify County of such fact in writing and shall represent such County Indemnified Party or Hotel Property in such legal action unless County undertakes to represent such County Indemnified Party or Hotel Property as co-defendant in such legal action, in which event, Lessee shall pay to County its litigation costs, expenses, and attorneys' fees. If, in connection with any such lawsuit, judgment is entered against any County Indemnified Party or the Hotel Property and Lessee by a court of competent jurisdiction because of the concurrent liability of such County Indemnified Party and Lessee, County and Lessee agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.2 Release. Lessee hereby releases and waives all Claims and recourse against the County Indemnified Parties, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, except Claims arising from the willful misconduct or active or sole gross negligence of County Indemnified Parties. For the avoidance of doubt, and without limiting the foregoing, Lessee hereby waives, withdraws, releases, and relinquishes any and all Claims (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County and the County Indemnified Parties which Lessee now has or may have or asserts in the future which are based upon any (a) defects in the physical condition of the Hotel Property and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument, except as set forth in Section 10.12, or (b) injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Lessee, of Lessee's employees, invitees, customers, or of any other person in or about the Hotel Property or the Improvements caused by or resulting from any peril which may affect the Hotel Property or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Hotel Property or the Improvements, whether such damage or injury results from conditions arising upon the Hotel Property or from other sources. Without limiting the generality of the waivers set forth in this subsection, and notwithstanding anything in this Lease to the contrary, at no time shall County be responsible or liable to Lessee for any lost profits, lost economic opportunities or any form of consequential, punitive or exemplary damages as the result of any actual or alleged breach by County of its obligations under this Lease. It is the intention of the Parties that the foregoing release shall be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. Lessee realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit County, the County Indemnified Parties and the Hotel Property from any such unknown losses,

damages, liabilities, costs and expenses. In furtherance of this intention, Lessee hereby expressly waives any and all rights and benefits conferred upon it by 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.

By initialing this subsection below, Lessee acknowledges that it has read, is familiar with, and waives all benefit of the provisions of California Civil Code Section 1542 set forth above to the extent described in this subsection, and agrees to all of the provisions of Section 8.2 above.

_____
Lessee's Initials

8.3 Lease Challenge. Notwithstanding anything to the contrary in this Lease, including without limitation Sections 8.1 and 8.2 hereof, in the event of a Lease Challenge (whether or not such Lease Challenge prevails), the terms and conditions of this Section 8.3 shall prevail. If any Claim is asserted by any third party challenging the validity, enforceability or effectiveness of the approval of this Lease or the authority to enter into this Lease for the Term set forth herein, County shall reasonably cooperate with Lessee, at Lessee's sole cost and expense, in defending, resolving or mooting such challenge, and, notwithstanding anything to the contrary in this Lease, before County may seek indemnification from Lessee arising from such challenge pursuant to the terms and conditions of this Lease, Lessee shall have the right, exercisable by written notice to County, to cause the Term of this Lease to be reduced, reformed, reverted or otherwise modified to the longest term then permitted by Applicable Law, including the Tidelands Grant. Upon Lessee's exercise of such right, County and Lessee shall promptly execute and record, if applicable, an amendment, memorandum, stipulation, corrective instrument, or other document reasonably necessary to evidence such reduced, reformed, reverted or modified terms to comply with Applicable Law, including the Tidelands Grant, reinstate the Original Existing Lease (so long as so doing does not have a material adverse effect on the County or County Indemnified Parties) or re-execute and record, if applicable, a lease to replace this Lease, in the same form of this Lease except for those terms necessary to comply with Applicable Law, including the Tidelands Grant. No such reformation, reversion, modification, termination or reinstatement shall constitute a default by Lessee, shall give rise to any termination right in favor of County, or shall otherwise affect the validity or enforceability of this Lease except solely with respect to the length of the Term as so reduced, reformed, reverted or modified or the reinstatement of the Original Existing Lease, as applicable. County shall not settle, compromise, confess judgment, or agree to any relief in connection with any such challenge without Lessee's prior written consent, which consent may be withheld in Lessee's reasonable discretion if such settlement, compromise, judgment, or relief would affect the Term, Lessee's leasehold estate, Lessee's use rights, Lessee's financing, or Lessee's rights or obligations under this Lease.

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease, Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State by the Insurance Commissioner and having a "general policyholders rating" of at least A- and VIII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency. Notwithstanding anything to the contrary in this Lease, in the event DPHP or any Affiliate of DPHP provides and maintains the insurance required pursuant to this Article 9 for the entire Harbor Property, Lessee shall be deemed to be in full compliance with the requirements of this Article 9.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent). Coverage shall include products completed operations, personal and advertising injury, contractual liability, abuse/misconduct, and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	$20,000,000
Products/Completed Operations Aggregate:	$2,000,000
Personal and Advertising Injury:	$1,000,000
Contractual Liability:	$1,000,000
Abuse/Misconduct:	$1,000,000
Each Occurrence:	$1,000,000

The above limits are intended to be for each Hotel. Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least Two Million Dollars ($2,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1 (c) excess liability policies must "follow form" and afford no less coverage than the primary coverage.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than Two Million Dollars ($2,000,000) combined single limit , for each accident and providing coverage for all "owned", "scheduled", "hired", "non-owned" vehicles, or coverage for "any auto." Coverage may be satisfied through a combination of primary coverage and excess liability. During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State and for which Lessee is responsible (if applicable), and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

9.1.4 Commercial Property insurance covering damage to the Hotel Property, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or its equivalent, excluding earthquake, and including Ordinance or Law Coverage, written for $5,000,000, provided that upon the commencement of construction of the Full Service Hotel or Select Service Hotel, as applicable, such limit shall be the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Hotel Property and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Hotel Property or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this Subsection 9.1.4 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5 below is carried.

9.1.5 For construction projects on the Hotel Property, including the Redevelopment Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to reasonably determine the coverage and coverage limit required on a project-by-project basis):

(a) Builder's Risk Course of Construction. Such insurance shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or equivalent. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, mechanical / cold testing, preservation of property, excavation costs, landscaping, shrubs and plants, wind/hail, water damage, flood, earth movement and full collapse coverage during construction (without restricting collapse coverage to specified perils). This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

(b) General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (i) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (ii) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

(c) Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for

the Redevelopment Work or Alterations. Such insurance shall include coverage for all "owned," "scheduled", "hired", and "non-owned" automobiles, or coverage for "any auto."

(d) Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, consultants, etc.). If coverage is written on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5(d) shall be (i) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Chief Real Estate Officer for the prime architect in connection with any subsequent Alterations), and (ii) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Chief Real Estate Officer shall have the discretion to reduce the coverage limits under this clause (ii) if appropriate in the judgment of Chief Real Estate Officer based on the nature and scope of the services being provided.

(e) Contractors Pollution Liability. Such insurance shall be required if construction requires remediation of pollutants. Such insurance shall also cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of pollutants in compliance with governmental mandate or order. If the pollutants will be removed from the construction site, pollution liability shall also include Non-Owned Disposal Sites (NODS). Pollution Liability coverage is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for the Redevelopment Work or Alterations. If coverage is written on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project.

9.1.6 If the use of the Hotel Property or Improvements involves any manufacture, distribution, selling, or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.1.7 Contractor's Pollution Liability by Lessee no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants, and Non-Owned Disposal Sites (NODS). If coverage is

written on a claims made form, it shall also provide an extended two-three year reporting period commencing upon termination or cancellation of the construction project.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4 and 9.1.5(a) shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 13.8, upon the occurrence of any loss, in the event the proceeds of property and builder's risk insurance are more than $500,000, the insurance proceeds above such amount shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that the first $500,000 of such insurance proceeds, or if the insurance proceeds received with respect to a loss are less than $500,000 (in each case as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 13.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee. Notwithstanding anything to the contrary contained in this Lease, the settlement, collection and application of casualty insurance proceeds shall be governed by the terms of the loan documents entered into between Lessee and Lessee's Encumbrance Holder.

9.3 General Insurance Requirements. A duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, has been filed with the CREO Office and evidence of the insurance coverage required under Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Redevelopment Work or Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $50,000 or such other commercially reasonable amount as approved by the Chief Real Estate Officer; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the CREO Office or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with the CREO Office. Subject to the limitations set forth above in this Article 9, any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(1) that County and its respective Board and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(2) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(3) ill insurance policies, shall waive all right of subrogation against County and its respective Board and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(4) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(5) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(6) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(7) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(8) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(9) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor. In the event the coverage required hereunder becomes obsolete or unavailable from domestic insurance companies meeting the requirements of this Lease (excluding customized policies such

as those from Lloyds of London), the parties shall reasonably cooperate to modify the coverage on commercially reasonable terms.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1, 9.1.2 and 9.1.3 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date, consistent with the amounts of such liability insurance then being required by County for other comparable facilities or businesses within the County, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Hotel Property and such other developments. In no event shall the amounts of liability insurance be decreased as a result of such adjustment. Following such adjustment, the Parties shall execute an amendment to this Lease setting forth the adjusted insurance provisions.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Hotel Property which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within seventy-two (72) hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Continuously throughout the Term, Lessee shall maintain the Hotel Property, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Improvements), in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws and in conformance with the Minimum Standards at Lessee's sole cost and expense; provided, however, prior to the earlier of the applicable CO Date or the Required Construction Completion Date for the Hotel Property, Lessee shall not be obligated to perform any capital improvements for the Hotel Property that would otherwise be required in order to comply with the Minimum Standards if (A) such capital improvements would need to be removed, replaced or substantially altered in connection with the Redevelopment Work, or (B) would be materially more expensive to construct or install as an isolated improvement relative to the cost to construct or install such improvement as a part of the Redevelopment Work, as reasonably approved by County. Upon completion of the Redevelopment Work, the Hotel Property shall be maintained at a level commensurate with the operation and maintenance of institutional grade hotels in the Southern California area and, at a minimum, in conformance with the Minimum Standards. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Hotel Property and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Hotel Property in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Hotel Property under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Chief Real Estate Officer to Lessee incident to the provisions of this Article 10. For

the avoidance of doubt, and by way of example, Lessee's responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace each of the following (the location of each of which is identified on Exhibit H attached hereto unless otherwise specified elsewhere in this Lease): (a) seawall (provided, however, that Lessee's replacement obligation for the seawall shall be limited to replacing specific segments or portions thereof located on the Hotel Property only on as-needed basis, subject to and in compliance with all Applicable Laws, because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall unless the entire seawall is damaged or destroyed, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property, Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates), or (ii) third parties that are not agents, employees, tenants of Lessee or its Affiliates, or contractors working at the direction of the Lessee or its Affiliates); (b) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Hotel Property; (c) shelters, restrooms and park-scape within the parks located within the Hotel Property designated on Exhibit A-2; ; and (d) all trees and parking lots within the Hotel Property boundaries.

Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Hotel Property and the building footprints on the Hotel Property at a level commensurate with the standards set forth above with respect to the Hotel Property. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Hotel Property free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Hotel Property at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Hotel Property. The exclusion of the Excluded Improvements from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Improvements caused by Lessee, its agents, employees, Sublessees or contractors, or by Improvements installed or constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Specific Maintenance Obligations. Without limiting the generality of Lessee's maintenance obligations in Section 10.1 above, the following provisions shall also apply during the Term:

10.2.1 Intentionally Deleted.

10.2.2 Environmental Policies; Water Quality and MS4 Program.

(a) Protection of Environment. Without limiting Lessee's obligations elsewhere in this Lease, during the Term, Lessee shall take all reasonable measures available to:

(1) Avoid contributing any pollutants to the atmosphere or any littering of land or water caused by or originating in, on, or about Lessee's facilities.

(2) Maintain a reasonable noise level on the Hotel Property so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

(3) Ensure that lighting fixtures on the Hotel Property do not emit light in a manner that could negatively affect neighboring homeowners, or the safe operation of cars, boats, or airplanes in the area.

(4) Prevent all pollutants from Lessee's operations on the Hotel Property from being discharged, including petroleum products of any nature, in accordance with any applicable permits, provided that (i) Lessee is in compliance with all applicable laws and permit conditions, (ii) any such permitted discharge does not result in a violation of Applicable Law or applicable permit conditions, and (iii) any required Landlord consent has been obtained. Lessee and all of Lessee's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants emanating from the Hotel Property do not enter the Municipal Separate Storm Sewer System (including but not limited to curbs and gutters and drainage channel) (collectively, "**MS4**"), or directly impact "**Receiving Waters**", which include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean.

(5) The County may enter the Hotel Property and/or review Lessee records at reasonable times and upon reasonable notice (except in emergency circumstances) to assure that activities conducted on the Hotel Property comply with the requirements of this Subsection.

(b) Water Quality and MS4. During the Term, Lessee shall comply with any water quality management requirements applicable to the Hotel Property that are adopted or implemented pursuant to National Pollutant Discharge Elimination System ("**NPDES**") permits by the County, the Orange County Flood Control District and cities within the County, as co-permittees (hereinafter collectively referred to as "**County Parties**") as such requirements relate to the permits addressed in this subsection. Such requirements are imposed to comply with permitting or similar obligations imposed on the County Parties, and may be amended or modified from time to time, provided that they applied on a non-discriminatory basis. Such requirements shall include, without limitation, the following:

(1) The Parties acknowledge that the Premises are located within the jurisdiction of the County of Orange and may also be subject to the jurisdiction of the City ") or other applicable municipal agencies. The Parties further acknowledge that water quality and MS4 requirements applicable to the Hotel Property may be enforced by the County, the City, or other applicable regulatory agencies having jurisdiction over the Hotel Property, consistent with their respective authorities under applicable law. Enforcement of such requirements shall be administered by the applicable regulatory authority having jurisdiction over the subject matter.

(2) Lessee and all of Lessee's Sublessees, agents, employees and contractors shall use commercially reasonable and diligent efforts to conduct operations under this Lease so as to ensure that pollutants generated from the Hotel Property do not enter the MS4, and do not directly impact Receiving Waters.

(3) The San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County Parties. The NPDES permits regulate the discharge of pollutants from areas within the County, including the Hotel Property leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the MS4 or Receiving Waters. For the avoidance of doubt, the County Parties shall retain the right to enter upon the Hotel Property to perform such actions as are necessary or to the extent reasonably necessary for the County Parties to comply with the terms, conditions and requirements of the NPDES, Stormwater Permits, and similar water quality rules and regulations promulgated from time to time by federal, state and/or local regulatory agencies.

(4) To ensure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction. The DAMP and LIP establish Best Management Practices ("**BMPs**") that must be implemented by parties using properties within the County. As used herein, a BMP is defined as a technique, measure, or structural control that is used under given conditions to manage the quantity of stormwater and improve its quality in a cost-effective manner. These BMPs are found within the County's LIP and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as ("**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

(5) BMP Fact Sheets that apply to uses authorized under this Lease include, but are not limited to, the BMP Fact Sheets that are attached hereto as **Exhibit I**. These BMP Fact Sheets may be modified during the Term of the Lease, and Lessee shall be solely responsible for monitoring, obtaining, and complying with any such modified BMP Fact Sheets, as updated from time to time by applicable regulatory authorities, regardless of whether notice is provided by Landlord. Lessee, its agents, contractors, representatives and employees and all persons authorized by Lessee to conduct activities on the Hotel Property, shall, throughout the Term of the Lease, comply with the BMP Fact Sheets, as amended, with all applicable Stormwater Permits requirements. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

(6) Lessee may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative

BMPs shall be submitted to the CREO Office for review and approval prior to implementation.

(7) Chief Real Estate Officer or designated representative may enter the Hotel Property and/or review Lessee's records at any reasonable time during normal business hours to ensure that activities conducted on the Hotel Property comply with the requirements of this section. Lessee may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

(8) While Lessee is permitted to use the existing sanitary sewer and MS4 infrastructure on or serving the Hotel Property for discharges permitted under Applicable Law, County reserves the right to require Lessee to participate in a water quality management plan to minimize impacts on harbor and ocean waters on a non-discriminatory basis similar to other retail, commercial, hospitality, restaurant, marina and public park facilities in the County if required in order to comply with permitting or similar obligations imposed on the County Parties.

(9) Notwithstanding anything to the contrary contained herein, Lessee shall not be responsible for remediating, managing or reducing contamination emanating from the existing drainage channel which discharges into the harbor, except to the extent that such contamination is caused by or results from the acts or omissions of Lessee or any Lessee's Parties' in connection with their use or occupany of the Hotel Property. Lessee shall not be responsible for pollutants entering into the drainage channel from boat-related products (including paint and its components such as lead, copper, and zinc) originating from vessels in the harbor; provided, however, that Lessee shall remain responsible to the extent any such pollutants are caused or materially contributed to by Lessee or Lessee Parties. The parties acknowledge that the Harbor was listed as impaired for copper, zinc, and bacteria in the water column in 2010, with a Total Maximum Daily Load requirement targeted for completion (and in place) in 2019. The cost of compliance for any existing or future compliance with the foregoing Total Maximum Daily Load requirement shall not be borne by the Lessee, however this clause shall not limit Lessee's other obligations under this Subsection 10.2.2.

10.3 Maintenance Deficiencies.

10.3.1 Notice; Time to Cure. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.2.2 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Subsection 10.3.1),

then in addition to, and not in lieu of, any rights or remedies that County may have under Article 14 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

10.3.2 Determination of Deficiency Period. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.3 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to the CREO Office within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with the CREO Office, then Chief Real Estate Officer shall exercise Chief Real Estate Officer's reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date the CREO Office receives written notice of such contest and continuing until Chief Real Estate Officer notifies Lessee in writing that Chief Real Estate Officer accepts or denies Lessee's contest. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.3 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.3 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.4 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Hotel Property or any Improvements located thereon (other than the Excluded Improvements, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or to Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.4, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved

of the obligation to restore the Improvements on the Hotel Property where all or substantially all of the Improvements on the Hotel Property (other than the Excluded Improvements) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

10.4.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.4.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.4.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.4.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Hotel Property; secure the Hotel Property against trespassers; and, at County's election, remove all remaining Improvements on the Hotel Property.

10.4.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.4.1, Lessee delivers to County a quitclaim deed to the Hotel Property in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Hotel Property and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.4.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.4.1 County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.5 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Hotel Property where the damage or destruction results from a cause required to be insured against by this Lease.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Chief Real Estate Officer may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as reasonably established by Chief Real Estate Officer, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 14.5.

10.7 County Obligation to Make Repairs; Breakwater and Bridge Structure. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Hotel Property; provided, however, that Chief Real Estate Officer shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the Breakwater and the structural aspects of the bridge depicted on **Exhibit H** attached hereto (the "**Bridge Structure**") (both of which structures the Parties acknowledge and agree are not part of the Hotel Property) if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, or otherwise. Chief Real Estate Officer shall undertake such maintenance, repair and replacement, if any, with due diligence consistent with the funding provided. In the event the Breakwater or the Bridge Structure is in imminent danger of collapse or has collapsed, Chief Real Estate Officer shall promptly request funding from the Board for repair or replacement as may be necessary to avoid or repair such collapse. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Breakwater or the Bridge Structure. Furthermore, nothing herein shall relieve Lessee from liability for any damage to either the Breakwater or the Bridge Structure caused by Lessee, its agents, employees, Sublessees or contractors, or by the construction of the Improvements by or on behalf of Lessee.

10.8 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Hotel Property. Any entry by County onto the Hotel Property pursuant to this Section 10.8, and any entry onto the Hotel Property to perform work on the Breakwater pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (a) prior to entry onto the Hotel Property, County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Hotel Property, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee and any then-current Encumbrance Holder as an additional insured; (b) County's contractors shall comply with industry standard safety requirements; and (c) County shall repair, or cause its contractors to repair, any damage to the Hotel Property caused by the activities of County and/or it contractors on the Hotel Property pursuant to this Section 10.8 or Section 10.7. If repair of the Breakwater requires access to the Hotel Property, County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.9 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Hotel Property or the Improvements from any cause whatsoever.

10.10 Waivers. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of any statutes (including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code) or court decisions which provide a party to a Lease with a right to abatement of rent or termination of this Lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

10.11 Accessibility Disclosure. In compliance with its disclosure obligations under Section 1938 of the California Civil Code, County hereby notifies Lessee that, as of the Effective

Date, the Hotel Property has not been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, County hereby advises Lessee as follows:

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If Lessee elects to have a Certified Access Specialist ("**CASp**") inspect the Hotel Property, then Lessee shall: (a) provide County with prior written notice of such election and mutually agree with County on the arrangements for the time and manner of the CASp inspection, (b) promptly give County a copy of the resulting report (the "**CASp Report**") upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CASp Report and for completing any repairs or modifications that are necessary to correct violations of construction-related accessibility standards noted in the CASp Report and any additional work necessitated thereby (all of which Lessee shall complete as expeditiously as possible following the issuance of the CASp Report and in compliance with this Lease (including without limitation Section 5), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CASp Report to any person other than County (and except as necessary for Lessee to complete the repairs and corrections of violations noted in the CASp Report) without first obtaining the prior written consent of County (which consent shall not be unreasonably withheld) or if disclosure is required by law. Lessee's obligation to indemnify County and the County Indemnified Parties under Section 8.1 above shall apply equally to Claims arising out of any CASp investigation initiated by Lessee, including as a result of any violations discovered thereby.

10.12 Dana Point Harbor Water Quality. Notwithstanding anything to the contrary set forth in this Lease, Lessee shall not be responsible during the Term for the cost of undertaking any improvements required to: (a) improve the circulation of water in the Dana Point Harbor, (b) to improve the water quality in the Dana Point Harbor, or (c) to engage in other activities designed to improve the environmental condition of Dana Point Harbor over the condition as it exists on the Original Effective Date, and/or as might be required as a part of the Redevelopment Work. The foregoing shall not negate or limit Lessee's responsibilities under Subsections 3.2.2(f) or 10.2.2.

11. OPERATIONAL OBLIGATIONS OF LESSEE.

11.1 Standards of Operation. Continuously throughout the Term, Lessee shall operate the Hotel Property in a manner reasonably comparable to other comparable facilities or businesses

within the County, and in accordance with the Minimum Standards. The Minimum Standards shall not be modified without the prior written consent of the Chief Real Estate Officer, which consent may be granted or withheld in the Chief Real Estate Officer's sole discretion.

11.2 Property Manager. Continuously throughout the Term, Lessee shall employ a competent manager for the Hotel Property ("**Property Manager**"), who shall be responsible for the day to day full-time management, operation, maintenance, cleanliness, and general order of the Hotel Property. The Property Manager shall have the requisite skill, experience and expertise for the type of operation being conducted on the Hotel Property and (i) the Property Manager and Hotel Franchisor shall each be an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, (ii) the executive management of each of the Property Manager and Hotel Franchisor responsible for the management of the Hotel shall have a minimum of ten (10) years' experience in the successful franchising of hotels of comparable quality to the Hotel to be operated and maintained on the Hotel Property, and (iii) each of the Property Manager and Hotel Franchisor shall have or will be in a position to participate in a nationwide reservation system. County hereby approves the Property Managers and Hotel Franchisors identified on **Exhibit J** without the need for further County consent; provided, however, prior to engaging such pre-approved Property Manager or Hotel Franchisor, Lessee shall nevertheless be required to provide County with the information that would have been required of Lessee if the County's approval of such Property Manager or Hotel Franchisor were required. Any Property Manager or Hotel Franchisor that is not a pre-approved Property Manager per **Exhibit J** or that is not an Affiliate of Lessee shall be subject to Chief Real Estate Officer's prior written approval, which approval shall not be unreasonably withheld. Concurrently with submitting its request for approval of a Property Manager or Hotel Franchisor, Lessee shall submit to Chief Real Estate Officer all information needed to demonstrate compliance with the criteria set forth herein and thereafter, upon Chief Real Estate Officer's request, Lessee shall cooperate with County and provide such additional information as Chief Real Estate Officer may reasonably request relating to such criteria or other factors bearing upon Chief Real Estate Officer's approval of the Property Manager. If Chief Real Estate Officer disapproves a proposed Property Manager or Hotel Franchisor, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Each approved Property Manager and Hotel Franchisor shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Hotel Property, including the authority to enforce compliance by Lessee's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall provide County with the name and contact information for the Property Manager (and Hotel Franchisor) for the Hotel Property, and shall continuously throughout the Term update such information as changes occur. Lessee expressly agrees that any notice herein required to be served upon Lessee may, at the option of County or Chief Real Estate Officer, be personally served upon the Property Manager and that such service shall have the same force and effect as service upon Lessee. If during the Term in the reasonable judgment of Chief Real Estate Officer the then current Property Manager or Hotel Franchisor is performing in an unsatisfactory manner, then the Chief Real Estate Officer shall advise Lessee of the particular deficiencies in such operations and Lessee shall use commercially reasonable and diligent efforts to cause such Property Manager or Hotel Franchisor, as applicable, to correct such behavior or shall replace such Property Manager or Hotel Franchisor with a new management firm or Hotel Franchisor which complies with the requirements above. If during the Term the then current Property Manager or Hotel Franchisor terminates its contract, then Lessee

shall have the right to replace such Property Manager or Hotel Franchisor with another Property Manager or Hotel Franchisor which complies with the requirements above. Notwithstanding anything in this Lease to the contrary, and for the avoidance of doubt, Lessee shall be solely responsible to County for the continued operation of the Hotel Property in accordance with the terms and conditions of this Lease, and Lessee's employment of a Property Manager or a Hotel Franchisor to assist Lessee with the same shall not relieve Lessee of liability for any breach of such obligations.

11.3 Right to Work and Minimum Wage Laws.

11.3.1 In accordance with the United States Immigration Reform and Control Act of 1986, Lessee shall require its employees that directly or indirectly service the Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Lessee shall also require and verify that its contractors or any other persons servicing the Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

11.3.2 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and California Labor Code Section 1178.5, Lessee shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Hotel Property, in any manner whatsoever. Lessee shall require and verify that all its contractors or other persons servicing the Hotel Property on behalf of the Lessee also pay their employees no less than the greater of the Federal or California Minimum Wage.

11.3.3 Lessee shall comply and verify that its contractors comply with all other Federal and State laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Hotel Property or terms and conditions of this Lease.

11.3.4 Notwithstanding the minimum wage requirements provided for in this Section 11.3, Lessee, where applicable, shall comply or cause its contractors or subcontractors to comply with the prevailing wage and related requirements, as provided for in Subsection 11.4 below.

11.4 Labor Code Compliance. Lessee acknowledges and agrees that all construction performed by or on behalf of Lessee per the terms of this Lease shall be governed by, and performed in accordance with, all Applicable Laws, including without limitation, and to the extent applicable, the California Labor Code and the provisions thereunder concerning the payment of prevailing wage.

11.5 Public Contract Code Compliance. To the extent required by Applicable Law, Lessee shall comply, and shall cause its Sublessees, contractors and subcontractors to comply, with all County ordinances and public contracting laws regarding public works contracts, including, but not limited to, the bidding requirements under the California Public Contracts Code.

11.6 Pricing. Lessee shall at all times maintain a complete list or schedule of the prices charged by Lessee for all goods or services, or combinations thereof, supplied to the public on or from the Hotel Property, whether the same are supplied by Lessee or by its Sublessees, assignees,

concessionaires, permittees or licensees. The foregoing shall not be deemed a requirement for Lessee to maintain such lists or schedules of the prices charged by Sublessees. Said prices will be "market rate" pricing as reasonably determined by Lessee; provided, however, that in all events such prices shall be consistent with the limitations on pricing as mandated by the Tidelands Grant

11.7 Payment Card Compliance. Should Lessee conduct credit/debit card transactions in conjunction with Lessee's business with the County, on behalf of the County, or as part of the business that Lessee conducts on the Hotel Property, Lessee covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant with such standards, or any successor standards, during the entire duration of its conduct of such activities, provided such standards remain applicable. Notwithstanding the foregoing, with respect to the Hotel Property, Lessee shall be permitted to comply with the payment card standards imposed by a Hotel Franchisor, Property Manager or operator under a management agreement or a franchise agreement under the "flag" of a national or regional hotel chain, provided such standards are reasonably similar to the PCI/DSS and PA/DSS standards. Lessee agrees to immediately notify County in the event Lessee should ever become aware that it is non-compliant of this Subsection 11.7 at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days after Lessee's actual knowledge of the commencement of any such interruption. Upon demand by County, Lessee shall provide to County written certification of Lessee's PCI/DSS and/or PA/DSS compliance, or, if applicable, proof that any other standard implemented by Lessee as contemplated above complies with the PCI/DSS and/or PA/DSS standards and that Lessee complies with the same.

11.8 Administration of County Space. For the avoidance of doubt, County does not grant or delegate to Lessee any of County's governmental powers (statutory, implied, administrative, or otherwise) with respect to the Hotel Property.

11.9 Holiday and Event Coordination. Lessee agrees that County shall have the right from time to time to host or co-host certain community events or displays on or about the Hotel Property that typically coincide with various holidays on up to five (5) occasions per year, including without limitation those listed on **Exhibit K** attached hereto (the "**Permitted Events**"). County shall coordinate the location, dates, duration and scope of the Permitted Events with Lessee prior to the occurrence of the same in each instance. County shall provide Lessee with a proposed calendar of such proposed events no later than September 30 of each calendar year proposing the Permitted Events for the following calendar year. The Permitted Events shall be conducted within those portions of the Hotel Property reasonably approved by Lessee. Lessee and County agree to reasonably cooperate with each other in connection with the Permitted Events, including the planning and execution of the Permitted Events, provided that all costs and expenses associated with the Permitted Events shall be borne by County or other sponsoring party (including, but not limited to, the City), including but not limited to, advertising, promotions, marketing, signage and wayfinding, additional lighting requirements, valet services, extraordinary parking management services, catering, staging, entertainment, decorations, materials and supplies, staffing, security, utilities, clean-up, etc. For the avoidance of doubt, Lessee shall not conduct, nor permit any of its Sublessees to conduct, any events or other activities within the waterways of Dana Point Harbor without first obtaining all applicable permits for the same.

12. ASSIGNMENT AND SUBLEASE.

12.1 Subleases.

12.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession, or other interest in the Hotel Property or the Improvements, or a right to use the Hotel Property or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Hotel Property is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**". **FOR THE AVOIDANCE OF DOUBT, WITH RESPECT TO THE PROPERTY, NO PROPERTY MANAGER OR HOTEL FRANCHISOR SHALL CONSTITUTE A "SUBLESSEE" OR A "MAJOR SUBLESSEE" HEREUNDER AND NO HOTEL FRANCHISE OR HOTEL OR PROPERTY MANAGEMENT AGREEMENT, ROOM RESERVATION OR EVENT AREA RESERVATION SHALL CONSTITUTE A "SUBLEASE" OR A "MAJOR SUBLEASE" HEREUNDER, BUT THE SAME SHALL BE SUBJECT TO THE COUNTY'S PRIOR WRITTEN APPROVAL AS AND TO THE EXTENT SET FORTH IN SECTION 11.2 ABOVE.**

12.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease or Approved Retail Sublease, or (b) any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Chief Real Estate Officer for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Chief Real Estate Officer shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Chief Real Estate Officer. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Hotel Property subject to the Sublease. If Chief Real Estate Officer disapproves a Sublease, Chief Real Estate Officer shall notify Lessee in writing of the reason or reasons for such disapproval.

12.1.3 No Approval Required. Notwithstanding any contrary provision of this Article 12, but subject to Section 3.1 of this Lease, Lessee shall not be required to obtain County's approval of (a) any Sublease or license of retail space in the ordinary course, as long as such Sublease or license agreement pertains to no more than 10,000 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease), there are no substantive revisions to any of the required lease provisions described on **Exhibit M** attached hereto, and the term of such Sublease or license does not exceed one hundred twenty (120) months, inclusive of any option or renewal periods (each, an "**Approved Retail Sublease**").

12.1.4 Non-Disturbance Agreements. With respect to (i) a property management agreement, hotel management agreement or hotel franchise agreement; or (ii) any Sublease approved by County that (a) is with a Sublessee that is a national or regional retailer or restaurant

chain, and (b) pertains to more than 7,500 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease); County agrees, upon written request from Lessee, to execute and deliver a non-disturbance and attornment agreement using County's standard form.

12.1.5 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable entity of other comparable facilities or businesses. With respect to the Hotel Component, County agrees that each of the national or regional hotel chains and management companies listed on **Exhibit J** shall be deemed to be reputable. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Hotel Property, not less than forty- five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 12.2.

12.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 12, Lessee shall not, without the prior written consent of County (which consent shall be based upon factors including, without limitation, those described in **Exhibit C** hereto ("**Assignment Standards**"), which shall be applied in a commercially reasonable manner), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege herein, or enter into a Major Sublease affecting the Hotel Property, or license the use of all or substantially all of the Hotel Property. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For the avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County's consent even if it is an Excluded Transfer. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning at least one-third of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

12.2.1 County's Use of Discretion and Limitation on Permissible Assignees. Prior to the earlier to occur of the CO Date for the Select Service Hotel or the CO Date for the Full

Service Hotel, County shall have the right to withhold its consent to any assignment or Major Sublease for the Hotel Property in County's sole and absolute discretion. After the CO Date for the Select Service Hotel or the Full Service Hotel, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease for the Hotel Property. If County withholds its consent to an assignment or Major Sublease after the CO Date for the Select Service Hotel or the Full Service Hotel, County shall notify Lessee in writing of the reason or reasons for such disapproval.

12.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest herein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any other process of law including, without limitation, bankruptcy proceedings.

12.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

(a) Prior to entering into any agreement requiring the approval of County pursuant to Sections 12.1 or 12.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Sublease, and any other documents which set forth any proposed agreement regarding the Hotel Property and the information set forth in Subsection 12.2.3(e). County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request.

(b) In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

(c) Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 12 and shall provide such response in no more than thirty (30) days.

(d) Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without any duplication with any Administrative Charge payable under Subsection 4.3).

(e) Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the

proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(1) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(2) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(3) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Hotel Property (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only Beneficial Interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Hotel Property) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Hotel Property and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (a) equity capital; (b) sources and uses of funds; (c) terms of financing; (d) debt service coverage and ratio; and (e) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Hotel Property. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(4) Business Plan. County shall be provided with the proposed assignee's business plan for the Hotel Property (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Hotel Property), including pro forma financial projections for the Hotel Property for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections

will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(5) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(6) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(7) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Hotel Property.

(8) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Hotel Property and any proposed alterations or improvements to the Hotel Property. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Hotel Property, contracts in excess of $25,000 affecting the Hotel Property, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Hotel Property. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

(f) Non-disturbance. Upon the written request of Lessee, County shall agree to execute a subordination, non-disturbance and attornment agreement and a ground lessor's estoppel certificate in favor of any Major Sublessee, or any national or regional hotel chains or management companies listed on **Exhibit J** attached hereto, using County's standard form for the same.

(g) Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

12.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Hotel Property or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect Beneficial Interest in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 12.2.4. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Hotel Property and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Hotel Property or Lessee's books and records pursuant to this Subsection 12.2.4 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (a) three percent (3%) of the Lessee Sale Price, plus (b) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (i) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (ii) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (i) or (ii), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (A) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (B) the transfer is consummated not later than twelve (12) months after the later of (i) or (ii) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Hotel Property subject to the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Hotel Property, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Hotel Property retained by Lessee and Annual Minimum Rent shall be reduced as of the date of the acquisition to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Hotel Property remaining with Lessee to the fair market value

of the entire Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the acquisition. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent paid by Lessee to County prior to the date of such acquisition shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Hotel Property which remains after such acquisition bears to the fair market value of the entire Hotel Property immediately prior to such acquisition. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.2. Any determinations of fair market value made pursuant to this Section 12.2.4 in connection with any arbitration proceeding shall be predicated upon the Income Approach. In the event that County elects to recapture all or any portion of the Hotel Property as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this Subsection 12.2.4 shall not apply to (I) Financing Events, or (II) those events identified in Subsection 4.3.1(e)(3) of this Lease.

12.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Percentage Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price, plus (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the Parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

12.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for in this Lease, each and all of the provisions, agreements, terms, covenants, and conditions of this Lease contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of Lessee's heirs, executors, administrators, successors and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Furthermore, any transferor of any interest in this Lease or the Hotel Property or Improvements shall remain

primarily liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease. County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

13. ENCUMBRANCES.

13.1 Financing Events.

13.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Section 4.3:

(1) "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance; for purposes of Subsection 13.1.2 below and Subsections 4.2.4 through 4.3.1(e) above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease. Notwithstanding the foregoing, the initial construction financing obtained in connection with the Redevelopment Work, and other exclusions set forth in Section 4.3, above, shall not be deemed a "**Financing Event**".

(2) "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (i) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants), or (ii) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. Notwithstanding the foregoing, that certain Declaration, dated January 27, 2026, between Dana Point Harbor Partners, LLC, and Dana Point Harbor Partners Drystack, LLC, recorded in the Official Records, Orange County as document 2026000019896 and any amendment, extension or modification thereto or assignment thereof shall not be deemed an "Encumbrance" hereunder.

(3) "**Encumbrance Holder**" shall also be deemed to include any and all Affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such Affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease.

(4) "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

13.1.2 County Approval Required. Lessee may, with the prior written consent of Chief Real Estate Officer (except as set forth in Subsection 13.1.3 below), which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Chief Real Estate Officer, consummate one or more Financing Event(s). Lessee shall submit to the Chief Real Estate Officer a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event (collectively, the "**Financing Documents**"). The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Chief Real Estate Officer. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Chief Real Estate Officer shall have twenty (20) days to grant or withhold approval of the preliminary loan package and its preliminary approval or disapproval of the Financing Event, subject to confirmation that the substantially complete loan documents conform to the preliminary loan package. Chief Real Estate Officer shall have ten (10) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event. If not approved by Chief Real Estate Officer in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Chief Real Estate Officer and, if so requested in writing by Lessee, Chief Real Estate Officer shall within ten (10) days of such request deliver to Lessee a written description of Chief Real Estate Officer's objections to said proposed Financing Event. Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 13.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

13.1.3 No County Approval Required. Notwithstanding anything to the contrary contained in Subsection 13.1.2 above, so long as Olson Real Estate Group. Inc. or R.D. Olson Investments II, LLC is the manager or managing member of Lessee, then Lessee may consummate one or more Financing Event(s) without the prior written consent of Chief Real Estate Officer, subject to the following terms and conditions:

(a) As soon as reasonably practicable following Lessee's receipt of the Financing Documents (which may include draft documents), but in all cases no later than ten (10) Business Days prior to executing the same, Lessee shall submit the Financing Documents for each applicable Financing Event to the Chief Real Estate Officer for the Chief Real Estate Officer's review for the purpose of confirming the same comport with the requirements set forth in this Subsection 13.1.3. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any such approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof.

(b) The Encumbrance Holder shall be an Institutional Lender.

(c) The Encumbrance shall cover no interest in any real property other than Lessee's interest in the Hotel Property and Improvements or some portion thereof, and the leasehold estate of Lessee under this Lease. The Encumbrance shall be fully subordinate to Lessor's fee title in and to the Hotel Property and all of Lessor's rights set forth in this Lease and shall state on its face that it does not encumber in any way Lessor's fee interest in the Hotel Property or Lessor's rights set forth in this Lease.

(d) Prior to the completion of the Redevelopment Work, Encumbrances may be made only for the purposes of financing necessary and appropriate to pay Improvement Costs.

(e) Prior to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Hotel Property shall not exceed seventy-five percent (75%) of the budgeted Improvement Costs for the Hotel Property, as the Budget for said Improvement Costs may be revised from time to time in accordance with this Lease.

(f) Subsequent to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Hotel Property shall not exceed seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Hotel Property, as determined by either (i) the appraisal selected by the Institutional Lender to conduct the appraisal in connection with the Financing Event (provided such appraisal is actually relied upon by the applicable Encumbrance Holder in connection with Lessee's loan approval) or (ii) a licensed California appraiser retained at Lessee's sole cost and expense who is a member of the Appraisal Institute and who has a minimum of ten (10) years' experience appraising properties comparable to the Hotel Property and Improvements to be developed on the Hotel Property, with the Chief Real Estate Officer or his or her designee having the right of reasonable approval or disapproval of the appraisal in connection with this subsection (ii) alternative; provided, however, that Lessee shall not be deemed to be in default of this Subsection 13.1.3(f) if a loan or loans secured by Encumbrances recorded prior to completion of the Redevelopment Work in compliance with Subsection 13.1.3(e), including any amendment(s) or extension(s) of such loan(s) that do(es) not increase the total outstanding principal balance of such loan(s) and whether or not such amendment(s) or extension(s) occur(s) prior or subsequent to completion of the Redevelopment Work, exceed(s) seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Hotel Property. In addition, it is understood and agreed that the loan-to-value ratio constraint in this Subsection 13.1.3(f) shall be made only at the time Lessor is determining whether to approve or disapprove the proposed Encumbrance and thereafter this Subsection 13.1.3(f) shall not limit, restrict, invalidate, or result in the disapproval of any such Encumbrance or any amendment or extension of any such Encumbrance that does not increase the total outstanding principal balance of the loan secured by such Encumbrance if the fair market value of Lessee's leasehold interest in the Hotel Property that was relied upon by Lessor in approving the Encumbrance declines.

(g) All rights acquired by an Encumbrance Holder under an Encumbrance shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease, and to all rights of County hereunder, none of which covenants, conditions, and restrictions is or shall be waived by County by reason of the giving of such Encumbrance. Notwithstanding the foreclosure of any such Encumbrance, Lessee shall remain liable for the payment of the accrued but unpaid rent reserved in this Lease while Lessee remains in possession of the Hotel Property and Improvements.

(h) Promptly upon the recording of an Encumbrance, Lessee shall, at its own expense, cause to be recorded in the Official Records of Orange County a written request executed and acknowledged by County for a copy of all notices of default and all notices of sale under the Encumbrance as provided by Applicable Law to be provided to the Chief Real Estate Officer. Inclusion of a request for notice having the effect described above in the body of the recorded Encumbrance shall constitute compliance with this provision.

(i) County shall not be required to amend this Lease, nor undertake any additional obligations, nor be obligated to forego any rights under this Lease, in connection with any such Financing Event.

(j) The Encumbrance Holder shall acknowledge in the Encumbrance that any amounts in the Hotel Capital Reserve Fund and the Replacement Reserve Fund, as applicable, shall be administered in accordance with, and shall be subject to, the terms and conditions of this Lease.

13.2 Consent Requirements In The Event of a Foreclosure Transfer.

13.2.1 Definitions. For the purposes of this Lease:

(a) "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof.

(b) "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer.

(c) "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

13.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer and, notwithstanding anything to the contrary in this Lease, no Percentage Share shall be payable in connection therewith.

13.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (a) County's consent to such transfer shall be required, but shall not be

unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under Subsection 13.3.1 below, and (b) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults. For clarification purposes, the right to a single transfer under this Subsection 13.2.3 shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Subsection.

13.2.4 Bankruptcies. In the event that County becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), and County or any trustee of County rejects or seeks authority to reject the Lease under 11 U.S.C. Section 365 (or any other or successor provision permitting any similar relief), County understands that Encumbrance Holder and Lessee have agreed that: (i) Lessee shall elect, without further act, unless Encumbrance Holder consents in writing to any other election, to remain in possession for the balance of the term of the Lease and any renewal or extension thereof, pursuant to 11 U.S.C. Section 365(h) (and any other successor provision permitting a similar election); (ii) any purported election by the Lessee to treat the Lease as terminated shall be void and of no effect, unless Encumbrance Holder consents in writing thereto; and (iii) the lien of the Security Instrument shall not be impaired by such rejection. In the event that the Lessee becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), County shall give prompt notice to Encumbrance Holder of any notice it receives of a request by the Lessee or any trustee of the Lessee for authority to reject the Lease.

13.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

13.3.1 Any Encumbrance Holder which is an Institutional Lender, shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 13.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (a) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (b) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

13.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 13.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults).

13.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Hotel Property, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Administrative Charge nor Percentage Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Subsection 13.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 13.3.3 shall also inure to the benefit of the Lessee.

13.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

13.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 13.2.3, shall trigger (a) any obligation to pay an Administrative Charge nor Percentage Share, (b) any acceleration of any financial obligation of Lessee under this Lease, (c) any recapture right on the part of County, or (d) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 13.2.3, shall be deemed to be excluded from the definition of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Subsection 13.2.3), so that there may be more than one "single subsequent transfer" benefited by this Subsection.

13.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Redevelopment Work described in Section 5.1 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 13.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

13.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (a) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (b) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 13 or any other provision of this Lease shall also be afforded

to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

13.3.8 The occurrence of a default or event of default under an Encumbrance or related document or instrument evidencing or securing a loan shall not, in and of itself constitute a default or event of default under this Lease, provided, however, that the circumstances giving rise to such default or event of default under the Encumbrance or related document or instrument evidencing or securing the Loan may also constitute a default or event of default under this Lease. In such an event, except as expressly set forth herein, County shall not be prohibited from exercising its rights or remedies to address any such default or event of default pursuant to the terms and conditions of this Lease.

13.3.9 Upon delivery by Encumbrance Holder of a written notice to County that Encumbrance Holder has commenced a Foreclosure (as defined herein) (such written notice to include a written notice of event of default delivered previously or contemporaneously to Lessee), any and all entitlement, permitting, construction and related obligations of Lessee under the Lease, including, without limitation, the Required Cost Amounts obligations and the Alternative Hotel Component (the "**Construction Obligations**") shall be tolled. If Encumbrance Holder or an affiliate of Encumbrance Holder shall become Foreclosure Transferee upon completion of a Foreclosure, then such tolling of the Construction Obligations shall continue for five (5) years after the date of completion of such Foreclosure (the "**Tolling Period**") so long as such Encumbrance Holder as Foreclosure Transferee is diligently pursuing a sale of the Leasehold interest of Lessee, including, without limitation, by engaging a nationally recognized broker or other broker with experience marketing and selling marinas and actively marketing the Hotel Property. The tolling of all Construction Obligations shall cease immediately upon either (i) a third party (unaffiliated with Encumbrance Holder) becoming a Foreclosure Transferee upon completion of a Foreclosure or (ii) Encumbrance Holder as Foreclosure Transferee completing a sale of the leasehold interest of Lessee to a third- party Foreclosure Transferee during the Tolling Period (each, a "**Tolling Termination**"). Upon a Tolling Termination, a third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a reasonable construction schedule for such remaining Construction Obligations (and not any dates or time periods set forth in the Lease) as determined by an independent construction inspector agreed to between County and Foreclosure Transferee (a "**Reset Construction Schedule**"). Upon the expiration of the Tolling Period, so long as no Tolling Termination has occurred and so long as Encumbrance Holder is the Foreclosure Transferee, such Foreclosure Transferee shall diligently pursue completion of the Construction Obligations and shall not be subject to any Reset Construction Schedule or any dates or time periods set forth in the Lease, provided, however, that if Encumbrance Holder as Foreclosure Transferee assigns the leasehold interest of Lessee to a third party after expiration of the Tolling Period, then such third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a Reset Construction Schedule.

13.3.10 County acknowledges that, if Encumbrance Holder or any other party succeeds to the interest of Lessee under the Lease as a result of a Foreclosure Transfer, the Foreclosure Transferee shall be deemed to have agreed to perform all of such Lessee's obligations only for so long as such purchaser is the owner of the leasehold interest of Lessee. The Foreclosure

Transferee shall, upon any assignment of the leasehold interest of Lessee, be relieved of all obligations under the Lease. The Foreclosure Transferee shall be entitled to exercise all rights of Lessee under the Lease. County's approval or consent shall not be required in connection with any assignment of the leasehold interest of Lessee to a Foreclosure Transferee or to the first third party (unaffiliated with Encumbrance Holder) Foreclosure Transferee, including, without limitation, with respect to any secured or unsecured lender providing financing for such acquisition or as to such financing (including any underlying financing documents).

13.3.11So long as any Foreclosure Transferee is the owner of the leasehold interest of Lessee, County shall look solely to the interest of such Foreclosure Transferee in the Hotel Property and the improvements located thereon in the event of the breach or default by such Foreclosure Transferee under the terms of the Lease and County hereby agrees that any judgment or decree to enforce the obligations of such Foreclosure Transferee shall be enforceable only to the extent of the interest of such Foreclosure Transferee in the Hotel Property and such improvements.

13.4 No Subordination. County's rights in the Hotel Property and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 13.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Hotel Property under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

13.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 13) without the prior written consent of each such Encumbrance Holder. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

13.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

13.6.1 Right to Cure. Each Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Hotel Property Manager, shall have the right, at any time during the term of its Encumbrance, Major Sublease, property management agreement, hotel management agreement or franchise agreement, as applicable, and in accordance with the provisions of this Article 13, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

13.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 14.5 or imposing the daily payment set forth in Section 10.3), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Encumbrance Holder and Major Sublessee which has notified Chief Real Estate Officer in writing of its interest in the Hotel Property or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Property Manager, shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the cure rights set forth in this Section 13.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.3.

13.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder, Major Sublessee, and, for each approved Hotel Franchisor and Property Manager, in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder, Major Sublessee, and each approved Hotel Franchisor and Property Manager, may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty-five (35) days after its receipt of the aforesaid notice of default (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder, Major Sublessee or the approved Hotel Franchisor or Property Manager.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder, Major Sublessee, Property Manager, or Hotel Franchisor, as follows:

(1) Such party may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 14.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the curing party commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the initial cure period provided to the curing party shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the curing party that

Lessee has failed or ceased to cure the default with due diligence. Notwithstanding anything in this Lease to the contrary, if any default by the Lessee is of such a nature that it reasonably cannot be cured by the curing party, or reasonably cannot be cured by the curing party without the curing party obtaining possession of the Hotel Property, County will not terminate the Lease as long as all rent payments are made and all other defaults which reasonably can be cured by the curing party without the curing party obtaining possession of the Hotel Property are so cured.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee or an approved Hotel Franchisor or Property Manager, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in Subsection 13.6.3(a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

13.7 New Lease.

13.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Subsection 13.7.1 within thirty (30) days after the occurrence of such termination, which notice shall state (a) that the Lease has

terminated in accordance with this Subsection 13.7.1, and (b) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Subsection 13.7.1, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Hotel Property. From and after the effective date of the new lease, the Encumbrance Holder (or its Affiliate) shall have the same rights to a single transfer that are provided in Subsection 13.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 13. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 12 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

In connection with Encumbrance Holder's right to a new lease contained herein, Encumbrance Holder shall not be required to cure any existing non-monetary Event of Default that is personal to Lessee or otherwise not reasonably susceptible to cure by Encumbrance Holder. From and after any termination or rejection of the Lease after which Encumbrance Holder has a right to a New Lease, for so long as Encumbrance Holder has such right, County will not terminate any subleases or the rights of any sublessee except in the case of a default under any such sublease beyond any applicable notice and cure periods. During such period County shall receive all rent and other payments due from all sublessees as agent of the Encumbrance Holder, and shall deposit such amounts in a segregated account in trust for the Encumbrance Holder, and upon execution of a new lease, shall account to the sublessees thereunder for such amounts. The collection of such amounts by County under this Section shall not be deemed an acceptance by County for its own account of the attornment of any sublessee unless County shall have agreed in writing with such sublessee that its tenancy shall be continued in the event that a new lease is not entered into pursuant to this Section. In the event a new lease is so entered into, County shall not object to any requirement that all sublessees under such subleases shall attorn to the new tenant thereunder.

13.7.2 Priority of New Lease. The new lease made pursuant to Subsection 13.7.1 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Hotel Property first arising or attaching to the Hotel Property from and after the Effective Date, and any future fee mortgagee or other future holder of any lien on the fee interest in the Hotel Property is hereby given notice of the provisions hereof.

13.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (a) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the

terms of this Lease to be applied to restoration of the Improvements on the Hotel Property (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (b) any funds required to be held in the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

13.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Hotel Property following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

13.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Hotel Property shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

13.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Hotel Property, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13.12 No Amendment. Without the written consent of each Encumbrance Holder, this Lease shall not be amended, modified, cancelled or terminated by joint action of County and Lessee, and any attempted amendment, modification, cancellation or termination shall be of no force and effect. County shall not recognize any cancellation, surrender or termination by Lessee alone without in each case the prior written consent of the Encumbrance Holder, and any attempted cancellation, surrender or termination shall be of no force and effect.

14. DEFAULT.

14.1 Events of Default. The following are deemed to be "**Events of Default**" and, each an "**Event of Default**" hereunder:

14.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Hotel Capital Reserve Fund, if applicable), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon at the Applicable Rate and the applicable Late Fee, within such ten (10) day period.

14.1.2 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

14.1.3 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other non-monetary promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty (30) days after written notice of Lessee's failure to perform from Chief Real Estate Officer; provided, however, that where Lessee's performance of such non-monetary covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty (30) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Subsection 14.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond the thirty (30) day period shall not be applicable to any failure of Lessee to comply with the Required Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may extended pursuant to Section 5.7).

14.1.4 Non-Use of Property. The abandonment (as defined in California Civil Code Section 1951.3), vacation, or discontinuance of use of the Hotel Property, or any substantial portion thereof, for a period of thirty (30) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, if an individual Sublessee of retail, office or restaurant space on the Hotel Property fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 14.1.4 if Lessee uses its reasonable and diligent efforts to recover possession of the applicable space from the Sublessee and re-subleases such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances. In addition, notwithstanding any contrary provision of this Subsection 14.1.4, an Event of Default shall not be triggered under this Subsection 14.1.4 due to the termination of operations by a Sublessee as long as Lessee diligently attempts to re-sublease and re-open such Sublessee's space as soon as reasonably possible after Lessee obtains possession of the Sublessee's space.

Any notice required to be given by County pursuant to Section 14.1 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

14.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

14.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 13.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

14.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination effective thirty (30) days thereafter. Upon the expiration of such thirty (30) day period absent cure by Lessee, this Lease and all of Lessee's rights in the Hotel Property and in all Improvements shall terminate. Promptly after such termination, Lessee shall surrender and vacate the Hotel Property and all Improvements in broom-clean condition, and County may re-enter and take possession of the Hotel Property and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 14.4.4. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Hotel Property as is reasonably necessary to permit Lessee to comply with its removal obligations.

14.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Hotel Property and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the Parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

14.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 14.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Hotel Property unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 14.2, hereof. County agrees to use reasonable efforts to mitigate damages.

14.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section 14.3, County shall be entitled to recover from Lessee as damages:

14.4.1 The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof; plus

14.4.2 The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

14.4.3 The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

14.4.4 Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Hotel Property, expenses of reletting, including necessary repair, renovation and alteration of the Hotel Property, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, expert witness costs, any unpaid Administrative Charges and any other reasonable costs; plus

14.4.5 Any other amount which County may by law hereafter be permitted to recover from Lessee to compensate County for the detriment caused by Lessee's default.

The term "rent" as used herein shall be deemed to be and to mean the Annual Minimum Rent, Percentage Rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease. All such sums, other than the Annual Minimum Rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Subsections 14.4.1 and 14.4.2 above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Subsection 14.4.3 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Applicable Rate.

14.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder, or Major Sublessee, as provided in the last sentence of this Section 14.5), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (a) one hundred ten percent (110%) of the amount expended by County to cure such default, and (b) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders, or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

14.6 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease. County's pursuit of any of the remedies provided for in this Lease shall not preclude its pursuit of any of the other remedies or relief available to County at law, in equity or otherwise (whether or not stated in this Lease), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rental due to County hereunder or of any damages accruing to County by reason of the violation of any of the terms, provisions, and covenants herein contained (except as may otherwise be expressly provided herein).

14.7 No Waiver; Surrender. County's acceptance of rental following an Event of Default shall not be construed as County's waiver of such Event of Default. No waiver by County of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Hotel Property, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

14.8 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Lease or the Hotel Property, provided County provides written notice to Lessee of the identity of such person and the address of such person prior to the delivery of the foregoing notice from Lessee specifying in detail County's failure to perform. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall be limited to the value of County's equity interest in the Hotel Property and its right to insurance proceeds in connection with the policies required under Article 9 hereof, and nothing else. Any and all claims or actions against County accruing hereunder shall be absolutely barred unless such action is commenced within twelve (12) months of the event or action giving rise to the default.

14.9 Waiver. Lessee hereby waives any and all rights of reinstatement, redemption or relief from forfeiture granted under any present and future laws (including without limitation under California Civil Code Section 3275 or California Code of Civil Procedure Sections 1174 and 1179) in the event County obtains the right to possession of the Hotel Property by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise.

15. ACCOUNTING.

15.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, and other sums due under this Lease, Lessee and all Sublessees in connection with any Lessee Business Operation shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Chief Real Estate Officer, true, accurate, and complete records (as defined herein below) and double-entry books of account for the current and five (5) prior Lease Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Hotel Property separate and apart from those in connection with Lessee's (or an applicable Sublessee's, as applicable) other business

operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize the accrual basis of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. If Lessee elects to use an alternative method, including a cash or modified accrual method, Lessee shall utilize the same method of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. For example, Lessee shall not utilize the cash basis for monthly Gross Receipts statements while also utilizing the accrual basis for the annual audited Supplemental Statement of Gross Receipts. For purposes hereof, "**records**" shall mean full and accurate books and accounts, records, cash receipts, and other pertinent data as necessary or appropriate for the purpose of this Lease as reasonably determined by the Auditor-Controller showing Lessee's financial operations pertaining to this Lease and the Hotel Property. Such books and records shall be organized in a manner that separately itemizes each of the separate components of Gross Receipts.

15.2 Cash Registers. To the extent retail sales are conducted on the Hotel Property in connection with any Lessee Business Operation, or other cash or credit sales of goods or services are conducted in connection with any Lessee Business Operation, all such sales shall be recorded by means of cash registers, point-of-sale computers, or other comparable devices as reasonably determined by the Auditor-Controller which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the CREO Office in advance of installation for Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 15.2 include Lessee's obligation to insure that Lessee's Sublessees in connection with any Lessee Business Operation (including licensees, permittees, concessionaires and any other occupants of any portion of the Hotel Property which constitute any Lessee Business Operation) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent and other sums due under this Lease.

15.3 Statement; Payment. No later than the last business day of each calendar month, Lessee shall deliver to County a detailed statement showing (a) the Gross Receipts during the preceding calendar month, (b) Lessee's calculation of the amount payable to County under Section 4.2, and (c) Lessee's calculation of the deposits required to be made into each sub-fund for the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable, and accompany such statement with remittance of the amount so shown to be due. For the avoidance of doubt, such statement shall include all gross revenues prior to the permitted deductions under Section 1.1.84(b) so that County can verify the calculation of Gross Receipts.

15.4 Availability of Records; County's Audit Right.

15.4.1 Retention of Records; Examination. Books of account and records for the then current and five (5) prior Lease Years as hereinabove required shall be kept or made available at the Hotel Property or at another location within the County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records for the previous five (5) year period, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Hotel Property and the compliance of Lessee with the terms of this Lease and other governmental requirements. Except in the event of a dispute between the parties and otherwise except as required by Applicable Law, including without limitation the California Public Records Act (Government Code Sections 6250 *et seq.*), Lessee's books and records shall remain confidential. No contingency based auditor shall be permitted to participate in such audit.

15.4.2 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Hotel Property at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

15.4.3 Survival. This Section 15.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

15.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's in connection with any Lessee Business Operation) original records and books of account at the Hotel Property or at a location within the County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Lessee in accordance with this Lease and the rent due as determined by said audit, then Lessee shall pay the County's Actual Cost of County's audit, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Subsection 4.2.3.

15.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major commercial real estate management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

15.7 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

15.8 Annual Financial Statements. Within ninety (90) days after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements, including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2(a) (including,

without limitation, an income statement showing profits and losses, as well as a balance sheet) prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning such financial statements and Gross Receipts (or other fair representation as approved by Auditor-Controller). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Hotel Property, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Hotel Property.

15.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Hotel Property which constitute a Lessee Business Operation (and shall include language in all applicable Subleases requiring each applicable Sublessee) to comply with all terms of this Article 15 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements (including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2(a))) and unqualified opinions (or other fair representation as approved by Auditor-Controller) as to Gross Receipts. County shall provide written notice to Lessee of the failure of any Sublessee in connection with any Lessee Business Operation or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 15.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

15.10 Inadequacy of Records. In the event that Lessee or any Major Sublessee (including applicable licensees or concessionaires) fails to keep the records required by this Article 15 such that a Certified Public Accountant or Auditor-Controller is unable to issue an unqualified opinion as to Gross Receipts (or other fair representation as approved by Auditor-Controller), such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Hotel Property, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in the County with comparable business operations, or any other method as reasonably determined by Chief Real Estate Officer and shall utilize such methodology as Chief Real Estate Officer deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of five percent (5%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

16. DEFINITION OF TERMS; INTERPRETATION.

16.1 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

16.2 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

16.3 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

16.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

16.5 "County" and "Lessee". In any provision relating to the conduct, acts or omissions of Lessee, the term "**Lessee**" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Hotel Property with Lessee's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Hotel Property with County's expressed or implied permission.

16.6 Business Days. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

16.7 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.8 Time For Chief Real Estate Officer Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Chief Real Estate Officer is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Chief Real Estate Officer either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Chief Real Estate Officer (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Chief Real Estate Officer does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

16.9 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Chief Real Estate Officer determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or the Board, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

17. MISCELLANEOUS.

17.1 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein (all of which are incorporated herein by this reference), constitutes the entire agreement between County and Lessee relative to the leasing of the Hotel Property. County and Lessee hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

17.2 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Hotel Property throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

17.3 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

17.4 Holding Over.

17.4.1 No Renewal or Extension of Term. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided with respect to any Post Term Personal Property Removal Period.

17.4.2 Failure to Surrender; No Consent. Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Hotel Property to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 17.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Hotel Property upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including,

without limitation, any claims made by any succeeding ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Hotel Property will cause County to incur such lost profits.

17.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving Party, any waiver by either Party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either Party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that Party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re- enter the Hotel Property or of either Party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either Party shall be construed as being exhausted by the exercise thereof in one or more instances.

17.6 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Hotel Property in the case of an Event of Default, or in case of abandonment or vacation of the Hotel Property by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Hotel Property and remove any and all persons and property whatsoever situated upon the Hotel Property and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee. Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Hotel Property in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

17.7 Notice and Service of Process.

17.7.1 Notice Requirement. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 17.7.

17.7.2 Service of Process. If Lessee is not a resident of the State, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with the CREO Office a designation of a natural person residing in the County, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee. If for any reason service of such process upon such agent

is not possible, then any officer of Lessee may be personally served with such process outside of the State and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

17.7.3 Method of Delivery. Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with the CREO Office, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

17.7.4 Required Additional Recipients. Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

17.7.5 Addresses. As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY:
County Executive Office
County Administration North
400 W. Civic Center Dr., 5th Floor
Santa Ana, California 92701
Attn: Chief Real Estate Officer
Fax: (714) 834-6166

With a Copy to:
Office of County Counsel
County Administration North
400 W. Civic Center Dr., 2nd Floor
Santa Ana, California 92701
Attn: Michael Haubert, Senior Deputy
Fax: (714) 834-2359

and to:	Director OC Parks 13042 Old Myford Road Irvine, California 92602 Fax: (714) 834-2359
LESSEE:	[DPHP HOTELS, LLC] c/o R.D. Olson Development 520 Newport Center Drive, Suite 600 Newport Beach, California 92660 Attn: Robert D. Olson Fax: (949) 271-1080
and to:	Bellwether Financial Group, Inc. 610 Newport Center Drive, Suite 490 Newport Beach, California 92660 Attn: Joe Ueberroth Fax: (949) 723-7786
and to:	Burnham Ward Properties, LLC 860 Newport Center Drive, Suite 100 Newport Beach, California 92660 Attn: Scott Burnham and Bryon Ward Fax: (949) 760-0430

Either Party shall have the right to change its notice address by written notice to the other Party of such change in accordance with the provisions of this Section 17.7.

17.8 Brokers. If Lessee has engaged a broker in this transaction pursuant to a separate agreement, Lessee shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Lessee hereby agrees to indemnify, defend and hold the County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by County in connection with any Claim by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Lessee's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Lessee. No broker, finder or other agent of any Party hereto shall be a third-party beneficiary of this Lease.

17.9 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Lessee. County and Lessee mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Lessee or any other party.

17.10 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is

specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

17.11 Attorneys' Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

17.12 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County.

17.13 Estoppel Certificates. Each Party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other Party, an estoppel certificate stating: (a) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (b) that, to the best knowledge of such Party, the other Party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (c) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. County shall provide its response to any request for an estoppel certificate using its standard form. Prospective purchasers, Major Sublessees, Property Managers, Hotel Franchisors and Encumbrance Holders may rely on such statements.

17.14 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

17.15 Memorandum of Lease. This Lease itself shall not be recorded, but the Parties hereto shall execute and acknowledge a memorandum of lease ("**Memorandum**"), in recordable form and otherwise satisfactory to the Parties hereto, for recording as soon as is practicable on or following the Effective Date. Lessee shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.16 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.17 Venue**.** The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in the County, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.18 Nondiscrimination. Lessee agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

17.19 Public Records. Lessee acknowledges that any written information submitted to and/or obtained by County from Lessee or any other person or entity having to do with or related to this Lease and/or the Hotel Property, either pursuant to this Lease or otherwise is a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq*.) as now in force or hereafter amended, or any Applicable Laws in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Lessee fifteen (15) days' written notice prior to turning over such records so that Lessee can take any necessary action.

17.20 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.21 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

17.22 Obligations of DPHP and Lessee. Wherever in this Lease the phrase "during the Term", "continuously throughout the Term", "from the Original Effective Date" or phrases of similar import, such language shall mean and be the obligation of DPHP from the Original Effective Date until the Effective Date and mean and be the obligation of Lessee from and after the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

DPHP HOTELS, LLC a California limited liability company

BURNHAM-WARD PROPERTIES, LLC, a California limited liability company, Manager

By:_____
Name:_____
Title:_____

BELLWETHER FINANCIAL GROUP, INC. a California corporation, Manager

By:_____
Name:_____
Title:_____

OLSON REAL ESTATE GROUP, INC., a California corporation (dba RD Olson Development), Manager

By:_____
Name:_____
Title:_____

COUNTY OF ORANGE,
a political subdivision of the State of California

By:_____
Chief Real Estate Officer

APPROVED AS TO FORM:

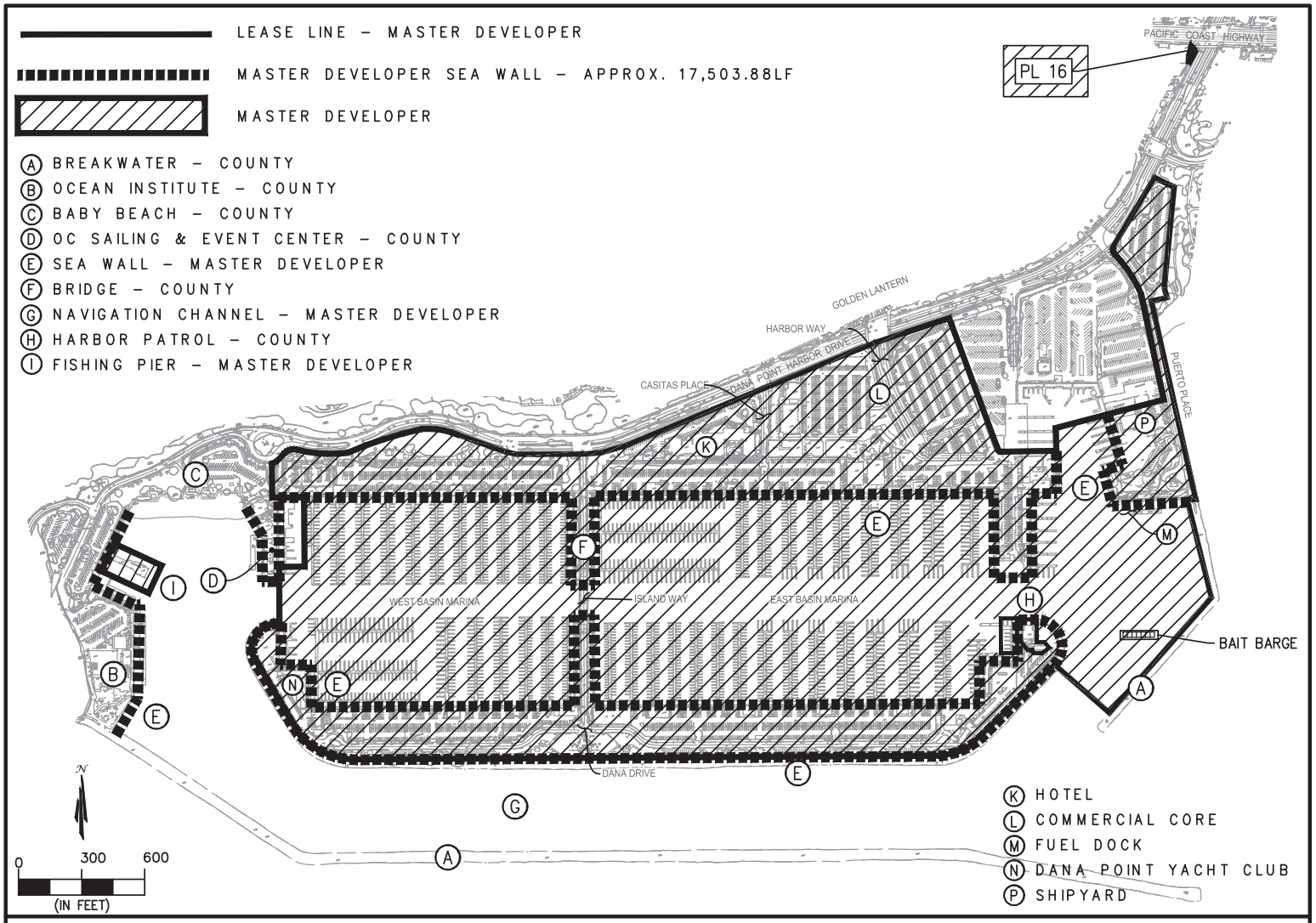
County Counsel

Signed by:
By: Michael Haubert
135BE67AB0194AE...

EXHIBIT A-1

DEPICTION OF HARBOR PROPERTY

[Attached hereto]



DANA POINT HARBOR
EXHIBIT A–1
DEPICTION OF PROPERTY

EXHIBIT A-2

LEGAL DESCRIPTION OF HOTEL PROPERTY

[Attached hereto]

Attachment A

EXHIBIT "A-2"

LEGAL DESCRIPTION

FACILITY DANA POINT HARBOR

FACILITY NO.: HA78H

PARCEL NO.: 162

PARCELS 1 AND 2 OF LOT LINE ADJUSTMENT LLA 2025 - 009, IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED DECEMBER 22, 2025, AS INSTRUMENT NO. 2025000353616, OFFICIAL RECORDS OF THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF DANA POINT HARBOR DRIVE (FORMERLY KNOWN AS DEL OBISPO STREET) & ISLAND WAY;

THENCE ALONG SAID CENTERLINE OF ISLAND WAY SOUTH 15°28'34" WEST 50.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DANA POINT HARBOR DRIVE, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 550.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF NON-TANGENT CURVE BEARS SOUTH 15°25'47" WEST;

THENCE EASTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF DANA POINT HARBOR DRIVE THROUGH A CENTRAL ANGLE OF 04°04'23" AND AN ARC LENGTH OF 39.10 FEET TO THE **TRUE POINT OF BEGINNING**, SAID TRUE POINT OF BEGINNING ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 28.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF NON-TANGENT CURVE BEARS NORTH 04°52'56" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 44°29'55" AND AN ARC LENGTH OF 21.75 FEET;

THENCE NORTH 49°22'51" WEST 0.50 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 28.50 FEET, A RADIAL BEARING TO SAID BEGINNING OF NON-TANGENT CURVE BEARS NORTH 49°22'51" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 40°06'46" AND AN ARC LENGTH OF 19.95 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 7.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF COMPOUND CURVE BEARS NORTH 89°29'37" WEST;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31°05'09" AND AN ARC LENGTH OF 3.80 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF REVERSE CURVE BEARS NORTH 59°25'14" EAST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°00'35" AND AN ARC LENGTH OF 20.08 FEET;

THENCE SOUTH 15°25'49" WEST 50.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 20.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°56'38" AND AN ARC LENGTH OF 18.13 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 10.00 FEET, A RADIAL BEARING TO SAID BEGINNING OF REVERSE CURVE BEARS NORTH 22°37'34" WEST;

TAIT & ASSOCIATES
Since 1964

701 North Parkcenter Drive
Santa Ana, CA 92705

p: 714.560.8200
www.tait.com

ENGINEERING ENVIRONMENTAL BUILDING LAND

Orange County San Luis Obispo Sacramento Riverside Denver Boise Dallas Atlanta

Jun 12, 2026 - 2:20pm by aquijoe X:\ENGINEERING\ME\ME03810 - Dana Point Harbor\Survey\Office\Exhibits\Hotel Lease Area Exhibits\Hotel - Overall\ME03381 Hotel-Overall.dwg

05/23/2026 EXHIBIT xx

Attachment A

EXHIBIT "A-2"

LEGAL DESCRIPTION

FACILITY DANA POINT HARBOR
FACILITY NO.: HA78H
PARCEL NO.: 162

(CONTINUATION):

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°53'52" AND AN ARC LENGTH OF 9.06 FEET;

THENCE SOUTH 15°28'34" WEST 70.95 FEET;

THENCE SOUTH 74°31'26" EAST 820.62 FEET;

THENCE NORTH 15°28'34" EAST 452.71 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 30.00 FEET;

THENCE NORTHEASTERLY, NORTHWESTERLY AND WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 112°14'09" AND AN ARC LENGTH OF 58.77 FEET TO SAID SOUTHERLY RIGHT-OF-WAY LINE OF DANA POINT HARBOR DRIVE;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF DANA POINT HARBOR DRIVE SOUTH 83°14'25" WEST 638.43 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 550.00 FEET;

THENCE WESTERLY ALONG SAID CURVE AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF DANA POINT HARBOR DRIVE, THROUGH A CENTRAL ANGLE OF 18°06'59" AND AN ARC LENGTH OF 173.90 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING A TOTAL AREA OF 6.229 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RESERVATIONS, RIGHTS-OF-WAY AND MATTERS OF RECORD, IF ANY.

ALSO SHOWN 0N EXHIBIT "A-2" ATTACHED HEREWITH AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY SUPERVISION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS' ACT.

6/15/26

MICHAEL FURLONG, PLS 8899 DATE
LICENSE EXPIRES: 12-31-27

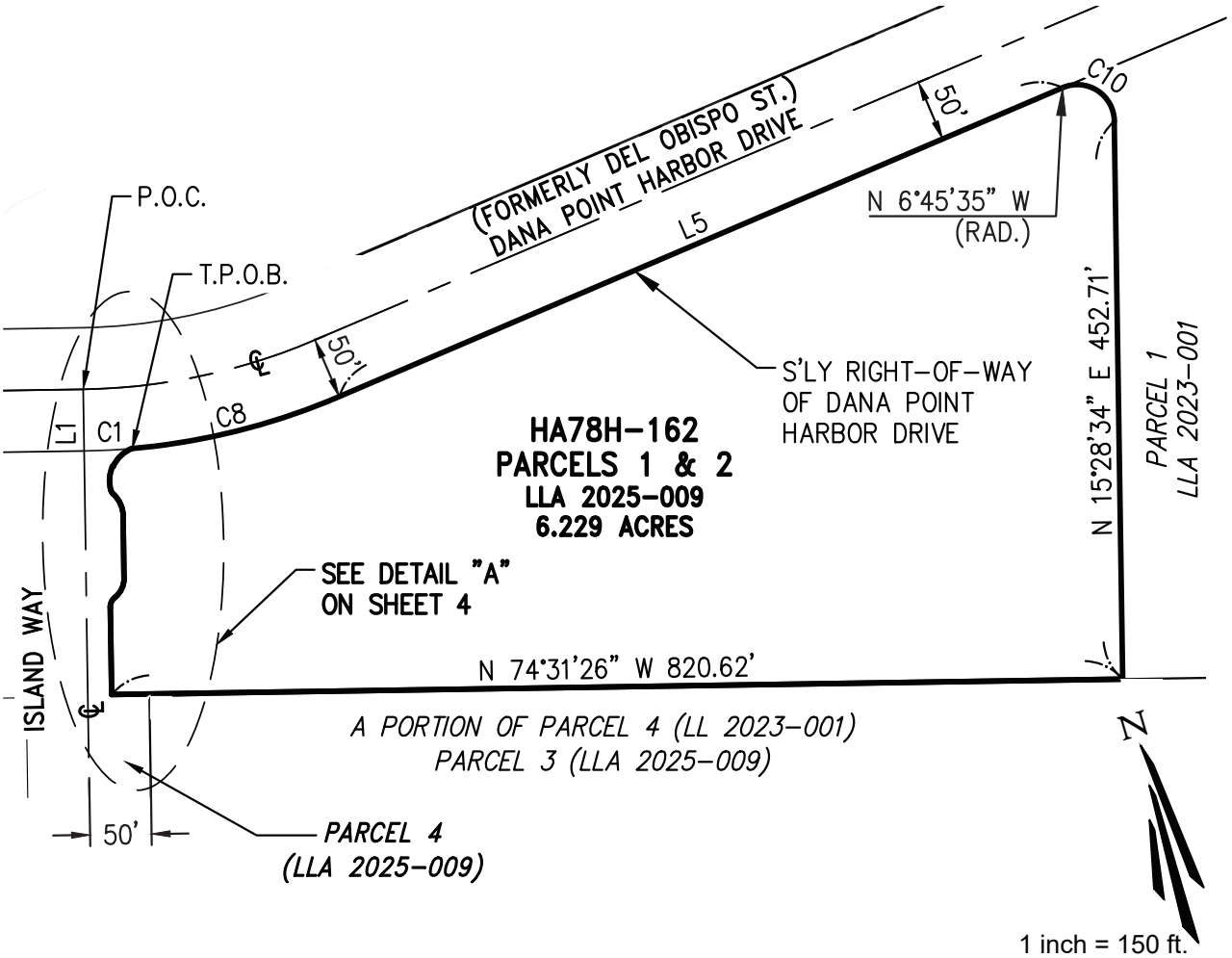
PROFESSIONAL LAND SURVEYOR
MICHAEL FURLONG
No. 8899
STATE OF CALIFORNIA

TAIT & ASSOCIATES
Since 1964
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Santa Ana, CA 92705
p: 714.560.8200
www.tait.com
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Orange County San Luis Obispo Sacramento Riverside Denver Boise Dallas Atlanta

Jun 12, 2026 - 2:23pm by aaulpeo X:\ENGINEERING\ME\ME03810 - Dana Point Harbor\Survey\Office\Exhibits\Hotel Lease Area Exhibits\Hotel - Overall\ME03361 Hotel-Overall.dwg

05/23/2026 EXHIBIT xx

EXHIBIT "A-2"

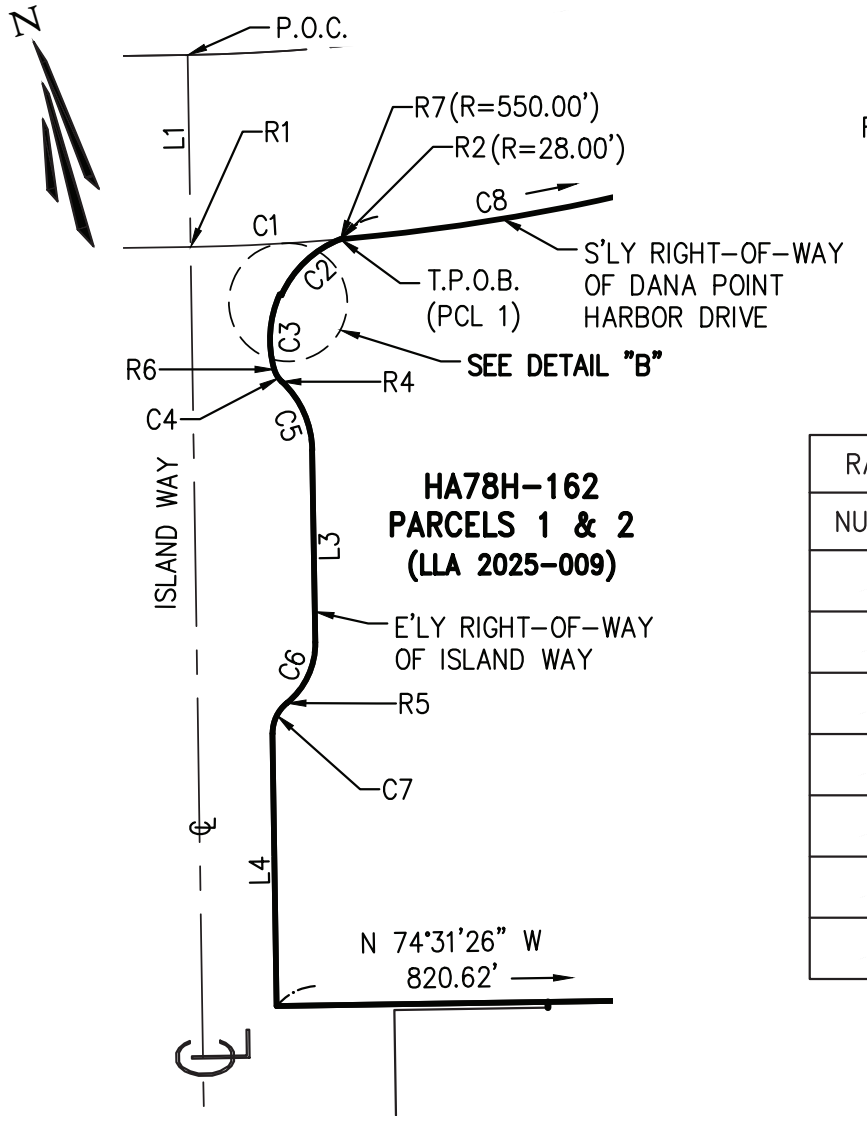


LINE TABLE		
NUMBER	BEARING	LENGTH
L1	N15° 28' 34"E	50.00'
L2	N49° 22' 51"W	0.50'
L3	N15° 25' 49"E	50.00'
L4	N15° 28' 34"E	70.95'
L5	N83° 14' 25"E	638.43'

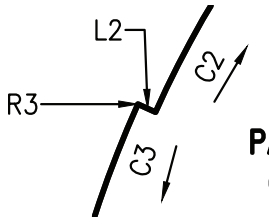
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05/23/2026 EXHIBIT xx

EXHIBIT "A-2"



DETAIL "A"
NTS



HA78H-162
PARCELS 1 & 2
(LLA 2025-009)

DETAIL "B"
NTS

RADIAL BEARING TABLE	
NUMBER	BEARING
R1	N15° 25' 47"E
R2	N4° 52' 56"W
R3	N49° 22' 51"W
R4	N59° 25' 14"E
R5	N22° 37' 34"W
R6	N89° 29' 37"W
R7	N11° 21' 24"E

CURVE TABLE				CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH	CURVE	DELTA	RADIUS	LENGTH
C1	4° 04' 23"	550.00'	39.10'	C6	51° 56' 38"	20.00'	18.13'
C2	44° 29' 55"	28.00'	21.75'	C7	51° 53' 52"	10.00'	9.06'
C3	40° 06' 46"	28.50'	19.95'	C8	18° 06' 59"	550.00'	173.90'
C4	31° 05' 09"	7.00'	3.80'	C10	112° 14' 09"	30.00'	58.77'
C5	46° 00' 35"	25.00'	20.08'				

EXHIBIT A-2

HOTEL AREA
DANA POINT HARBOR (HA78H-162)

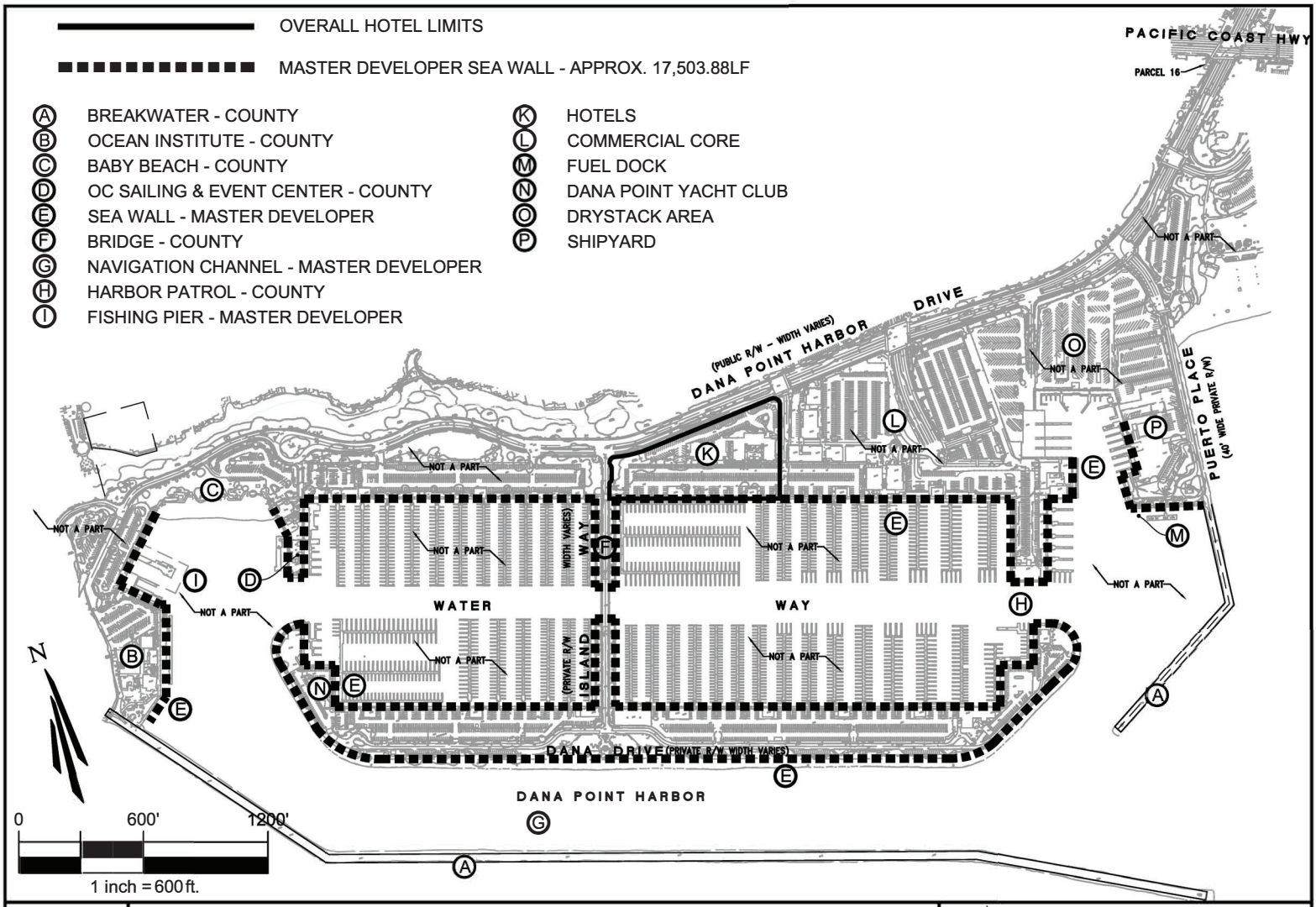
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05/23/2026 EXHIBIT xx

EXHIBIT A-3

DEPICTION OF HOTEL PROPERTY

[Attached hereto]



1 OF 1	EXHIBIT A-3 DEPICTION OF HOTEL PROPERTY DANA POINT HARBOR	TAIT & ASSOCIATES Since 1964 701 North Parkcenter Drive Santa Ana, CA 92705 p: 714.560.8200 www.tait.com ENGINEERING ENVIRONMENTAL BUILDING LAND Santa Ana Sacramento Denver Dallas San Luis Obispo Riverside Boise

EXHIBIT B

APPROVED PROPOSAL SUBMITTALS

[Attached hereto]

EXHIBIT B

TABLE OF CONTENTS

1. HOTEL RENDERINGS
2. HOTEL PLANS
3. HOTEL DEMOLITION PLANS
4. HOTEL CONSTRUCTION PHASING PLAN
5. HOTEL DEVELOPMENT BUDGET
6. HOTEL CONSTRUCTION SCHEDULE
7. HOTEL MARKETING & MANGEMENT PLAN
8. HOTEL FINANCIAL PLAN

EXHIBIT B

HOTEL COMPONENT RENDERINGS








DANA HOUSE





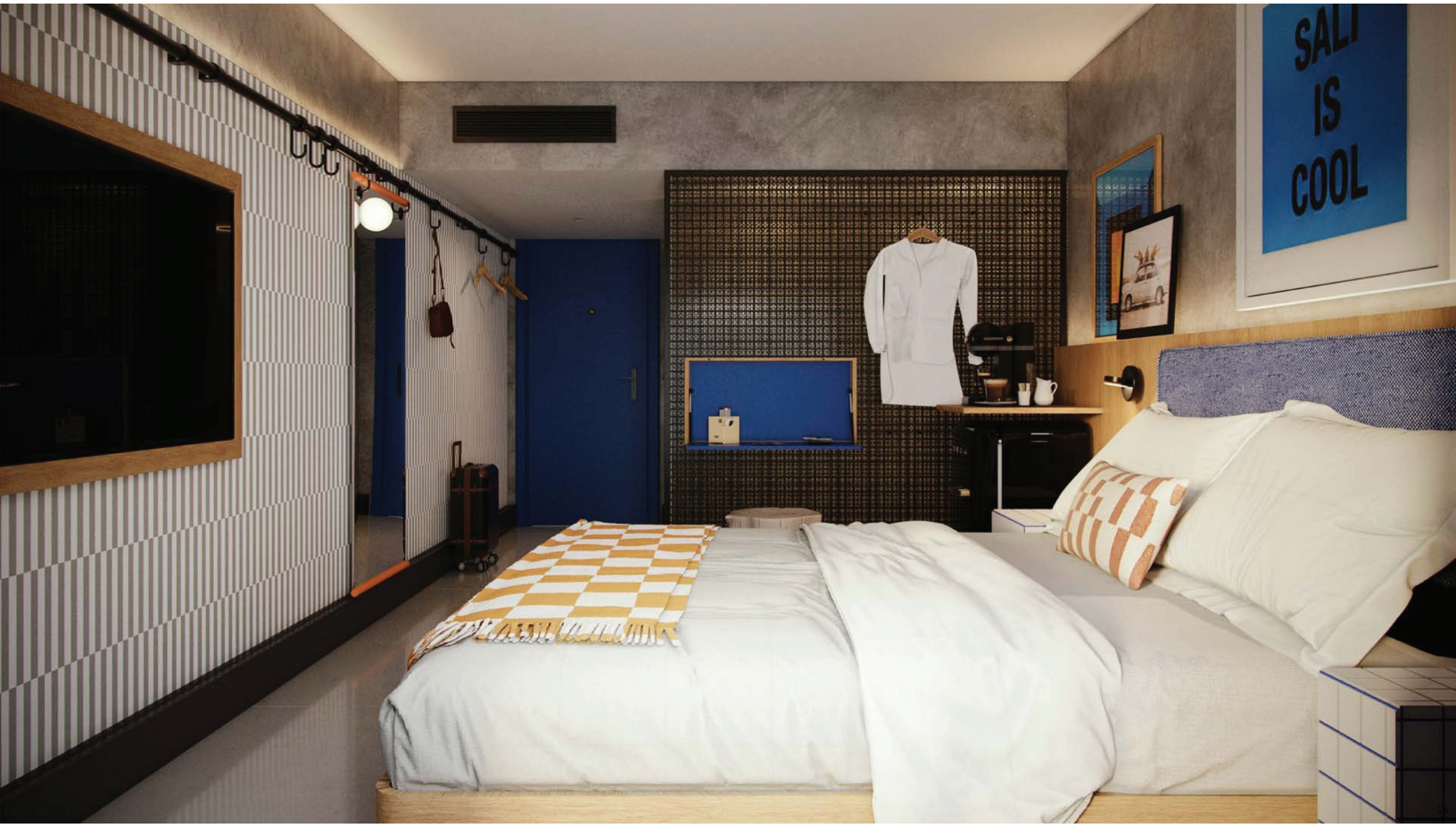





RESTAURANT


BONFIRE
salthaus
DANA POINT


SURF
surfer


SALI
IS
COOL

HOTEL COMPONENT PLANS

SITE PLAN


DAY BOATER &
DRYSTACK AREA
BABY BEACH
BAIT DOCK


MONUMENT SIGN
3 WAYFINDING SIGN
SELF PARKING
CHECK-IN
BOATER PARKING
MONUMENT SIGN
WAYFINDING SIGN
MONUMENT SIGN
BOATER SIGN
3 WAYFINDING SIGN
SELF PARKING
CHECK-IN
BOATER PARKING
BOATER PARKING SIGN
TYPE C SIGNAGE
TYPE C SIGNAGE
TYPE D SIGNAGE

EXHIBIT B

HOTEL COMPONENT PLANS



SOUTH - MARINA SIDE



NORTH - STREET SIDE



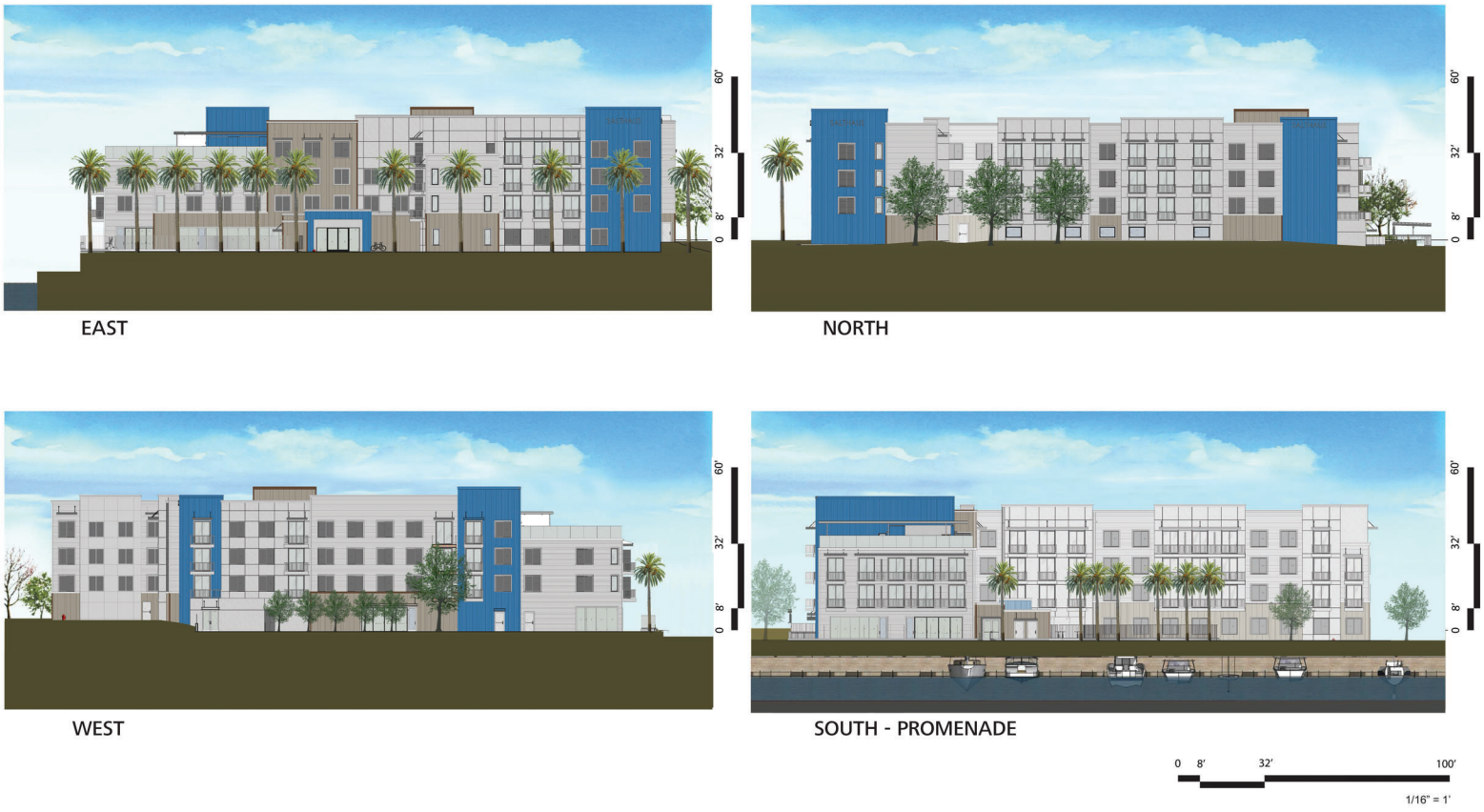
WEST

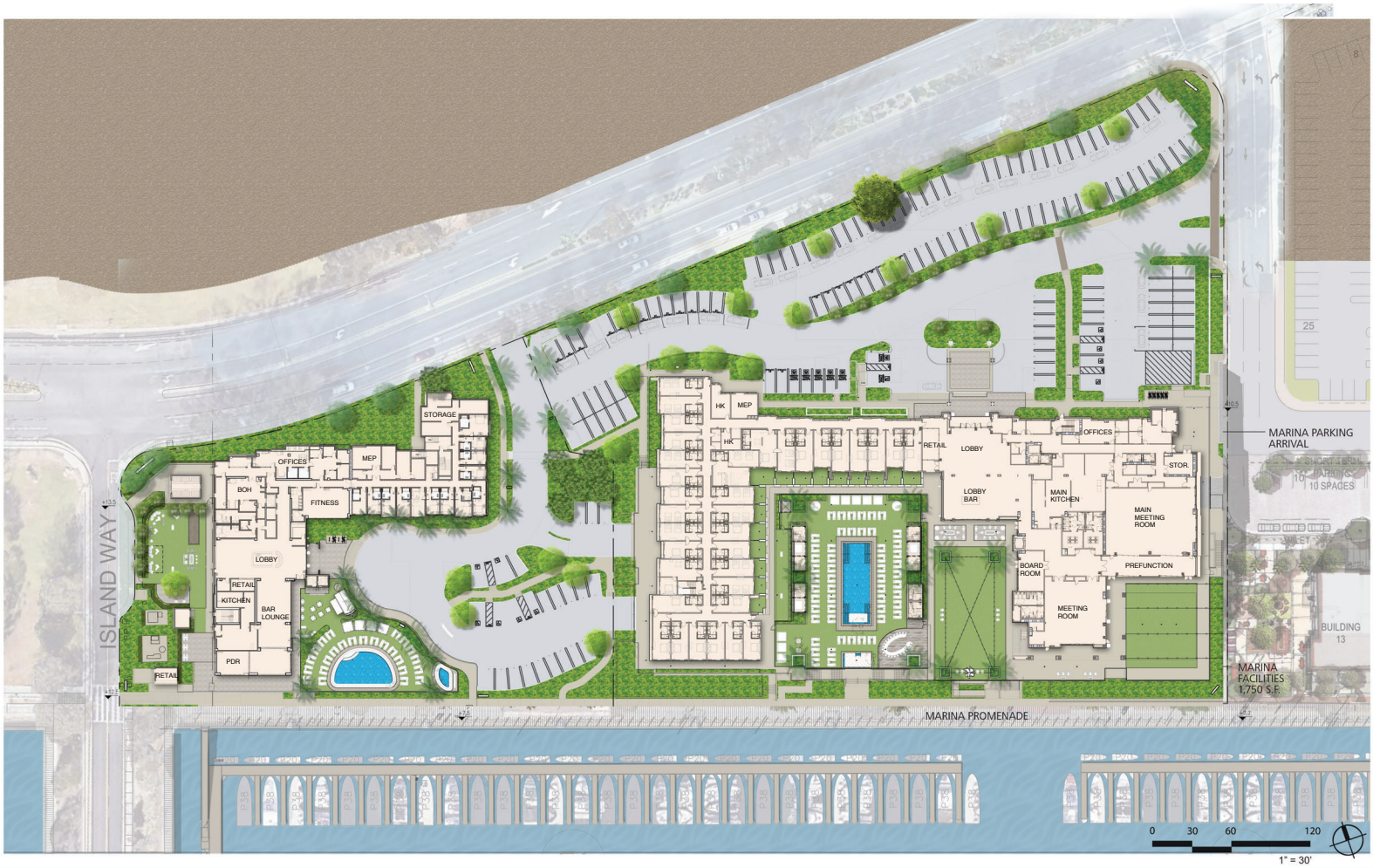


EAST

0 8' 32' 100'

1/16" = 1'

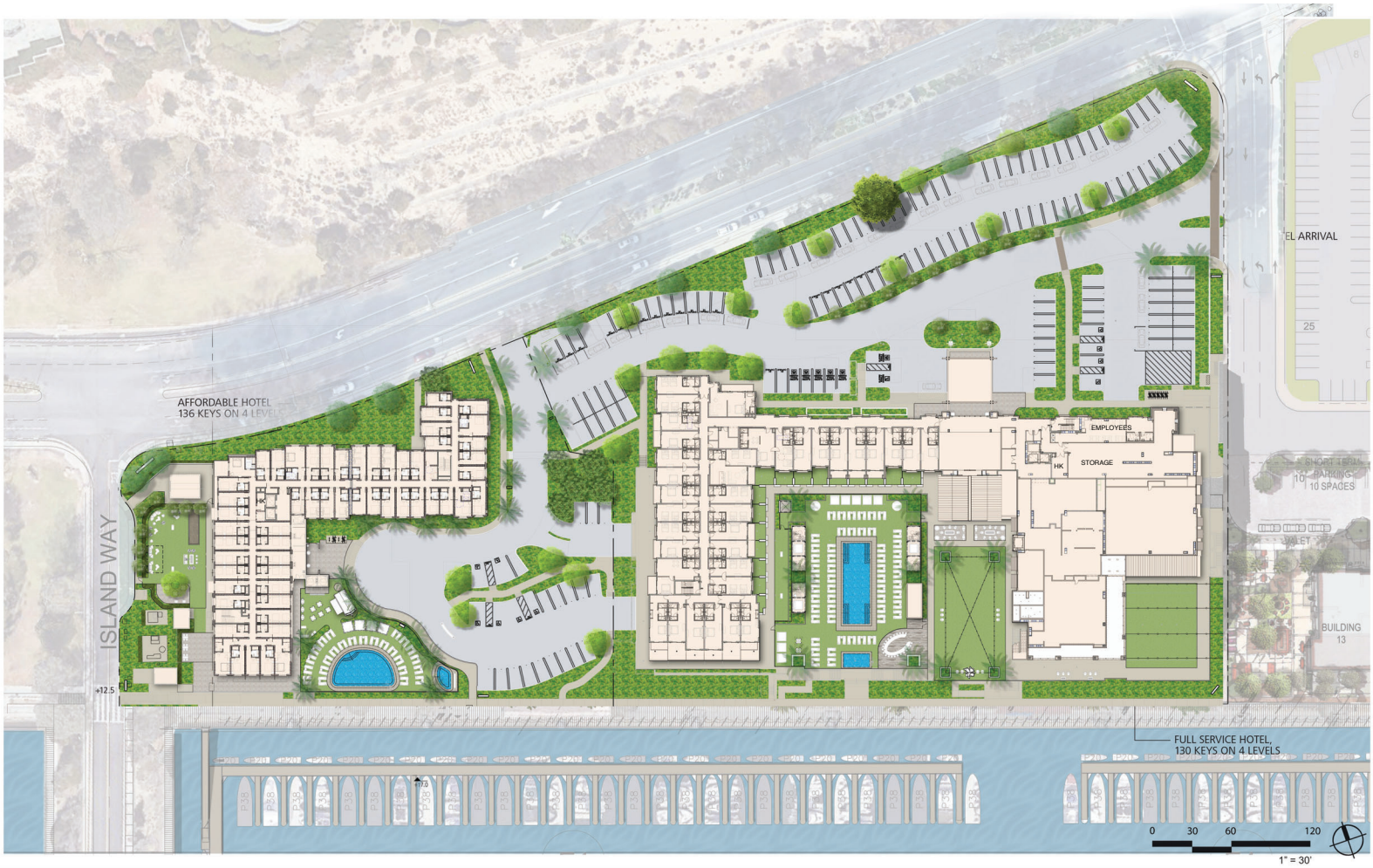

60'
32'
8'
0
EAST
NORTH
WEST
SOUTH - PROMENADE
0 8' 32' 100'
1/16" = 1'



Dana Point Harbor Hotel
Dana Point, California

8.1.6 Schematic Floor Plans

LEVEL 1 PLAN - MARINA & AFFORDABLE HOTEL ARRIVAL
JUNE 16, 2026



Dana Point Harbor Hotel
Dana Point, California

8.1.6 Schematic Floor Plans

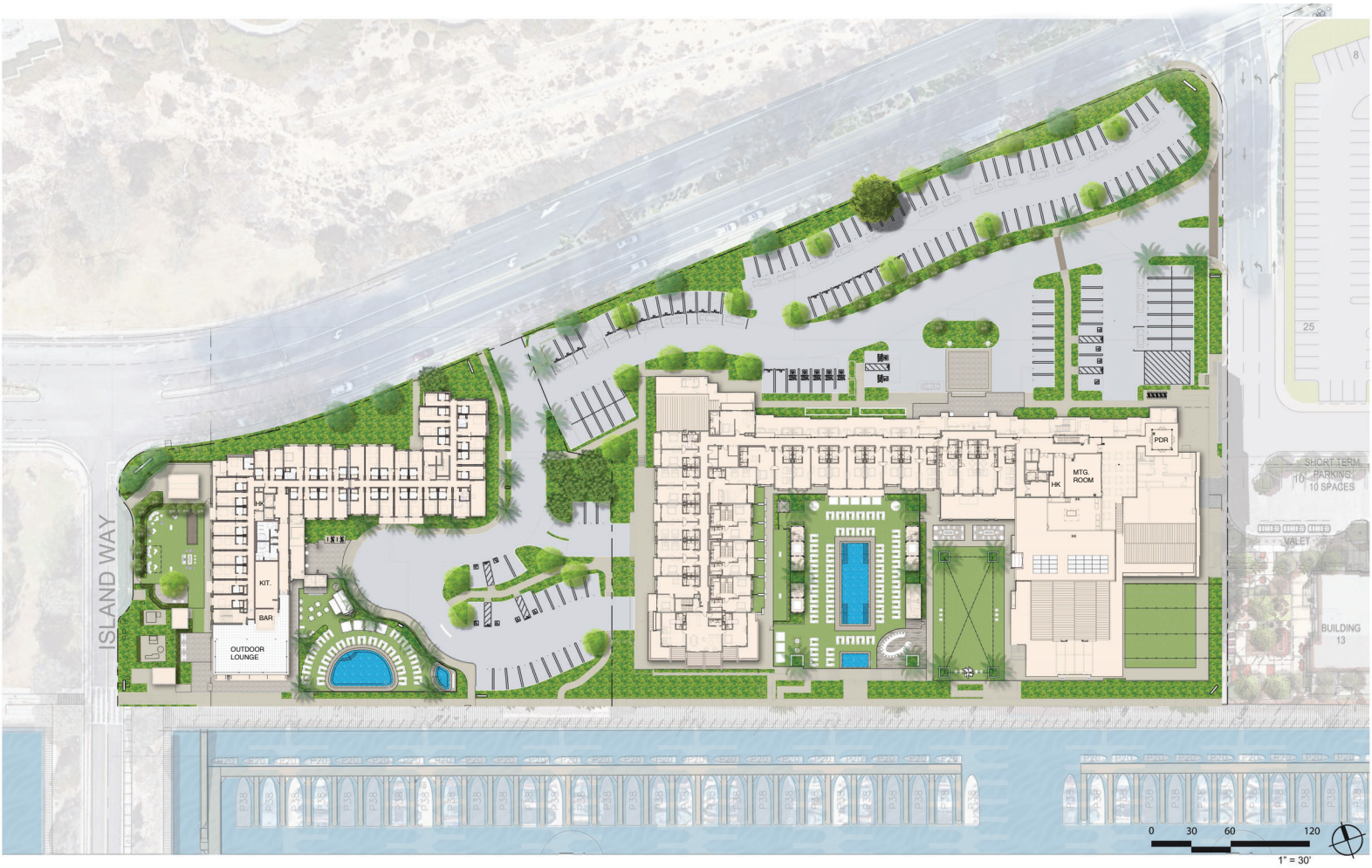
LEVEL 2 PLAN - FULL SERVICE HOTEL ARRIVAL
JUNE 16, 2026



Dana Point Harbor Hotel
Dana Point, California

8.1.6 Schematic Floor Plans

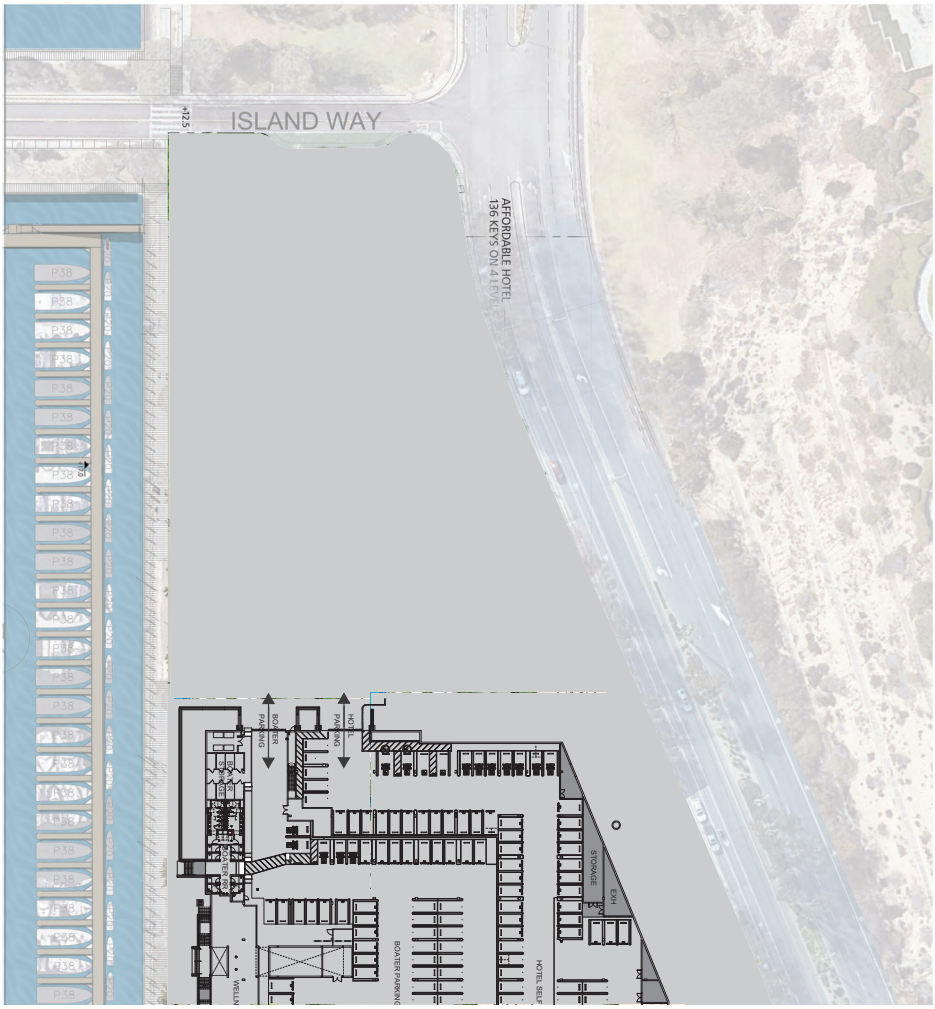
LEVEL 3 PLAN - GUESTROOMS
JUNE 16, 2026



Dana Point Harbor Hotel
Dana Point, California

8.1.6 Schematic Floor Plans

LEVEL 4 PLAN - GUESTROOMS
JUNE 16, 2026



Dana Point Harbor Hotel

Dana Point, California

8.1.6 Schematic Floor Plans

EXHIBIT B

HOTEL COMPONENT DEMOLITION PLAN

IN THE CITY OF DANA POINT, COUNTY OF ORANGE, STATE OF CALIFORNIA

DANA POINT HARBOR HOTEL DEMOLITION PLAN

24650 DANA POINT HARBOR DR.
DANA POINT, CA 92629

PREPARED FOR:
DANA POINT HARBOR PARTNERS, LLC
1100 NEWPORT CENTER DR. STE 200
NEWPORT BEACH, CA 92660

GENERAL NOTES

1. THIS NOTE HEREIN AUTHENTICATES BY REFERENCE, THESE GENERAL NOTES MARKED 1 THROUGH 24 INCLUSIVE OF OC PUBLIC WORKS STANDARD PLAN 1601, 2006 EDITION PLUS 2011 SUP.
2. ALL WORK SHALL BE IN CONFORMANCE WITH CURRENT OC PUBLIC WORKS STD. PLANS AND STD. SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (LATEST EDITION BOOK OR APPROVED DEVIATION FOR STANDARD).
3. THE DEVELOPER/CONTRACTOR SHALL MAKE A COPY OF THE CURRENT OC PUBLIC WORKS STANDARD PLANS ON THE CONSTRUCTION SITE AT ALL TIMES.
4. THE DEVELOPER SHALL TELEPHONE OC PUBLIC WORKS CONSTRUCTION AT (714) 245-4500 AT LEAST 24 HOURS PRIOR TO STARTING CONSTRUCTION WORK SUBJECT TO OC PUBLIC WORKS INSPECTION.
5. COUNTY APPROVED PLANS DO NOT RELIEVE THE CONTRACTOR/DEVELOPER FROM RESPONSIBILITY TO OBTAIN PUBLIC WORKS PERMITS FOR WORK WHICH SHALL BE AVAILABLE ON FILE AT ALL TIMES WORK IS BEING ACCOMPLISHED IN THE PUBLIC RIGHT-OF-WAY.
6. ALL CONCRETE CURB AND GUTTER FLOW LINES WITH LESS THAN 1% GRADE SHALL BE WATER TESTED PRIOR TO FINAL FINISHING TO INSURE PROPER DRAINAGE WITHOUT UNACCEPTABLE HIGH OR LOW SPOTS.
7. ALL UTILITY TRENCH BACKFILL AND COMPACTION INSPECTION OUTSIDE THE LIMITS OF DEDICATED STREET RIGHT-OF-WAY SHALL BE PERFORMED BY OC PUBLIC WORKS.
8. ALL BROKEN CONCRETE, SIDEWALKS OR CURBS SHALL BE SAWCUT TO THE NEAREST TRANSVERSE SCORE MARK OR EXPANSION JOINT AND REMOVED AND REPLACED IN CONFORMANCE WITH THE APPLICABLE PROVISIONS OF OC PUBLIC WORKS STANDARD PLANS.
9. DEVELOPER SHALL MAINTAIN ADJACENT STREETS IN A NEAT, CLEAN, DUST FREE AND SANITARY CONDITIONS AT ALL TIMES AND TO THE SATISFACTION OF THE COUNTY'S INSPECTOR. THE ADJACENT STREETS SHALL BE KEPT CLEAN OF DEBRIS, WITH STREET SWEEPING OR VACUUMING BEING CONSTRUED AS ALL TIMES OF CONSTRUCTION ACTIVITY. NO DEBRIS SHALL BE ALLOWED ON ADJACENT STREETS DURING CONSTRUCTION ACTIVITY. NO DIRT OR DEBRIS SHALL BE WASHED DOWN BY ANY MEANS INTO ALL PAVED AREAS. NO STOCKPILES OF BUILDING MATERIALS WITHIN THE COUNTY RIGHT-OF-WAY WITHOUT PERMISSION OF THE COUNTY'S INSPECTOR.
10. PRIOR TO FINAL ACCEPTANCE OF STREET IMPROVEMENTS, ALL STREET PAVEMENT STRIPING AND STENCILING WITHIN THE PERIMETER OF THE CONSTRUCTION PROJECT WILL BE RESTORED TO A "LIKE NEW" CONDITION, IN A MANNER MEETING THE APPROVAL OF THE INSPECTOR. OC PUBLIC WORKS ALL STRIPING AND STENCILING SHALL BE ACCORDING TO STANDARD PLAN NO 1001, NOTE 16.
11. TRAFFIC SHALL BE MAINTAINED AT ALL TIMES AND SHALL BE PROTECTED WITH ADEQUATE BARRICADES, LIGHTS, SIGNS AND WARNING DEVICES AS PER THE CURRENT STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, MANUAL OF TRAFFIC CONTROLS, AND TO THE DIRECTIONS OF THE COUNTY'S INSPECTOR.
12. OC PUBLIC WORKS STANDARD PLANS SHALL TAKE PRECEDENCE OVER ANY CONFLICTS EXCEPT FOR STANDARD PLANS AFFECTING UTILITY COMPLIANCE, IF THEIR STANDARDS ARE MORE STRINGENT.
13. ANY UTILITIES UNDER PAVED AREAS OF PRIVATE STREETS SHALL HAVE A MINIMUM OF 30" COVER AND DEVELOPER SHALL PROVIDE PRIVATE LABORATORY COMPACTION CERTIFICATION FOR ALL UNDERGROUND UTILITIES PRIOR TO PAVING. THE DEVELOPER SHALL SET UP A MEETING WITH THE INSPECTOR AND THE PRIVATE LABORATORY PRIOR TO ANY TESTING.
14. A.C. PAVEMENT UNDER CARPORTS/ROOFS SHALL BE SLURRY SEALED IN ACCORDANCE WITH SECTION 332-14 "EMULSION – AGGREGATE SLURRY" OF THE STANDARD SPECIFICATION FOR PUBLIC WORKS CONSTRUCTION, 2009 EDITION, BEFORE FINAL ACCEPTANCE.
15. ALL TRAFFIC MARKING AND STRIPING SHALL BE STENCILS THAT CONFORM TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (D.O.T.) NON-METRIC STANDARDS.
16. NO CONCENTRATED FLOWS ACROSS ASPHALT PAVEMENT WITHOUT COUNTY'S INSPECTOR'S APPROVAL.
17. SURVEY MONUMENTS SHALL BE PRESERVED AND REFERENCED BEFORE CONSTRUCTION, AND REPLACED AFTER CONSTRUCTION PURSUANT TO SECTION 8771 OF THE BUSINESS AND PROFESSIONS CODE.
18. PRIOR TO ORDERING ANY CONCRETE OR CONCRETE PRODUCTS FOR USE ON THIS PROJECT, SOIL SULFATE TESTS SHALL BE PERFORMED MEETING THE APPROVAL OF THE OC PUBLIC WORKS MATERIALS LABORATORY.
19. CONCRETE ITEMS SHALL MEET THE REQUIREMENTS OF THE MIXTURE OF SECTION 201-1.1.3 "CONCRETE SPECIFIED BY SPECIAL EXPOSURE" OF THE GREEN BOOK, UNLESS OTHERWISE APPROVED BY THE OC PUBLIC WORKS MATERIALS LABORATORY.
20. ALL STREET SECTIONS TO BE DETERMINED BY OC PUBLIC WORKS MATERIAL ENGINEER. ALL REPORTS FOR SAMPLING OF STREETS SHALL BE MADE TO COUNTY INSPECTION AND ONLY AFTER GRADE RELEASE AND PRIOR TO ANY UTILITY REPLACEMENT WITHIN STREET TEMPLATE.
21. ALL WET AND DRY UTILITIES ARE NOT TO BE INSTALLED PRIOR TO CURB AND GUTTER CONSTRUCTION UNLESS REQUESTED IN WRITING AND APPROVED PRIOR TO INSTALLATION BY COUNTY.
22. SIDEWALK SHALL BE CLEAR OF ALL VERTICAL OBSTRUCTIONS UNLESS APPROVED BY COUNTY.
23. MICRO BIOBINFILL IS TO BE PLACED UNDER A PREVIOUSLY INSTALLED CONDUIT, SLURRY BIOBINFILL WILL BE 450-C-2000 CONCRETE.
24. LIGHTING SHALL BE SHIELDED OR DIRECTED AWAY FROM RHV OPEN SPACE HABITAT AREAS THROUGH THE USE OF LOW-500LUM OR TAILOR INTENSITY LIGHTS. LIGHT SHIELD, NATIVE SHRUBS, BERMS AND OTHER SHIELDING METHODS.

NOTICE TO CONTRACTOR

THE EXISTENCE AND LOCATIONS OF ANY UNDERGROUND UTILITIES, PIPES AND/OR STRUCTURES ETC. SHOWN ON THESE PLANS WERE OBTAINED BY A SEARCH OF AVAILABLE PUBLIC RECORDS. THOSE SHOWN ON THE RECORDS EXAMINED, ARE INDICATED WITH APPROXIMATE LOCATION AND EXTENT TO THE BEST OF OUR KNOWLEDGE. THERE MAY BE OTHERS NOT KNOWN OR SHOWN. BY THESE PLANS, THE CONTRACTOR SHALL ASSUME THE RESPONSIBILITY FOR THE PROTECTION AND SUPPORT OF ANY UNDERGROUND UTILITIES TO BE USED AND SHALL BE RESPONSIBLE FOR DAMAGE TO PUBLIC OR PRIVATE UTILITIES, SHOWN OR NOT SHOWN HEREON.

THE CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THIS PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY. THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THAT THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD THE OWNER, THE ENGINEER, AND THE CITY OF DANA POINT HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FOR LIABILITY ARISING FROM SOLE NEGLIGENCE OF OWNER, ENGINEER, OR THE CITY OF DANA POINT.

THE CONTRACTOR AND ALL ITS SUBCONTRACTORS PERFORMING WORK SHOWN ON OR RELATED TO THESE PLANS SHALL CONDUCT THEIR OPERATIONS SO THAT ALL EMPLOYEES ARE PROVIDED A SAFE PLACE TO WORK AND THE PUBLIC IS PROTECTED. THE CONTRACTOR AND ALL SUBCONTRACTORS SHALL COMPLY WITH THE "OCCUPATIONAL SAFETY AND HEALTH REGULATIONS" OF THE U.S. DEPARTMENT OF LABOR, AND THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS' "CONSTRUCTION SAFETY ORDERS".

THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITIES OR STRUCTURES SHOWN AND ANY OTHER UTILITIES OR STRUCTURES FOUND AS THE SITE. IT SHALL BE THE CONTRACTOR'S ACKNOWLEDGMENT TO NOTIFY THE ENGINEER AND OWNERS OF ANY DISCOVERED UNMARKED UTILITIES OR STRUCTURES CONCERNED BEFORE STARTING WORK. THE CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS AND SHALL REPORT ALL DISCREPANCIES TO THE ENGINEER PRIOR TO THE COMMENCEMENT OF WORK.

NOTE:
ALL SIGNS REQUIRE SEPARATE PERMIT AND PLAN CHECK APPLICATION.

TRENCHING NOTE

THERE SHALL BE NO TRENCHES OR EXCAVATIONS 5 FEET OR MORE IN DEPTH INTO WHICH A PERSON IS REQUIRED TO DESCEND, OR OBTAIN PERMIT FROM STATE OF CALIFORNIA, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (CAL/OSHA). THIS PERMIT AND ANY OTHER SAFETY PERMIT SHALL BE OBTAIN PRIOR TO COMMENCE OF ANY WORK.

NPDES NOTES

1. IN THE CASE OF EMERGENCY, CALL MICHAEL CHAVEZ RSDC AT MOBILE PHONE # 949-678-4841
2. MOVEMENT FROM AREAS DISTURBED BY CONSTRUCTION SHALL BE RETAINED ON SITE USING STRUCTURAL CONTROLS TO THE MAXIMUM EXTENT PRACTICABLE.
3. STOCKPILES OF SOIL SHALL BE PROPERLY CONTAINED TO MINIMIZE SEDIMENT TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES OR ADJACENT PROPERTIES VIA RUNOFF, VEHICLE TRACKING, OR WIND.
4. APPROPRIATE BMP'S FOR CONSTRUCTION-RELATED MATERIALS, WASTES, SPILLS SHALL BE IMPLEMENTED TO MINIMIZE TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES, OR ADJOINING PROPERTIES BY WIND OR RUNOFF.
5. RUNOFF FROM EQUIPMENT AND VEHICLE WASHING SHALL BE CONTAINED AT CONSTRUCTION SITES UNLESS TREATED TO REDUCE OR REMOVE SEDIMENT AND OTHER POLLUTANTS.
6. ALL CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR PERSONNEL ARE TO BE MADE AWARE OF THE REQUIRED BEST MANAGEMENT PRACTICES AND GOOD HOUSEKEEPING MEASURES FOR THE PROJECT SITE AND ANY ASSOCIATED CONSTRUCTION STAGING AREAS.
7. AT THE END OF EACH DAY OF CONSTRUCTION ACTIVITY ALL CONSTRUCTION DEBRIS AND WASTE MATERIALS SHALL BE COLLECTED AND PROPERLY DISPOSED IN TRASH OR RECYCLE BINS.
8. CONSTRUCTION SITES SHALL BE MAINTAINED IN SUCH A CONDITION THAT AN ANTICIPATED STORM DOES NOT CARRY WASTES OR POLLUTANTS OFF THE SITE. DISCHARGES OF MATERIALS OTHER THAN STORM WATER (CONTROLLED NON-STORM WATER DISCHARGES) ARE PROHIBITED, EXCEPT AS AUTHORIZED OR PERMITTED UNDER 40 CFR PARTS 122 AND 123.
9. POTENTIAL POLLUTANTS INCLUDE BUT ARE NOT LIMITED TO: SOLID OR LIQUID CHEMICAL SPILL WASTES FROM PAINTS, STAINS, SEALANTS, GLUES, LACQUERS, PESTICIDES, HERBICIDES, WOOD PRESERVATIVES AND SOLVENTS; ASBESTOS FIBERS, PAINT FLAKES OR STUCCO FRAGMENTS; FUELS; OILS, LUBRICANTS, AND HYDRAULIC, RADIATOR OR BATTERY FLUIDS; FERTILIZERS, VEHICLE/EQUIPMENT WASH WATER AND CONCRETE WASH WATER; CONCRETE, DETERGENT OR FLUSHABLE WASTES; WASTES FROM ANY ENGINE/EQUIPMENT STEAM CLEANING OR CHEMICAL DEGREASING AND HIGHLY-CHLORINATED POTABLE WATER LINE FLUSHING DURING CONSTRUCTION. POTENTIAL SHALL DISPOSE OF SUCH MATERIALS IN A SPECIFIED AND APPROVED WASTE DISPOSAL AREA THAT PREVENTS CONTACT WITH STORM RUNOFF FROM POTENTIAL STORM WATER RUNOFF, WITH ULTIMATE DISPOSAL IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL REQUIREMENTS.
10. DISCHARGES OF CONTAMINATED GROUNDWATER OR DISCHARGES CONTAMINATED SOILS VIA SURFACE EROSION OR PROHIBITED DEWATERING OF NON-CONTAMINATED GROUNDWATER REQUIRES A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT FROM THE RESPECTIVE STATE REGIONAL WATER QUALITY CONTROL BOARD.
11. ERASED AREAS ON THE PERMITTED AREA PERIMETER MUST DRAIN AWAY FROM THE FACE OF SLOPES AT THE CONCLUSION OF EACH WORKING DAY UNLESS IT IS TO BE DIRECTED THROUGH EXISTING FACILITIES.
12. THE PERMITTEE AND CONTRACTOR SHALL BE RESPONSIBLE AND SHALL TAKE NECESSARY PRECAUTIONS TO PREVENT PUBLIC TRESPASS ONTO AREAS WHERE IMPOUNDED WATER CREATES A HAZARDOUS CONDITION.
13. THE PERMITTEE AND CONTRACTOR SHALL INSPECT THE EROSION CONTROL WORK AND INSURE THAT THE WORK IS IN ACCORDANCE WITH THE APPROVED PLANS.
14. THE PERMITTEE SHALL NOTIFY ALL GENERAL CONTRACTORS, SUBCONTRACTORS, MATERIAL SUPPLIERS, LESSEES, AND PROPERTY OWNERS, THAT DUMPING OF CHEMICALS INTO THE STORM DRAIN SYSTEM OR THE WATERSHED IS PROHIBITED.
15. EQUIPMENT AND WORKERS FOR EMERGENCY WORK SHALL BE MADE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON. NECESSARY MATERIALS SHALL BE AVAILABLE ON SITE AND STOCKPILED AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES WHEN RAIN IS IMMINENT.
16. ALL REMOVABLE EROSION PROTECTIVE DEVICES SHALL BE IN PLACE AT THE END OF EACH WORKING DAY WHEN THE 5-DAY RAIN PROBABILITY EXCEEDS 40%.
17. MOVEMENT FROM AREAS DISTURBED BY CONSTRUCTION SHALL BE RETAINED ON SITE USING AN EFFECTIVE COMBINATION OF EROSION AND SEDIMENT CONTROLS TO THE MAXIMUM EXTENT PRACTICABLE, AND STOCKPILES OF SOIL SHALL BE PROPERLY CONTAINED TO MINIMIZE SEDIMENT TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES OR ADJACENT PROPERTIES VIA RUNOFF, VEHICLE TRACKING, OR WIND.
18. APPROPRIATE BMPS FOR CONSTRUCTION-RELATED MATERIALS, WASTES, SPILLS OR RESIDUES SHALL BE IMPLEMENTED AND RETAINED ON SITE TO MINIMIZE TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES, OR ADJOINING PROPERTY BY WIND OR RUNOFF.

ON-SITE AREA: 6.20 AC
ON-SITE DISTURBED AREA: 6.20 AC

ESTIMATED EARTHWORK QUANTITIES (FOR BONDING PURPOSES ONLY)

Bank Cut: 30,000 C.Y.
Bank Fill: 11,000 C.Y.

CONTRACTOR GRADING NOTE

CONTRACTOR SHALL SUBMIT PLANS FOR OFF-SITE DISPOSAL OF EXCESS MATERIAL HEREWITH, BUT NOT LIMITED TO, PROVIDING FOR AN OFF-SITE HAUL ROUTE AND DOCUMENTED ACCEPTANCE AGREEMENT FOR DISPOSAL SITE.

BENCH MARK:

DESIGNATION: 2981-2-A7

DCO AND/OR 020-96
PMB/2980 S71/M-7
CITY/LOCATION: DANA POINT

LINE &/OR: 376/0340
ESTABLISHED BY: OCS 1983
MONUMENT TYPE: ORANGE COUNTY SURVEYOR'S 3 3/4" ALUMINUM DISK

NAVD88(FEET): 18.260 NGVD29(FT): 13.961 YEAR LEVELED: 1997

DESCRIPTION:
DESCRIPTION BY OCS 2003 – FOUND 3 3/4" ALUMINUM BENCHMARK DISK STAMPED "2981-2-A7 1997" IN 3-1/2" DIA. BRASS CAP IN 5" DIA. CONCRETE MONUMENT WELL WITH BOX. MONUMENT IS LOCATED APPROXIMATELY 0.5 MILES NORTH OF ALICIA PARKWAY, ALONG DANA POINT HARBOR DRIVE FROM ITS INTERSECTION WITH GOLDEN PRAIRIE STREET, NEAR TWO CONCRETE CATCH BASINS FULL RADIAL ACROSS SAID DRIVE, 23.6 FT. SOUTHERLY OF THE CENTERLINE OF DANA POINT HARBOR DRIVE, 113.2 FT. SOUTHWESTERLY OF STREET LIGHT POLE #22989-PG420, 40.6 FT. SOUTHEASTERLY OF STREET LIGHT POLE #22989-PG420, 40.6 FT. WESTERLY OF A "NO STOPPING AT ANY TIME" SIGN. MONUMENT IS SET LEVEL WITH THE SIDEWALK.

BUILDINGS TO BE DEMOLISHED

BUILDING	ADDRESS
MARINA INN BUILDING	24570 DANA POINT HARBOR DR.
BOATER SERVICES BLDG 3	24555 CASTAS PL,DANA POINT, CA 92629
BOATER SERVICES BLDG 4	24555 CASTAS PL,DANA POINT, CA 92629

SCOPE OF WORK

DEMOLITION OF EXISTING MARINA INN HOTEL BUILDING, AND 2 BOATER SERVICES BUILDING BUILDINGS AT ASPHALT LANDSLAPING WITHIN LIMITS OF WORK. PROJECT LIMITS EXTENDS EAST TO ISLAND WAY, WEST TO CASTAS PLACE, NORTH TO DANA POINT HARBOR DRIVE AND SOUTH WITH THE EAST COVE HARBOR

UTILITY COMPANY/AGENCY INDEX

UTILITY/AGENCY	CONTACT NAME	PHONE NUMBER
SDG&E	JIM WATSON	(949) 361-8704
SEMPRA UTILITIES	MYRON DEKMANN	(949) 440-8314
AT&T TELEPHONE	BOB FLEISHER	(714) 610-8169
COX COMMUNICATION	DEBBIE BERTHEL	(949) 270-2874
SOUTH COAST WATER DISTRICT		(949) 499-4556
CITY OF DANA POINT PUBLIC WORKS MAINTENANCE		(949) 248-3590
CITY OF DANA POINT PUBLIC BUILDING INSPECTION		(949) 248-3590

PROJECT DIRECTORY

OWNER:
COUNTY OF ORANGE
EDD REAL ESTATE DIVISION
333 W. SANTA ANA (SSS)/EXT10
SANTA ANA, CA 92701
PHONE: 714.834.3243

DEVELOPER:
DANA POINT HARBOR PARTNERS, LLC
1100 NEWPORT CENTER DRIVE, SUITE 200
NEWPORT BEACH, CA 92660
PHONE: 949.720.0700

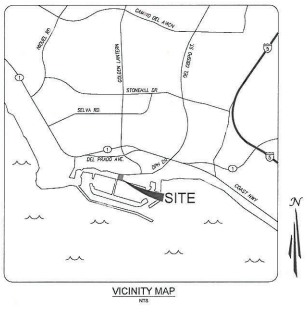
DEVELOPER'S REPRESENTATIVE:
B.D. OLSON DEVELOPMENT
520 NEWPORT CENTER DRIVE, SUITE 600
NEWPORT BEACH, CA 92660
PHONE: 949.271.1100

SURVEYOR(S):
MICHAEL CHAVEZ, VP OF CONSTRUCTION
CELL: 949 678-4841

CIVIL ENGINEER:
PSOMAS ASSOCIATES, INC
701 N. PARKCENTER DRIVE
SANTA ANA, CA 92705
PHONE: 714.560.1200

GEOTECHNICAL ENGINEER:
GMU GEOTECHNICAL, INC
30326 ESTUDIANTE
RANCHO SANTA MARGARITA, CA 92688
PHONE: 949.610-6063

GEOTECHNICAL REPORT:
"PRELIMINARY GEOTECHNICAL INVESTIGATION, DANA POINT HARBOR REVITALIZATION, HOTEL COMPONENT, CITY OF DANA POINT, CALIFORNIA"
DATED SEPTEMBER 10, 2019 (GMU PROJECT NO. 17-259-01)



VICINITY MAP
NTS

ABBREVIATIONS

APPROX	APPROXIMATE	NGVD	NATIONAL GEODETIC VERTICAL DATUM
BEG	BEGIN	NGS	NATIONAL GEODETIC SURVEY
BLDG	BUILDING	NTS	NOT TO SCALE
BM	BENCH MARK	NO	NUMBER
BMP	BEST MANAGEMENT PRACTICE	OC	ON CENTER
BTWN	BETWEEN	O.C. DPH	OC DANA POINT HARBOR
CB	CATCH BASIN	OD	OUTSIDE DIAMETER
CEN	CENTER	ORIG	ORIGINAL
CONC	CONCRETE	PROP	PROPERTY
DDCV	DOUBLE CHECK DETECTOR ASSEMBLY	PL	PROPOSED
DIA	DIAMETER	RDE	REQUIRED DRAINAGE EASEMENT
E	EAST	REQ	REQUIRED
ELEC	ELECTRICAL	RG	ROUGH GRADE
ELEV, EL	ELEVATION	RCP	REINFORCED CONCRETE PIPE
ENGR	ENGINEER, ENGINEERING	RDMD	RESOURCES AND DEVELOPMENT MANAGEMENT DEPARTMENT
EXIST, EX	EXISTING		
FDC	FIRE DEPARTMENT CONNECTION		
FS	FINISHED SURFACE	SD	STORM DRAIN
FG	FINISHED GRADE	SPEC	SPECIFICATIONS
FT	FOOT, FEET	STA	STATION
GI	GRATE INLET	STD	STANDARD
GPS	GLOBAL POSITIONING SYSTEM	SW	SIDEWALK
		TC	TOP OF CURB
HOR	HORIZONTAL	TOF	TOP OF FINISH
HDPE	HIGH DENSITY POLYETHYLENE	TOW	TOP OF WALL
ID	INSIDE DIAMETER	TYP	TYPICAL
INV	INVERT	USA	UNDERGROUND SERVICE ALERT
MAX	MAXIMUM	VAR	VARIES
MIN	MINIMUM	VERT	VERTICAL
MISC	MISCELLANEOUS	WQ	WATER QUALITY
MLW	MEAN LOWER LOW WATER	X-SEC	CROSS SECTION
MON	MONUMENT		
N	NORTH		
NAVD	NORTH AMERICAN VERTICAL		

SHEET INDEX

SHEET NO.	SHEET TITLE
1	TITLE SHEET
2	DEMOLITION PLAN
3	EROSION CONTROL PLAN
4	EROSION CONTROL DETAILS

SCOPE OF WORK

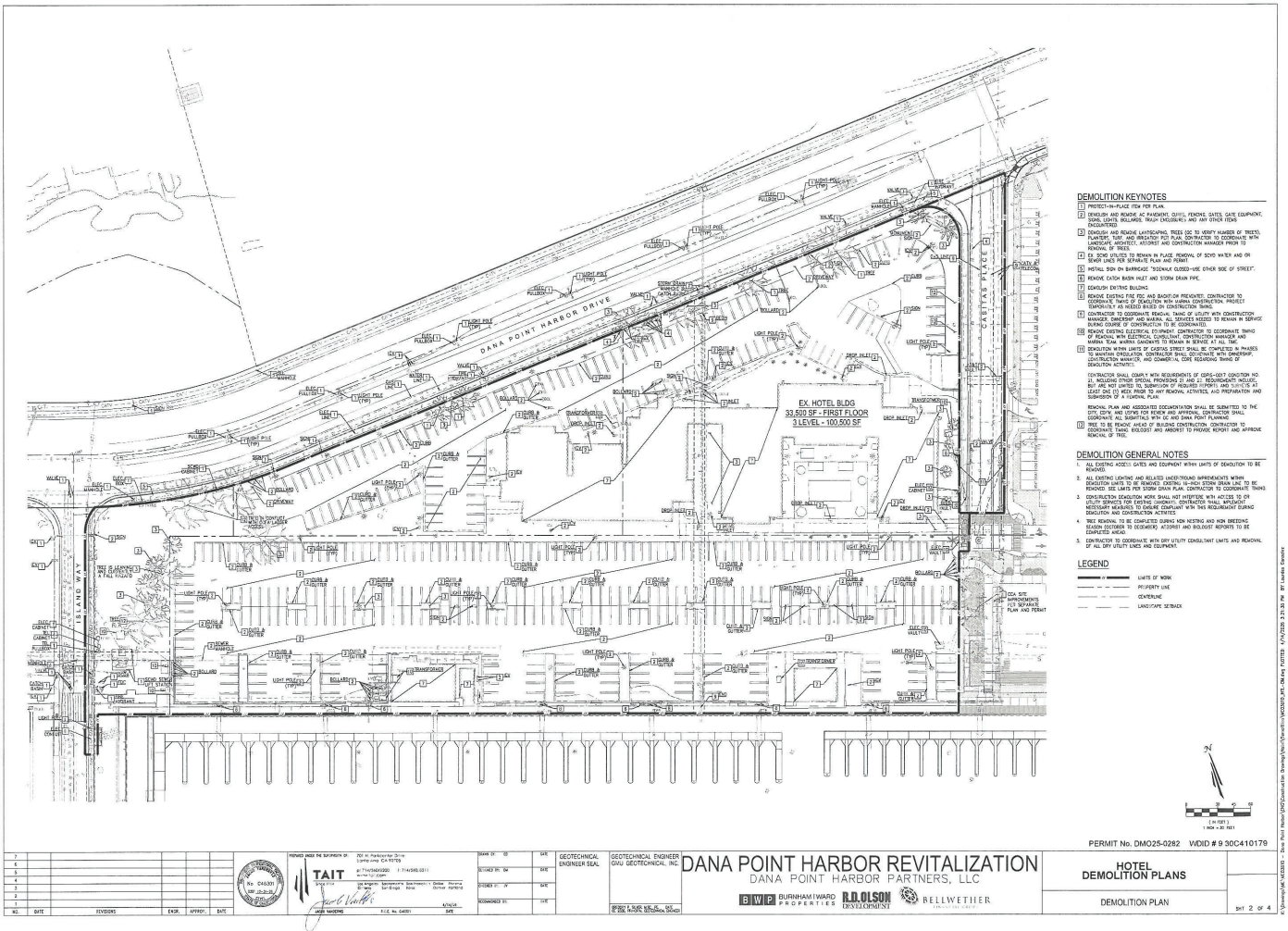
HOTEL DEMO SCOPE OF WORK TO INCLUDE COMPLETE SITE DEMOLITION THAT INCLUDES EXISTING HOTEL BUILDING, ENTIRE ASPHALT PARKING LOT, REMOVAL OF LANDSCAPING AND HARDSCAPE WITHIN LIMITS OF WORK. PER CITY DEMOLITION PERMIT NO. 23-590 (PLANNING PERMIT 23-0019) AND PER CDP NO. 5-20-0017 WITH THE LAND USE PLAN POLICIES 5.2.1-4 AND 7.1.1-3, & IMP-EXISTING ACTIONS PROGRAM SPECIAL PROVISION 21 OF CHAPTER 3 OF THE IMPLEMENTATION PLAN. TREE REMOVAL AND PROTOCOLS FOR PRE-CONSTRUCTION SURVEYS AND LIMITS ON CONSTRUCTION NOISE LEVELS ISOLATED TO ACTIVE NESTS SHALL BE IMPLEMENTED PER MITIGATION MEASURES BIO-1 AND BIO-2 OF THE EIR FOR POLICY 7.1.3-1 & 2.5 NOTED IN THE BIOLOGICAL ASSESSMENT DANA POINT HARBOR HOTELS PROJECT, DANA POINT, CA (HAMILTON BIOLOGICAL INC MARCH 2021, AND NONGRADED TEMPORARY IRRIGATION), AND EXISTING SITE FIXTURES. SCOPE OF WORK ALSO INCLUDES STREET SCAD WORK ALONG CASTAS PLACE. ITEMS TO BE REMOVED ARE NOTED ON PLAN.

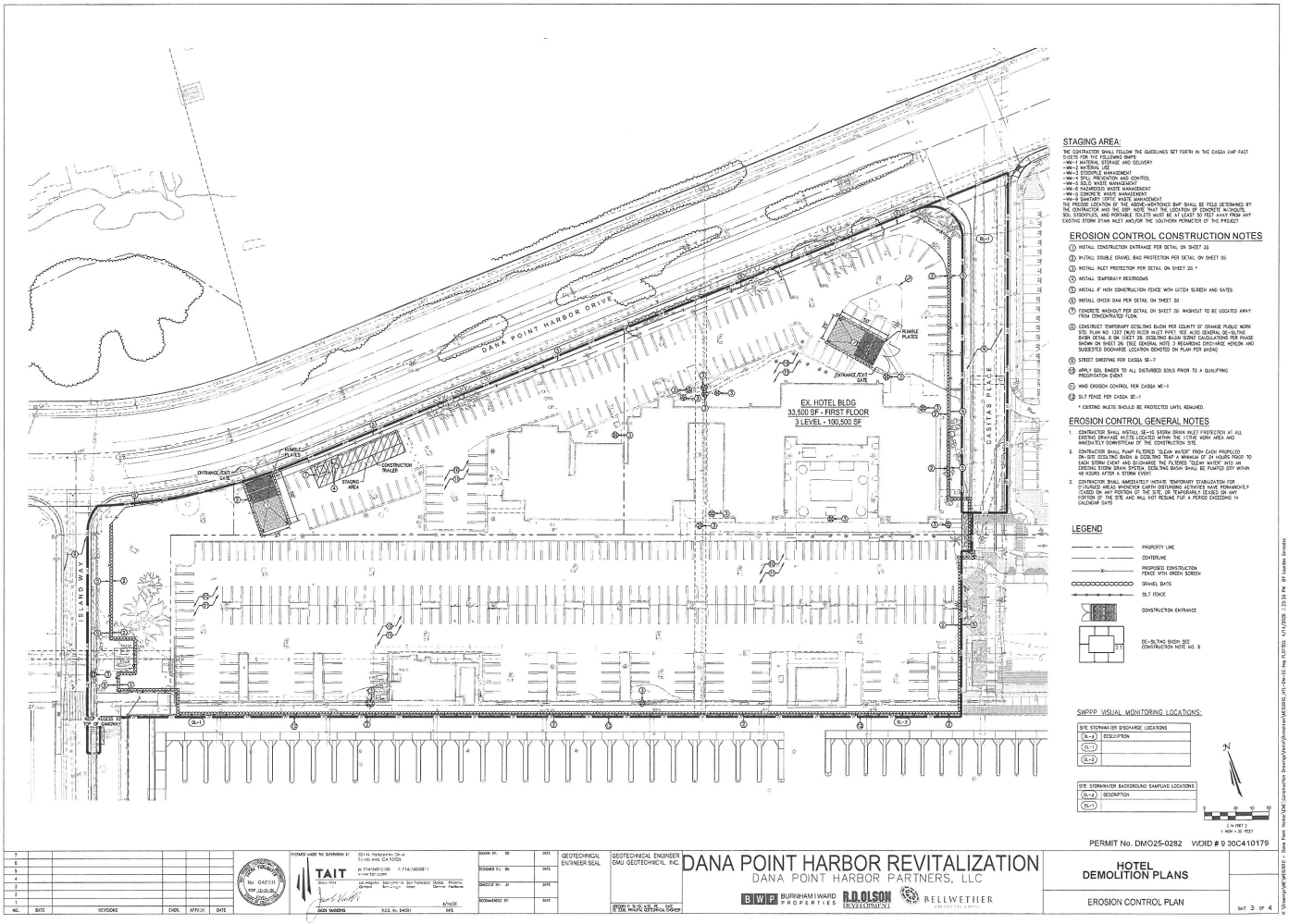
RELATED PERMITS

BUILDING AND SAFETY PLANS	PERMIT NUMBER
HOTEL PRECISE GRADING PLAN	GR2021-0011
HOTEL WET UTILITY PLAN	PLB25-1512
HOTEL ENVIRONMENT PERMIT PLAN	PE21-0162
HOTEL BUILDING PLAN	BMP25-0495 & 0502
HOTEL LANDSCAPE PLAN	LM25-0085 & 0096
BUILDING 6-12 DEMO PLAN	DM21-0092, DM09-0103, DM21-0114
BUILDING 6-12 PHASE 1 PRECISE GRADING PLAN	GR05-0090

DEMOLITION NOTES

1. ALL DEMOLITION WORK SHALL BE STRICTLY IN ACCORDANCE WITH THE APPLICABLE REGULATIONS AND PROVISIONS OF THE COUNTY OF ORANGE.
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED PERMITS PRIOR TO COMMENCEMENT OF ANY WORK COVERED BY THESE PLANS. SEPARATE COUNTY OF ORANGE PUBLIC WORKS PERMIT WILL BE REQUIRED FOR ANY WORK WITHIN THE COUNTY RIGHT-OF-WAY.
3. A CONSTRUCTION EASEMENT AND "RIGHT TO ENTER" WILL BE REQUIRED FOR WORK ON ADJACENT PROPERTY.
4. THE EXTENT OF DEMOLITION WITH SHALL BE AS SHOWN ON THE DEMOLITION PLANS. DEMOLITION INCLUDES COMPLETE WRECKING OF ALL BUILDINGS, IMPROVEMENTS AND CLEARING AND DISPOSAL OF DEMOLISHED MATERIALS. ANY SALVAGE OPERATIONS SHALL BE COORDINATED WITH THE OWNER.
5. TRAFFIC: CONDUCT DEMOLITION OPERATIONS AND REMOVAL OF DEBRIS TO ENSURE MINIMUM INTERFERENCE WITH ROADS, STREETS, WALKS, AND OTHER ADJACENT OCCUPIED FACILITIES.
6. PROTECTIONS: ENSURE SAFE PASSAGE OF PERSONS AROUND AREA OF DEMOLITION. CONDUCT OPERATIONS TO PREVENT INJURY TO ADJACENT BUILDINGS, STRUCTURES, OTHER FACILITIES, AND PERSONS.
7. DAMAGES: PROMPTLY REPAIR DAMAGES CAUSED TO ADJACENT FACILITIES BY DEMOLITION OPERATIONS AT NO COST TO OWNER.
8. UTILITY SERVICES: MAINTAIN EXISTING UTILITIES IN OPERATING CONDITION, FREE OF DAMAGE OR INTERRUPTIONS, AND COMPLY WITH ALL REGULATIONS AND MAKE PROVISIONS TO HAVE ALL EXISTING ON-SITE WATER, SEWER, GAS, ELECTRIC, IRRIGATION, AND TELEPHONE LINES REMOVED, ABANDONED, OR RELOCATED THAT SERVE THE BUILDINGS TO BE DEMOLISHED, OR THAT INTERFERE WITH PROPOSED CONSTRUCTION. CONTRACTOR TO MEET THESE MIN.
   A. THE CONTRACTOR SHALL DISRUPT THAT ALL DISTURBED UNPAVED ROADS AND DISTURBED AREAS WITHIN THE PROJECT ARE TREATED TO AVOID WIND PICK-UP OF DUST FROM THE SITE.
   B. THE CONTRACTOR SHALL ENSURE THAT TRAFFIC SPEEDS ON UNPAVED ROADS AND PROJECT SITE AREAS ARE REDUCED TO 15 MILES PER HOUR OR LESS TO REDUCE PM10 AND PM2.5 FUGITIVE DUST HAUL ROAD EMISSIONS BY APPROXIMATELY 44%.
10. DISPOSAL: REMOVE FROM SITE ALL DEMOLISHED MATERIALS EXCEPTING FROM EXCAVATION OPERATIONS BURNING OF REMOVED MATERIALS FROM DEMOLISHED STRUCTURES WILL NOT BE PERMITTED ON SITE.
11. THE CONTRACTOR SHALL COMPLY WITH THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S LATEST REGULATION I, RULE 1403 REGARDING THE ABATEMENT OF HAZARDOUS MATERIALS SUCH AS ASBESTOS, LEAD-BASED PAINT, PCB'S, AND OTHER HAZARDOUS MATERIALS PRIOR TO DEMOLITION.
12. DEMOLITION WILL ADHERE TO THE COUNTY'S ORANGE NOISE ORDINANCES. WHEREIN NOISE CONSTRUCTION ACTIVITIES ARE PROHIBITED BETWEEN 8:00 P.M. AND 7:00 A.M. ON WEEKDAYS (INCLUDING SATURDAY) AND PROHIBITED ALL DAY ON SUNDAY. ALL WORK SHALL ALSO COMPLY WITH CONDITION NO. 25 OF CDP5-0017 AND APPLICABLE CITY REQUIREMENTS GRADING OPERATIONS WITHIN THE CITY OF DANA POINT SHALL BE LIMITED TO THE HOURS OF 7:00 A.M. TO 8:00 P.M., MONDAY THROUGH FRIDAY, AND SHALL NOT BE PERMITTED ON SATURDAY OR SUNDAY.
13. REMOVE TREES, SHRUBS, SHRUBS, GRASS, AND OTHER VEGETATION, INCLUDING ALL ROOT SYSTEMS, IMPROVEMENTS, OR OBSTRUCTIONS AS INDICATED.
14. BELOW-GRADE DEMOLITION: DEMOLISH AND REMOVE EXISTING BELOW-GRADE IMPROVEMENTS AND ALL FOOTINGS, CONCRETE SLABS AND UNDERGROUND UTILITY LINES.
15. FILLING BELOW-GRADE VOID: COMPLETELY FILL BELOW-GRADE AREAS AND VOIDS RESULTING FROM DEMOLITION OF EXISTING STRUCTURES.
   A. USE SATISFACTORY SOIL MATERIALS CONSISTING OF STONE DEBRIS, AND SAND, FREE FROM DEBRIS, TRASH, FROZEN MATERIALS, ROOTS AND OTHER ORGANIC MATTER, AS RECOMMENDED BY SOILS REPORT.
   B. PRIOR TO PLACEMENT OF FILL MATERIALS, ENSURE THAT AREAS TO BE FILLED ARE FREE FROM STANDING WATER, TRASH AND DEBRIS.
   C. PLACE FILL MATERIALS IN HORIZONTAL LAYERS NOT EXCEEDING 8" IN LOOSE DEPTH. COMPACT EACH LAYER OF FILL MATERIAL AT OPTIMUM MOISTURE CONTENT TO A DENSITY EQUAL TO ORIGINAL ADJACENT GROUND, UNLESS OTHERWISE AUTHORIZED IN WRITING BY SOILS REPORT.
   D. AFTER FILL PLACEMENT AND COMPACTION, GRADE SURFACE TO MEET ADJACENT CONTOURS. CONTRACTOR IS RESPONSIBLE FOR SOILS COMPACTION TESTS. COMPACTION TEST SHALL MEET ALL REQUIREMENTS OF THE CITY OF FONTANA.
16. FINISH SITE GRADING: THE FINISH GRADING SURFACES SHALL BE: (1) SMOOTH, UNIFORM SURFACES FREE OF IRREGULARITIES.
17. THIS DEMOLITION PLAN IS NOT INTENDED TO, AND DOES NOT DETERMINE THE, METHOD, DETAILS, AND MEANS OF PERFORMING THE DEMOLITION WORK. THE CONTRACTOR MAKES NO INQUIRY OR DETERMINATION AS TO THE ENGINEERING OR TOOLS NECESSARY FOR EXISTING ON THE SITE.
18. CONTRACTOR SHALL MAINTAIN/PROVIDE ON-SITE DRAINAGE AND STORM WATER CONVEYANCE SYSTEM TO ACCOMMODATE PASSAGE OF OFF-SITE STORM WATER RUNOFF THROUGH THE DEMOLITION LIMITS TO AN EXISTING STORM DRAIN SYSTEM.
19. NO DEMOLITION WORK SHALL COMMENCE PRIOR TO INSTALLATION OF THE PROJECT'S STORM WATER POLLUTION PREVENTION PROGRAM (SWPPP) BEST MANAGEMENT PRACTICES (BMP'S).
20. ALL EXISTING UTILITIES TO BE CAPPED.
21. CONTRACTOR SHALL FOLLOW ALL CONDITIONS OF APPROVAL PER CDP 19-001 AND CITY OF DANA POINT RESOLUTION NO 20-19-22-01.
22. A GRADING PERMIT SHALL BE OBTAINED PRIOR TO ANY WORK INCLUDING DEMOLITION ACTIVITIES. (DP-PW)
23. CONSTRUCTION MANAGEMENT PLAN PRIOR TO THE ISSUANCE OF DEMOLITION, GRADING OR ANY CONSTRUCTION PERMITS, THE PROJECT APPLICANT SHALL SUBMIT A CON


DANA POINT HARBOR DRIVE
CASITAS PLACE
ISLAND WAY
EX. HOTEL BLDG
33,500 SF - FIRST FLOOR
3 LEVEL - 100,500 SF
DEMOLITION KEYNOTES
1 PROTECT-IN-PLACE ITEM PER PLAN.
2 DEMOLISH AND REMOVE AC PAVEMENT, CURTS, FENCING, GATES, GATE EQUIPMENT, SIGNS, LIGHTS, BOLLARDS, TRASH ENCLOSURES AND ANY OTHER ITEMS ENCOUNTERED.
3 DEMOLISH AND REMOVE LANDSCAPING, TREES (DC TO VERIFY NUMBER OF TREES), PLANTERS, TURF, AND IRRIGATION PER PLAN. CONTRACTOR TO COORDINATE WITH LANDSCAPE ARCHITECT, ARBORIST AND CONSTRUCTION MANAGER PRIOR TO REMOVAL OF TREES.
4 EX. SEWER LATERALS TO REMAIN IN PLACE. REMOVAL OF SEWER WATER AND GAS SEWER LINES PER SEPARATE PLAN AND PERMIT.
5 INSTALL SIGN ON BARRICADE "SIDEWALK CLOSED-USE OTHER SIDE OF STREET".
6 REMOVE CATCH BASIN INLET AND STORM DRAIN PIPE.
7 DEMOLISH EXISTING BUILDING
8 REMOVE EXISTING FIRE RISE AND BACKFLOW PREVENTER. CONTRACTOR TO COORDINATE TIMING OF DEMOLITION WITH MARINA CONSTRUCTION. PROJECT CONTRACTOR AS NEEDED BASED ON CONSTRUCTION TIMING.
9 CONTRACTOR SHALL COORDINATE WITH CITY AND COUNTY WITH CONSTRUCTION MANAGER, DEMOLITION AND MARINA ALL SERVICE NEEDED TO REMAIN IN SERVICE DURING COURSE OF CONSTRUCTION TO BE COORDINATED.
10 REMOVE EXISTING ELECTRICAL EQUIPMENT. CONTRACTOR TO COORDINATE TIMING OF REMOVAL WITH ELECTRICAL CONSULTANT, CONSTRUCTION MANAGER AND MARINA TEAM. MARINA CANNOT BE TO REMAIN IN SERVICE AT ALL TIME.
11 DEMOLITION WITHIN LIMITS OF CASITAS STREET SHALL BE COMPLETED IN PHASES TO MAINTAIN CIRCULATION. CONTRACTOR SHALL COORDINATE WITH OWNERSHIP, CONSTRUCTION MANAGER, AND COMMERCIAL CORE REGARDING TIMING OF DEMOLITION ACTIVITIES.
CONTRACTOR SHALL COMPLY WITH REQUIREMENTS OF CGP5-GDT CONDITION NO. 21, BUILDING OTHER SPECIAL PROVISIONS 21 AND 27. REQUIREMENTS INCLUDE, BUT ARE NOT LIMITED TO, SUBMISSION OF REQUIRED REPORTS, AND SURVEYS AT LEAST ONE (1) WEEK PRIOR TO ANY REMOVAL ACTIVITIES, AND PREPARATION AND SUBMISSION OF A REMOVAL PLAN.
REMOVAL PLAN AND ASSOCIATED DOCUMENTATION SHALL BE SUBMITTED TO THE CITY, CSTM, AND USFWS FOR REVIEW AND APPROVAL. CONTRACTOR SHALL COORDINATE ALL SUBMITTALS WITH DC AND DANA POINT PLANNING.
12 TREE TO BE REMOVE AHEAD OF BUILDING CONSTRUCTION. CONTRACTOR TO COORDINATE TIMING. BIOLOGIST AND ARBORIST TO PROVIDE REPORT AND APPROVE REMOVAL OF TREE.
DEMOLITION GENERAL NOTES
1. ALL EXISTING ACCESS GATES AND EQUIPMENT WITHIN LIMITS OF DEMOLITION TO BE REMOVED.
2. ALL EXISTING LIGHTING AND RELATED UNDERGROUND IMPROVEMENTS WITHIN DEMOLITION LIMITS TO BE REMOVED. EXISTING 18-INCH STORM DRAIN LINE TO BE REMOVED. SEE LIMITS PER STORM DRAIN PLAN. CONTRACTOR TO COORDINATE TIMING
3. CONSTRUCTION DEMOLITION WORK SHALL NOT INTERFERE WITH ACCESS TO OR UTILITY SERVICES FOR EXISTING CANOPIES. CONTRACTOR SHALL IMPLEMENT TEMPORARY BMPS AND PROTECTIVE MEASURES AS REQUIRED WITH THIS REQUIREMENT DURING DEMOLITION AND CONSTRUCTION ACTIVITIES.
4. TREE REMOVAL TO BE COMPLETED DURING NON NESTING AND NON BREEDING SEASON (OCTOBER TO DECEMBER). ARTOPIST AND BIOLOGIST REPORTS TO BE COMPLETED AHEAD.
5. CONTRACTOR TO COORDINATE WITH DRY UTILITY CONSULTANT LIMITS AND REMOVAL OF ALL DRY UTILITY LINES AND EQUIPMENT.
LEGEND
LIMITS OF WORK
PROPERTY LINE
CENTERLINE
LANDSCAPE SETBACK
N
PERMIT No. DMO25-0282 WDID # 9 30C410179
TAIT
GEOTECHNICAL ENGINEER SEAL
GEOTECHNICAL ENGINEER
GMU GEOTECHNICAL, INC
DANA POINT HARBOR REVITALIZATION
DANA POINT HARBOR PARTNERS, LLC
BWP BURNHAM WARD PROPERTIES
R.D. OLSON DEVELOPMENT
BELLWETHER
HOTEL
DEMOLITION PLANS
DEMOLITION PLAN
Sht 2 of 4


DANA POINT HARBOR DRIVE
EX. HOTEL BLDG
33,500 SF - FIRST FLOOR
3 LEVEL - 100,500 SF
CASITAS PLACE
ISLAND WAY
RUBBLE PLATES
STAGING AREA
CONSTRUCTION TRAILER
ENTRANCE/EXIT GATE
ACCESS TO SANDPIPER
STAGING AREA:
THE CONTRACTOR SHALL FOLLOW THE GUIDELINES SET FORTH IN THE CASQA BMP FACT SHEETS FOR THE FOLLOWING BMPS
-WM-1 MATERIAL STORAGE AND DELIVERY
-WM-2 MATERIAL USE
-WM-3 STOCKPILE MANAGEMENT
-WM-4 SPILL PREVENTION AND CONTROL
-WM-5 SOLID WASTE MANAGEMENT
-WM-6 HAZARDOUS WASTE MANAGEMENT
-WM-8 CONCRETE WASTE MANAGEMENT
-WM-9 SANITARY/SEPTIC WASTE MANAGEMENT
THE PRECISE LOCATION OF THE ABOVE-REFERENCED BMP SHALL BE FIELD DETERMINED BY THE CONTRACTOR AND THE QSP. NOTE THAT THE LOCATION OF CONCRETE WASHOUTS, SOIL STOCKPILES, AND PORTABLE TOILETS MUST BE AT LEAST 50 FEET AWAY FROM ANY EXISTING STORM DRAIN INLET AND/OR THE SOUTHERN PERIMETER OF THE PROJECT
EROSION CONTROL CONSTRUCTION NOTES
1 INSTALL CONSTRUCTION ENTRANCE PER DETAIL ON SHEET 20
2 INSTALL DOUBLE GRAVEL BAG PROTECTION PER DETAIL ON SHEET 20
3 INSTALL INLET PROTECTION PER DETAIL ON SHEET 20 *
4 INSTALL TEMPORARY RESTROOMS
5 INSTALL 6' HIGH CONSTRUCTION FENCE WITH GITEN SCREEN AND GATES
6 INSTALL CHECK DAM PER DETAIL ON SHEET 20
7 CONCRETE WASHOUT PER DETAIL ON SHEET 20. WASHOUT TO BE LOCATED AWAY FROM CONCENTRATED FLOW.
8 CONSTRUCT TEMPORARY DESILTING BASIN PER COUNTY OF ORANGE PUBLIC WORK STD. PLAN NO. 1207 (MIN SIZED INLET FIRST. SEE ALSO GENERAL SE-5) FINE BASIN DETAIL 8 ON SHEET 20. DESILTING BASIN SIZING CALCULATIONS PER PHASE SHOWN ON SHEET 26. (SEE GENERAL NOTE 3 REGARDING DISCHARGE HORIZON AND SUGGESTED DISCHARGE LOCATION DENOTED ON PLAN PER BASIN)
9 STREET SWEEPING PER CASQA SE-7
10 APPLY SOIL BINDER TO ALL DISTURBED SOILS PRIOR TO A QUALIFYING PRECIPITATION EVENT
11 WIND EROSION CONTROL PER CASQA WE-1
12 SILT FENCE PER CASQA SE-1
* EXISTING INLETS SHOULD BE PROTECTED UNTIL REMOVED.
EROSION CONTROL GENERAL NOTES
1. CONTRACTOR SHALL INSTALL SE-10 STORM DRAIN INLET PROTECTION AT ALL EXISTING DRAINAGE INLETS LOCATED WITHIN THE LIMITS OF WORK AREA AND IMMEDIATELY DOWNSTREAM OF THE CONSTRUCTION SITE.
2. CONTRACTOR SHALL PUMP FILTERED "CLEAN WATER" FROM EACH PROPOSED DESILTING BASIN TO THE EXISTING STORM DRAIN SYSTEM PRIOR TO DISCHARGING TO EACH STORM EVENT AND DISCHARGE THE FILTERED "CLEAN WATER" INTO AN EXISTING STORM DRAIN SYSTEM. DESILTING BASIN SHALL BE PUMPED DRY WITHIN 48 HOURS AFTER A STORM EVENT.
3. CONTRACTOR SHALL IMMEDIATELY INITIATE TEMPORARY STABILIZATION FOR DISTURBED AREAS WHENEVER EARTH DISTURBING ACTIVITIES HAVE PERMANENTLY CEASED ON ANY PORTION OF THE SITE, OR TEMPORARILY CEASED ON ANY PORTION OF THE SITE AND WILL NOT RESUME FOR A PERIOD EXCEEDING 14 CALENDAR DAYS
LEGEND
PROPERTY LINE
CENTERLINE
PROPOSED CONSTRUCTION FENCE WITH GREEN SCREEN
GRAVEL BAGS
SILT FENCE
CONSTRUCTION ENTRANCE
DE-SILTING BASIN SEE CONSTRUCTION NOTE NO. 8
SWPPP VISUAL MONITORING LOCATIONS:
SITE STORMWATER DISCHARGE LOCATIONS
DL-1 DESCRIPTION
DL-2
SITE STORMWATER BACKGROUND SAMPLING LOCATIONS
DL-1 DESCRIPTION
DL-2
N
0 20 40 60
1 IN. = 20 FEET
PERMIT No. DMO25-0282 WDID # 9 30C410179
TAIT
DANA POINT HARBOR REVITALIZATION
DANA POINT HARBOR PARTNERS, LLC
BWP BURNHAM WARD PROPERTIES
R.D. OLSON DEVELOPMENT
BELLWETHER
HOTEL DEMOLITION PLANS
EROSION CONTROL PLAN
SHT 3 of 4

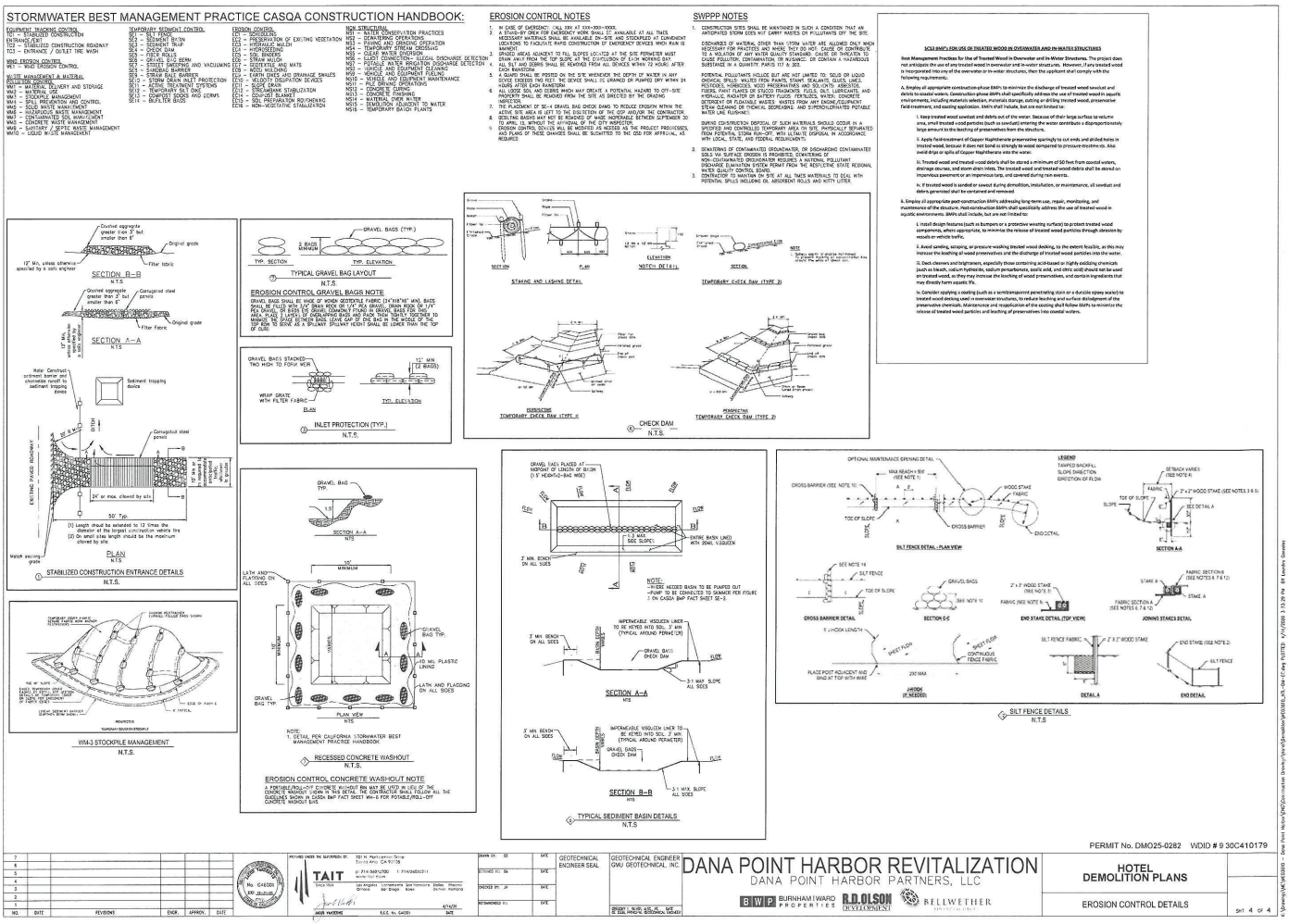

STORMWATER BEST MANAGEMENT PRACTICE CASQA CONSTRUCTION HANDBOOK:
EROSION CONTROL NOTES
SWPPP NOTES
SECTION B–B
SECTION A–A
STABILIZED CONSTRUCTION ENTRANCE DETAILS
TYPICAL GRAVEL BAG LAYOUT
EROSION CONTROL GRAVEL BAGS NOTE
INLET PROTECTION (TYP.)
STAKING AND LASHING DETAIL
CHECK DAM
TEMPORARY CHECK DAM (TYPE 2)
WM-3 STOCKPILE MANAGEMENT
RECESSED CONCRETE WASHOUT
EROSION CONTROL CONCRETE WASHOUT NOTE
SECTION A–A
SECTION B–B
TYPICAL SEDIMENT BASIN DETAILS
SILT FENCE DETAILS
HOTEL DEMOLITION PLANS
EROSION CONTROL DETAILS
DANA POINT HARBOR REVITALIZATION
DANA POINT HARBOR PARTNERS, LLC
PERMIT No. DMO25-0282 WDID # 9 30C410179

EXHIBIT B

HOTEL COMPONENT CONSTRUCTION PHASING PLAN

PHASE 1
HOTEL AREA CONSTRUCTION MOBILIZATION AND STAGING PLAN
CONSTRUCT SEWER AND STORM DRAIN RELOCATION
(3 MONTHS)
LEGEND
AREA UNDER CONSTRUCTION
CONSTRUCTION STAGING AREA
DANA POINT HARBOR DRIVE
SEWER RELOCATION
STORM DRAIN RELOCATION
DANA POINT HARBOR R
DANA POINT HARBOR PAR
TAIT

PHASE 2
SALTHAUS & DOHENY - HOTEL AREA CONSTRUCTION MOBILIZATION AND STAGING PLAN
(17 MONTHS)
LEGEND
AREA UNDER CONSTRUCTION
CONSTRUCTION STAGING AREA
DANA POINT HARBOR DRIVE
(PHASE 3 INCLUDES RELOCATION OF THE EXISTING ON-SITE STORM DRAIN LINE)
DANA POINT HARBOR R
DANA POINT HARBOR PAR
TAIT

PHASE 3
SALTHAUS AND DOHENY - HOTEL AREA COMPLETE CONSTRUCTION
(3 MONTHS)
LEGEND
AREA COMPLETED
CONSTRUCTION STAGING AREA
DANA POINT HARBOR DRIVE
DANA POINT HARBOR R
DANA POINT HARBOR PAR
TAIT

EXHIBIT B

HOTEL COMPONENT DEVELOPMENT BUDGET

PROJECT BUDGET

The anticipated total development budget ("Budget") for the Dana Point Harbor Redevelopment will be approximately $225,000,000. The Project Budget is comprised of the following components and budgets: Select Service Hotel $65,000,000 and Full Service Hotel $160,000,000.

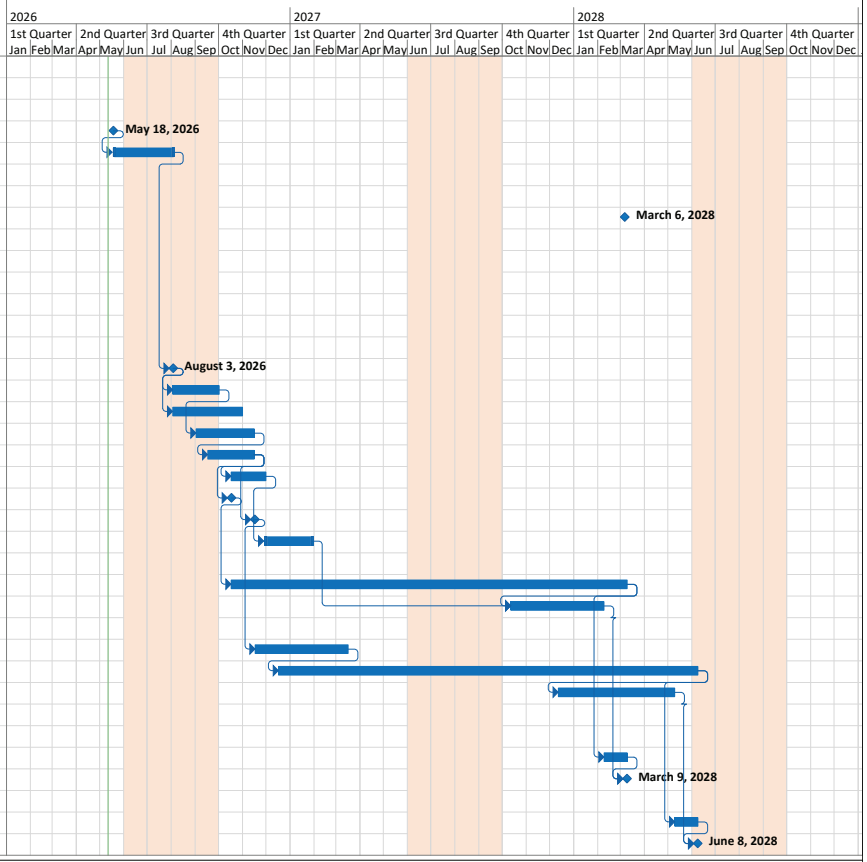
Project Budget	TOTAL	Select Service Hotel	Full Service Hotel
Land Costs	$616,212	$194,715	$421,497
Financing/Legal Fees	11,237,177	3,261,343	7,975,833
Consulting Costs	10,584,332	3,336,802	7,247,530
Fees/Permits	4,355,532	1,411,132	2,944,400
Construction Costs	165,022,577	48,674,378	116,348,200
FF&E	23,720,313	5,958,675	17,761,638
Pre-Opening Costs	3,044,000	614,000	2,430,000
Contingency	6,339,624	1,840,493	4,499,131
Total Cost	**$224,919,767**	**$65,291,539**	**$159,628,228**

EXHIBIT B

HOTEL COMPONENT CONSTRUCTION SCHEDULE

Dana Point Harbor Partners
Hotel Development Schedule

ID	Task Name	Start	Finish
1	**Dana Point Harbor Partners**		
2	**Hotels**		
3	**Ground Lease & Financing**		
4	Lease in Final Form	Mon 5/18/26	Mon 5/18/26
5	Construction Financing & Loan Closing	Wed 5/20/26	Mon 8/3/26
6	**Ground Lease Deadlines**		
7	**Commencement**		
8	Affordable Hotel Construction Commencement Deadline	Mon 3/6/28	Mon 3/6/28
9	Boutique Hotel Construction Commencement Deadline	Thu 3/7/30	Thu 3/7/30
10	**Completion Deadlines**		
11	Hotels Construction Completion Deadline	Wed 8/4/32	Wed 8/4/32
12	Hotels Certificate of Occupancy Deadline	Wed 8/4/32	Wed 8/4/32
13	**Construction**		
14	**Demolition, Grading & Utilities**		
15	Hotel Construction Commencement	Mon 8/3/26	Mon 8/3/26
16	Abatement/Demolition of BSB's & Marina Inn	Mon 8/3/26	Thu 10/1/26
17	Sanitary Sewer Relocation	Mon 8/3/26	Sat 10/31/26
18	Overexcavation & Rough Grading	Wed 9/2/26	Sun 11/15/26
19	DSM's	Thu 9/17/26	Sun 11/15/26
20	Stormdrain Relocation	Sat 10/17/26	Mon 11/30/26
21	Certification of Pad for Affordable Hotel	Sat 10/17/26	Sat 10/17/26
22	Certification of Pad for Boutique Hotel	Mon 11/16/26	Mon 11/16/26
23	Site Utilities	Tue 12/1/26	Fri 1/29/27
24	**Affordable Hotel**		
25	Affordable Hotel Building	Sat 10/17/26	Thu 3/9/28
26	Sitework & Island Way Yard	Tue 10/12/27	Tue 2/8/28
27	**Boutique Hotel**		
28	Parking Podium	Tue 11/17/26	Tue 3/16/27
29	Boutique Hotel Building	Thu 12/17/26	Thu 6/8/28
30	Sitework, Casitas Place, & Dana Point Harbor Drive	Sun 12/12/27	Tue 5/9/28
31	**Hotel Training & Opening**		
32	**Affordable Hotel**		
33	Hotel Training & Pre-Opening	Wed 2/9/28	Thu 3/9/28
34	Hotel Opening	Thu 3/9/28	Thu 3/9/28
35	**Boutique Hotel**		
36	Hotel Training & Pre-Opening	Wed 5/10/28	Thu 6/8/28
37	Hotel Opening	Thu 6/8/28	Thu 6/8/28



DPHP
May 2026

1 of 1

EXHIBIT B

MARKETING & MANAGEMENT PLAN

R.D. Olson Development will lead the Hotel Component. The hotel will be managed by a dedicated, hotel management company selected and supervised by R.D. Olson Development.

MARKETING PLAN

Our Marketing and Communications team brings strategy, design and eCommerce expertise to this marketing plan.

Hotel Branding: The Hotels' websites, review sites and social media are all critical touchpoints that will echo, engage, and amplify the brands long before the guest sets foot in the door of the hotel.

eCommerce: Our digital marketing approach involves a multi-channel booking strategy and includes a combination of analytical data and creative design. The eCommerce team works closely with sales and revenue team members to generate incremental revenue through needs-based promotions and achieve harmonic distribution among direct channels and OTAs.

Reputation Management: The purpose of reputation management is to positively shape public perception establishing online information about the hotel and supplementally influencing ongoing information through PR, social media and consumer review sites. A re-brand strategy would provide a clean slate to posture the hotel to the market segments recommended in our revenue strategy, i.e. raise corporate bookings and small groups.

Social Media: Social Media is a critical communication strategy. From a strategic standpoint, the very nature of communication with our guest inherently allows us to reach the friends and family members of our guests, as well. This is far more valuable than any paid advertising space and offers flexibility in frequency and content. At the end of the day, social media is a fundamental part of guest communication in the mobile age and we're equipped to engage before they enter the hotel and after they leave the front desk.

REVENUE STRATEGY AND SALES PLAN

We will provide a centralized solution to revenue strategy. Our priority will be to develop and retain quality sales leaders in order to exceed revenue goals and maximize investor returns. This will be achieved through strategic partnerships with Revenue Management, Marketing and Operations, relationship development and account saturation.

Support Structure: The Property is supported through Corporate Regional Director of Sales Leadership, Task Force and the Property Sales Team.

Corporate Sales & Task Force Leadership: The Corporate Sales Team will monitor segment production, budget reports, and key metrics to review with property leaders, ensuring all revenue opportunities are met. Corporate Sales will be an advocate for Property Leaders, building relationships and dialogue through local partnerships to maximize room sales and revenues. The Regional Sales Team will conduct on-site property visits and will provide in depth

on-boarding to equip new team members with tools to be successful. Task Force assists with the sales effort of properties requiring additional support through periods of transition and in the development of new sales team members.

Property Sales: The Property Sales Team provides direct proactive sales efforts toward local account saturation and penetration. They are responsible for in-house guest intelligence and lead referral to further qualify and build relationships, in turn aiding in increased guest satisfaction.

Accountability: Open and transparent communication provides the forum for accountability.

Strategic Direction: The Sales & Marketing Strategic direction will focus on key segments such as Corporate Preferred. Corporate Group will also be a priority, as will SMERF group.

SMERF Demand Generators: Leading demand generators in the SMERF segment will be the Dana Point Yacht Club and Chart House, which both house wedding and corporate events that hold up to 200 guests. The team will also focus on the nearby San Juan, El Niguel, and Marbella Country Clubs to gain mid-week golf groups and weekend wedding blocks. We will focus on building relationships with the Dana Point Chamber of Commerce to gain the knowledge on key events coming into the market that will drive group and transient business.

Annual Events: We will focus on key annual events such as the Tall Ships Festival, Festival of Whales, Dana Point Boat Parade, Dana Point Grand Prix, and the Turkey Trot. We will work with all events to gain additional room nights for both weekday and weekend business.

Corporate Demand Generators: Top Corporate Preferred generators in the market include Amgen, Boston Consulting, Chevron, Invesco Limited, and MARS Inc. In addition to these accounts, the team will prospect the local market for LNR potential, raising awareness about the hotel and establish new corporate loyalty through referral incentives.

See pro forma in Exhibit B.

MANAGEMENT PLAN

OPERATIONAL ORGANIZATION: The Hotels will be fully supported by a wide range of corporate staff including a regional director of operations, regional director of sales, regional revenue manager, regional controller, e-commerce manager, social media manager, payroll manager, accounting manager. Further additional resources will include support from human resources, marketing, and design and construction. At the property level, the staffing model includes a highly qualified general manager, assistant general manager, director of sales, front desk manager, housekeeping manager and chief engineer. Training and developing our people is one of our highest priorities in order to meet our goals in serving guests.

SAFETY AND SECURITY PLAN: The Hotels will follow safety and security planning following SOPs that meet or exceed industry standards. Safety training begins with new staff onboarding, property orientation to best practices, and rigorous on the job training. Training for safety procedures and practices is an ongoing priority including drills for emergency evacuations, training regarding the property's Emergency Response Plan, Illness and Injury prevention plan, management safety committee, and ongoing monthly safety practice training.

We will work in conjunction with our worker's compensation carriers as well as our property insurance carriers to have them conduct semi-annual safety inspections of our hotels. The general manager will form a KARE committee which consists of at least one person from each department. The committee meets monthly to discuss safety topics and plan and conduct safety training. In addition to insurance carrier safety inspections, safety inspections will be completed routinely by property leadership.

Safety of guests and associates is supported with a 24-hour front office presence, appropriate locking doors, security cameras, rigid cash handling and depositing practices, and regular facility inspections.

FINANCIAL MANAGEMENT PLAN: We follow the Uniform System of Accounts for Lodging Industry which enables full transparency. Hotels will be supported by our corporate accounting department. This system, first and foremost, aims to prevent fraud; and secondly allows the hotel personnel to focus solely on guests and property condition. We will also build a day by day annual budget for the hotel as well as a moving 30/60/90 day forecast which allows us to anticipate future performance of the hotel.

QUALITY SERVICE PLAN: We plan on retaining the entire staff of the hotel, which will assist in a seamless transition of hotel operations. Further, we will be implementing training and development programs for employees as well as introducing more robust systems which will increase employee efficiency and result in increased service levels and superior property conditions. Guest service is carefully measured, analyzed and responded to in a timely manner to establish strong guest relations and loyalty.

METHOD OF MAINTAINING SAFETY, EFFICIENCY, AND CLEANLINESS FOR PUBLIC: The Hotels staff and management will be responsible for maintaining safe, efficient, competent and clean facilities for the public, visitors, tenants, and vendors to meet or exceed all expectations expressed in the Lease.

(i) HOUSEKEEPING AND TRASH DISPOSAL: The Hotels will follow well designed SOPs for cleaning rooms and common areas in a timely and professional manner. The housekeeping

department consists of a housekeeping manager, housekeeping supervisors (who also assist in inspecting rooms) a team of housekeepers, a team of housemen who assist the housekeepers with removing trash from rooms and delivering supplies to housekeepers. Trash and recycling materials will be removed from the grounds by a qualified service at a frequency that minimizes the risk of unwanted pests or odors.

(ii) PREVENTATIVE MAINTENANCE PLAN: We employ a software that allows us to upload information as it relates to all preventive maintenance items for the hotel. The chief engineer will utilize the system to schedule routine maintenance of all items in the system which the system tracks and monitors to inform property management of upcoming maintenance requirements or replacement. The Hotels will follow a comprehensive preventative maintenance program that is tracked and regularly reviewed for compliance with our best practices.

(iii) LANDSCAPE, SIDEWALK, AND PAVED AREAS MAINTENANCE: The Hotels will follow best practices in use by the industry to continuously maintain the facility and grounds in a safe and appealing manner. Sidewalks will be maintained for cleanliness and to avoid any hazards for those who utilize them. Paved areas will be maintained in a good to excellent condition including repaving or striping as needed for readability. Landscaped areas of the grounds will be maintained by professional contracted services that are licensed and adequately insured to protect all interested parties.

(iv) WATER QUALITY MANAGEMENT PLAN: The Hotels will comply with all local, state and federal regulations to assure it meets or exceeds those requirements. This includes having strong procedures in place to avoid disposal of contaminated water into the surrounding areas.

(v) ONGOING REPAIR AND REPLACEMENT: Repair & Maintenance department will consist of a chief engineer and two hourly associates who will be responsible for maintaining the hotel. In addition to the hotel R&M staff, outsourced contractors will be utilized to repair or replace items which cannot be properly completed by in-house staff.

(vi) CAPITAL IMPROVEMENTS AND REFURBISHMENT: The Hotels will follow a model of budgeting for routine operational expenses and maintaining a long term (typically at least five years) capital plan. This fund will address the long-term plan as well as any emergency equipment refurbishment and replacement as well as investing in project improvements. In addition to the annual budget, the 5-year CapEx plan is also reviewed and updated for re-allocation of any items into the upcoming year, and to develop the new 5-year rolling plan, including any future upgrade initiatives more than one year out.

EXHIBIT B

HOTEL COMPONENT FINANCIAL PLAN

PROJECT FINANCIAL PLAN

DPHP plans to utilize both debt and equity to fund the development of the Project. The capital stack will include an industry typical debt to equity ratio likely ranging from 60% to 75%. Approximately $56,230,000 to $86,968,000 of equity will be required for the Project. The debt portion of the Project will range from $134,952,000 to $168,690,000 in required loan(s). DPHP has used an approximate overall 60% debt leverage ratio for the Project's financing. DPHP believes this is a reasonable and conservative leverage ratio of a project this size and diverse.

Sources of Funds			
Debt		$134,951,860	60.0%
Equity		89,967,907	40.0%
Total Sources of Funds		**224,919,767**	
Uses of Funds			
Land Costs		$616,212	
Direct Construction			
Construction Costs	*165,022,577*		
FF&E	*23,720,313*		
Total Direct Construction		$188,742,890	
Indirect Construction			
A&E/Professional	*10,584,332*		
Permits & Fees	*4,355,532*		
Pre-Opening	*3,044,000*		
Contingency	*6,339,624*		
Total Indirect Construction		$24,323,488	
Financing Costs		$11,237,177	
Total Uses of Funds		**$224,919,767**	

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 12.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Hotel Property, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Hotel Property, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (a) discriminatory employment practices which violate any federal, state or local law; or (b) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease; provided however, that a transfer of

ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Hotel Property or any Improvements thereon.

7. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the CREO Office and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Dana Point Harbor.

EXHIBIT D-1

FORM OF FULL SERVICE HOTEL LEASE

[Attached hereto]

GROUND LEASE AGREEMENT

FULL SERVICE HOTEL COMPONENT

by and between

COUNTY OF ORANGE

and

_____, LLC

Dated as of _____, 2026

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GROUND LEASE AGREEMENT

DANA POINT HARBOR

(FULL SERVICE HOTEL COMPONENT)

THIS GROUND LEASE AGREEMENT A("**Lease**") is made and entered into as of the _____ day of _____, 2026 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**" or "**Lessor**"), as lessor, and _____, a _____ (together with its permitted successors and assigns, "**Lessee**"), as lessee. County/Lessor and Lessee may be referred to herein each, individually, as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, County is the fee owner of that certain real property (the "**Harbor Property**") located in the City of Dana Point and comprised of the land depicted on **Exhibit A-1** attached hereto, together with all the Improvements (as defined below) located thereon as of the commencement of the Prior Harbor Lease (as defined below); and

WHEREAS, County and Dana Point Harbor Partners, LLC, a California limited liability company ("**DPHP**") entered into that certain Option to Lease dated as of July 30, 2018 (the "**Option Agreement**"), pursuant to which County granted DPHP an option (the "**Option**") to lease the Harbor Property in its entirety, upon the terms and conditions more specifically provided in the Prior Harbor Lease (as defined below), including, without limitation, the redevelopment and renovation of the Harbor Property, all in accordance with the terms and provisions thereof; and

WHEREAS, upon exercise of the Option by DPHP, County and DPHP entered into that certain Master Ground Lease Agreement (the "**Original Harbor Lease**") dated as of October 29, 2018 (the "**Original Effective Date**"), pursuant to which County leased the Harbor Property to DPHP in its entirety, upon the terms and conditions more specifically provided therein; and

WHEREAS, the Original Harbor Lease was amended by that certain Tolling Amendment to Master Ground Lease Agreement dated as of April 21, 2020 ("**First Amendment**") and that certain Second Amendment to Master Ground Lease Agreement dated March 9, 2022 ("**Second Amendment**") (the Original Harbor Lease, as amended, the "**Prior Harbor Lease**");

WHEREAS, the leasing of the Harbor Property under the Prior Harbor Lease was split into two leases, which cover the same Harbor Property: (a) that certain Ground Lease Agreement, dated _____, made by and between County and DPHP and relating to the Commercial Core Component and Marina Component (as defined therein) (the "**Commercial Lease**") and (b) that certain Ground Lease Agreement, dated _____, made by and between County and DPHP Hotels, LLC, a California limited liability company ("**DPHP Hotels**"), which is an Affiliate of DPHP, and relating to the Hotel Component (as defined therein) (the "**Hotel Lease**");

WHEREAS, upon entering into the Commercial Lease and the Hotel Lease, the Prior Harbor Lease was terminated and is of no further force nor effect;

WHEREAS, the Hotel Component is anticipated to be comprised of two hotels and related amenities and improvements: (i) the Full Service Hotel (as defined below) and related amenities and improvements (the "**Full Service Hotel Component**") and (ii) the Select Service Hotel (as defined below) and related amenities and improvements (the "**Select Service Hotel Component**"); and

WHEREAS, the Full Service Hotel Component is to be located on that certain real property located in the City of Dana Point and comprised of the land described on **Exhibit A-2** attached hereto and depicted on **Exhibit A-3** attached hereto (the "**Full Service Hotel Property**"); and

WHEREAS, DPHP has determined that, in order to facilitate the financing of the development of the Hotel Component, it is necessary to split the leasing of the Hotel Component under the Hotel Lease into two (2) leases, which cover the same property covered by the Hotel Lease; (a) one lease for the Select Service Hotel Component (the "**Select Service Hotel Lease**"); and (b) one lease for the Full Service Hotel Component, being this Lease; and

WHEREAS, Lessee is an Affiliate of DPHP Hotels and was formed by the members of DPHP Hotels in order to facilitate the financing of the development of the Full Service Hotel Component, so that this Lease, combined with the Commercial Lease and the Select Service Hotel Lease, shall comprise the same entire Harbor Property originally leased to DPHP under the Prior Harbor Lease; and

WHEREAS, for financing purposes, as of the Effective Date, Lessee and Lessor desire to enter into this Lease, pursuant to which Lessor is willing to lease the Full Service Hotel Property, together with all the improvements currently located thereon as of the Effective Date, to Lessee pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. DEFINITIONS AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "AAA" shall have the meaning set forth in Subsection 5.16.

1.2.1 "ABATEMENT PERIOD" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.3.1 "ACCOUNTING YEAR" shall have the meaning set forth in Section 15.7.

1.4.1 "ACTUAL COST" shall mean (a) the out-of-pocket costs and expenses actually incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (b) costs incurred in connection with appraisals, (c) the reasonable value of services actually provided by County's in-house counsel, and (d) the

reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.5.1 "ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1.1(b).

1.6.1 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Subsection 4.3.

1.7.1 "AFFILIATE" means, with respect to any person (which is used herein includes an individual, trust or entity), which directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person.

1.8.1 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.3.1.1(a).

1.9.1 "ALTERATIONS" means, with respect to the Full Service Hotel Property, the construction of any alterations or modifications to the Improvements located on the Full Service Hotel Property or the construction of any new Improvements on the Full Service Hotel Property, at any time during the Term, excluding the Redevelopment Work.

1.10.1 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.1(d).

1.11.1 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.12.1 "ANNUAL RENT" shall have the meaning set forth in Subsection 4.2.

1.13.1 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 2.1.1.

1.14.1 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.15.1 "APPLICABLE REDEVELOPMENT COSTS" mean, with respect to the Full Service Hotel Component, all reasonable market standard out-of-pocket Hard Costs paid to third parties for the construction of the Redevelopment Work on the Full Service Hotel Component, including the profit, overhead and general conditions paid to the general contractor that is responsible for the construction of the Redevelopment Work for the Full Service Hotel

Component; provided, however, if such general contractor or other third party is an Affiliate of Lessee, then Lessee must be able to demonstrate to County's reasonable satisfaction (which may entail, for example and without limitation, providing County with competitive pricing from unaffiliated third parties, if requested by County), that such amounts are not in excess of then-current competitive market-based rates for comparable quality of work. If County determines that Lessee paid any of its Affiliates any amount in excess of the foregoing limitations, then 120% of such excess shall be deducted from Applicable Redevelopment Costs. For example, if Lessee paid an Affiliated general contractor $2,500,000 for work that it is determined could have been performed, if competitively priced, for $2,000,000, then the Applicable Redevelopment Cost associated with such work shall be $1,900,000 (*i.e.*, 20% of $2,500,000 = $600,000, which amount is then subtracted from the original $2,500,000).

1.16.1 "APPROVED PROPOSAL SUBMITTALS" shall have the meaning set forth in Section 5.1.

1.17.1 "APPROVED RETAIL SUBLEASE" shall have the meaning set forth in Subsection 12.1.3.1.

1.18.1 "AS-BUILT PLANS" shall have the meaning set forth in Subsection 5.8.7.1.

1.19.1 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 12.2.

1.20.1 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Orange, California, or its designee.

1.21.1 "AWARD" shall have the meaning set forth in Subsection 6.1.3.1.

1.22.1 "BASE PERIOD" shall have the meaning set forth in **Exhibit F**.

1.23.1 "BENEFICIAL INTEREST" shall have the meaning set forth in Subsection 4.3.1.1(b).

1.24.1 "BMP FACT SHEETS" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.25.1 "BMPs" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.26.1 "BOARD" shall mean the Board of Supervisors for the County of Orange.

1.27.1 "BREAKWATER" shall have the meaning set forth in Subsection 3.2.2.1(f).

1.28.1 "BRIDGE STRUCTURE" shall have the meaning set forth in Subsection 10.7.

1.29.1 "BUSINESS DAY" shall have the meaning set forth in Section 16.6.

1.30.1 "CAD FILES" shall have the meaning set forth in Subsection 5.8.7.1.

1.31.1 "CALCULATION NOTICE" shall have the meaning set forth in Subsection 4.3.6.1(b)

1.32.1 "CASp" shall have the meaning set forth in Section 10.11.

1.33.1 "CASp REPORT" shall have the meaning set forth in Section 10.11.

1.34.1 "CDP" shall mean the Dana Point Harbor Hotels Project, Coastal Development Permit (CDP19-0017), as amended from time to time.

1.35.1 "CERTIFICATE OF OCCUPANCY" means a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval required for legal use and occupancy of any of the Improvements.

1.36.1 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.3.1.1(c).

1.37.1 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.3.1.1(d).

1.38.1 "CHIEF REAL ESTATE OFFICER" shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Lessee, such other person as may be designated by the Board.

1.39.1 "CITY" shall mean the City of Dana Point, California.

1.40.1 "CLAIMS" shall have the meaning set forth in Subsection 8.1.

1.41.1 "CO DATE" means the date of the issuance of a Certificate of Occupancy for the Full Service Hotel.

1.42.1 "COASTAL ACT" shall mean the California Coastal Act of 1976, as codified in Public Resources Code, Section 30000 et seq., as amended from time to time.

1.43.1 "COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.44.1 "COMPONENT" means each of three (3) portions of the Harbor Property including the Commercial Core, Hotel and Marina (both Wet Marina and Dry Marina), the boundaries and location of which are identified on **Exhibit A-1**, subject to the reasonable consent of the County.

1.45.1 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.1.

1.46.1 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.1.

1.47.1 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index for Long Beach-Anaheim, California [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)], as published from time to time by the U.S. Bureau of Labor Statistics or, in the event such index is no longer published or otherwise available, such replacement index as is published by the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.48.1 "CONSTRUCTION CHANGE DIRECTIVE" shall have the meaning set forth in Subsection 5.7.3.1.

1.49.1 "CONSTRUCTION SCHEDULE" shall have the meaning set forth in Subsection 5.3.2.1.

1.50.1 "CONTROLLING INTEREST" shall have the meaning set forth in Subsection 12.2.4.1.

1.51.1 "COST" shall have the meaning set forth in Subsection 1.79.1(b)(13).

1.52.1 "COUNTY" shall have the meaning set forth in the preamble to this Lease. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Full Service Hotel Property and not the County in its capacity as a land use or other governmental approval authority.

1.53.1 "COUNTY INDEMNIFIED PARTY" and "COUNTY INDEMNIFIED PARTIES" shall have the meaning set forth in Section 8.1.

1.54.1 "COUNTY OPTION" shall have the meaning set forth in Subsection 12.2.4.1.

1.55.1 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 12.2.4.1.

1.56.1 "COUNTY PARTIES" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.57.1 "CREO OFFICE" shall mean the Office of the Chief Real Estate Officer, County Executive Office, Orange County.

1.58.1 "DAMP" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.59.1 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.1.

1.60.1 "DPHP" shall have the meaning set forth in the Recitals to this Lease.

1.61.1 "DRB SPECIFICATION" shall have the meaning set forth in Subsection 5.16.

1.62.1 "EFFECTIVE DATE" shall have the meaning set forth in the preamble to this Lease.

1.63.1 "ENCUMBRANCE" shall have the meaning set forth in Subsection 13.1.1.1(2).

1.64.1 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1.1(2) and 13.1.1.1(3).

1.65.1 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or, in the event such index is no longer published or otherwise available, such substitute index that is generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.66.1 "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1.1(4).

1.67.1 "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1.1(c).

1.68.1 "EVENT(S) OF DEFAULT" shall have the meaning set forth in Section 14.1.

1.69.1 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.3.1(c).

1.70.1 "EXCLUDED DEFAULTS" shall have the meaning set forth in Subsection 13.3.3.1.

1.71.1 "EXCLUDED IMPROVEMENTS" shall have the meaning set forth in Subsection 2.5.1.

1.72.1 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.3.1.1(e).

1.73.1 "EXTENDED TIME" shall have the meaning set forth in Section 16.8.

1.74.1 "FINAL CO DATE" shall have the meaning set forth in Section 7.1.

1.75.1 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.4.3.1.

1.76.1 "FINANCING EVENT" shall have the meaning set forth in Subsection 13.1.1.1(1).

1.77.1 "FIRST OFFER NOTICE" shall have the meaning set forth in Section 11.13.

1.78.1 "FORCE MAJEURE" shall mean any inability of a Party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other natural disaster, civil disturbance, war, organized labor dispute (if unrelated to the specific business practices of Lessee or its Sublessees, or its or their respective contractors, agents, representatives, or consultants), freight embargo, financial crisis, governmental order or other unforeseeable event beyond the reasonable control of the Party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Redevelopment Work for the Full Service Hotel Property, a delay in such construction caused by unforeseen financial crisis, or by a hidden and unforeseeable condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Full Service Hotel Property which Lessee was unaware of and could not reasonably have foreseen as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Redevelopment Work, Force Majeure shall also include (a) Unreasonable County Action, as defined in and subject to the terms and conditions of Section 5.7 of this Lease; (b) unforeseen financial crisis that results in an inability to obtain appropriate financing in the reasonable discretion of Lessee, and (c) any delays resulting from legal challenges under the California Environmental Quality Act or otherwise that are brought by third parties that challenge or appeal any governmental approvals or entitlements that are required to be obtained by Lessee before Lessee can commence the Redevelopment Work, an injunction or restraining order against the performance of the Redevelopment Work issued pursuant to a court action, or a delay in processing any approvals or permits by the California Coastal Commission resulting from the failure of the California Coastal Commission to timely respond to a submittal or application or to take action in connection therewith; provided that (i) the plaintiff seeking such injunction or restraining order is not Lessee or any Affiliate of Lessee, (ii) the injunction or restraining order is not being sought as a result of any act or omission which would be a default by Lessee under this Agreement, (iii) Lessee shall diligently pursue and shall exhaust all commercially reasonable efforts to accomplish (x) the defense of such legal challenge to a final, non-appealable judgment regardless of whether Lessee is a named party in the action, (y) the removal of any such restraining order or injunction, as applicable, and/or (z) the response or other action required of the California Coastal Commission, and (iv) in no event shall any delay or series of delays resulting from the circumstances described in this clause (b) result in a delay, when taken in the aggregate, of more than three (3) years.

1.79.1 "FORECLOSURE TRANSFER" shall have the meaning set forth in Subsection 13.2.1.1(a).

1.80.1 "FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1.1(b).

1.81.1 "FULL SERVICE HOTEL" means the full service hotel to be constructed on the Full Service Hotel Property, comprised of approximately 130 rooms and designed to provide a full range of guest services and amenities such as meeting rooms, wedding and social event

venue lawn, a pool and jacuzzi, a poolside cabanas, poolside bar, fitness center, and rooftop restaurant and lounge. It shall include the completed hotel and any replacement, modification, or enhancement of the hotel or its amenities, provided the hotel continues to operate as a full-service hotel consistent with the intent of this Lease.

1.82.1 "FULL SERVICE HOTEL PROPERTY" shall have the meaning set forth in the Recitals to this Lease.

1.83.1 "GOVERNMENTAL AUTHORITIES" or "GOVERNMENTAL AUTHORITY" shall mean the City, County, State, United States of America, California Coastal Commission and/or any other local, state or federal governmental or quasi-governmental entity with jurisdiction over the Full Service Hotel Property.

1.84.1 "GROSS RECEIPTS" shall mean, with respect to the Full Service Hotel Component, the aggregate of (A) for any portion of the Full Service Hotel Component which is subject to an arms-length Sublease to a person or entity which is not an Affiliate of Lessee, all money (including, without limitation, "alternative" currencies, such as cryptocurrency and its equivalent), cash receipts, or other things of value received by Lessee, whether for cash or credit, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax reimbursements, percentage rent payments, lease payments and fees and commissions made or earned by Lessee, and (B) for any portion of the Full Service Hotel Component on which Lessee or an Affiliate of Lessee operates a business or enterprise, or generates income from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Full Service Hotel Component, whether delivery of items sold is made from the property or not, whether services are actually performed or not, all money, cash receipts, or other things of value received by Lessee, including but not limited to sales, fees and commissions made or earned by Lessee, from rentals (other than rentals generated from Subleases and covered under Subsection 1.1.93(A) above) and the rendering or supplying of services and the sale of goods, wares or merchandise, hotel room revenues and resort fees, each of which shall be calculated in accordance with the accounting method described in the penultimate sentence of Section 15.1 except as herein otherwise provided and subject to County's reasonable verification rights (such operation described within this Subsection 1.1.93(B)) being referred to herein as a "**Lessee Business Operation**"). There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in Subsection 1.1.93(b)(11) below), insurance and taxes, except as otherwise set forth herein. Notwithstanding the foregoing, and for the avoidance of doubt:

(a) Gross Receipts shall include, among other things, the following items:

(1) entry, rental, license and other fees of any nature or kind charged by Lessee (including but not limited to deposits accepted by Lessee upon the application of such deposit to a transaction or the forfeit of such deposit and excluding any deposit under a Sublease to the extent addressed in (b)(2) below);

(2) sales of merchandise, goods, wares, products, food, beverages and services;

(3) gift certificates at the time sold;

(4) any sums deposited into any coin-operated vending machine or other device maintained on the Full Service Hotel Property, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others, and regardless of what percentage thereof Lessee is entitled to receive except for pay telephones and newspaper racks;

(5) any commission or surcharge received by Lessee from the operation of any automatic teller machines on the Full Service Hotel Property;

(6) if pay telephones are owned by Lessee, gross receipts shall be the gross amount deposited or charged for use of the telephones or if pay telephones are owned and operated by a third party, gross receipts shall be the commission or payment received by Lessee;

(7) for newspaper racks gross receipts shall be the commission or payment received by Lessee from racks owned and operated by a third party;

(8) all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty;

(9) all rentals, license fees and similar sums received in connection with any advertising on the Full Service Hotel Property via signage, billboards, and similar;

(10) all rebates, kickbacks, credits (hidden or otherwise), and similar received by Lessee in consideration for granting rights in the Full Service Hotel Property or any portion thereof; and

(11) all other rents received by Lessee by any Sublessee, concessionaire or licensee of Lessee on the Full Service Hotel Property, subject to the exclusions set forth hereinbelow.

(b) Gross Receipts shall not include any of the following items (provided, however, that excluding the amount of the following items from Gross Receipts may not be double counted as a credit towards or offset against the amount of items that are to be included in Gross Receipts):

(1) direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes (other than boater possessory interest tax to the extent received by Lessee), transient occupancy taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement;

(2) security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application;

(3) goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Full Service Hotel Property;

(4) an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Full Service Hotel Property; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

(5) sales of fixtures, equipment or property which are not Lessee's stock in trade;

(6) receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

(7) interest earned by Lessee on funds arising from the Full Service Hotel Property or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

(8) tips and gratuities paid to employees;

(9) receipts from vending machines used solely by employees of the business operation;

(10) fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this Subsection 1.1.93(a)(10) in connection with a particular business operation shall not exceed the actual charges for such matters;

(11) interest or other charges paid by customers of Sublessees for the extension of credit; or

(12) payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered, actual or estimated allocation of electricity provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Full Service Hotel Property; (B) the reimbursed sum is in an amount equal to the Cost

of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity (i.e. the Sublessee is not also separately charged for electricity paid for hereunder). For the purpose of this Subsection (12), the "**Cost**" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's bill that is allocable to the Sublessee based on such Sublessee's submetered, actual or estimated consumption of electricity, and in paying the portion of any third party meter or submeter reading and service charge to each meter or submeter that is actually read and a direct allocation of the meter or submeter service charge to each such submeter that is serviced. County shall have the right to reasonably challenge the legitimacy or amount of any Cost. The terms and provisions of this Subsection (12) shall also be applicable to other submetered or estimated utility charges, such as water, gas, telephone, internet, sewer and trash, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(13) Bad debt losses shall not be deducted from Gross Receipts unless the obligation being converted to a bad debt loss was previously included in Gross Receipts.

(c) Chief Real Estate Officer, with the reasonable consent of Lessee, Auditor-Controller and County Counsel may further reasonably interpret the definition of Gross Receipts from time to time, provided that Lessee's consent shall not unreasonably prevent County from verifying, auditing, or enforcing the proper calculation of Gross Receipts with such interpretations to be a guideline in implementing Subsection 4.2.2.1(a) of this Lease.

1.1.85 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Subsection 4.3.1.1(f).

1.1.86 "HARBOR PROPERTY" shall have the meaning set forth in the Recitals to this Lease.

1.87.1 "HARD COSTS" means those costs listed in Classifications 01 through 16 of the Construction Specifications Institute (1995 edition), together with contingency earned or awarded to the general contractor, insurance, contractor fees and bonds, but in no event may such amounts be duplicative.

1.88.1 "HAZARDOUS SUBSTANCES" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including without limitation, the County acting in its governmental capacity, the State, or the United States government, including, without limitation, the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous

material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws.

1.89.1 "HOTEL COMPONENT" means the Component of the Harbor Property identified as the Hotel on **Exhibit A-1** including, without limitation, the hotel currently known as the "Dana Point Marina Inn" and associated amenities.

1.90.1 "HOTEL DEEMED COMPLETION DATE" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.91.1 "HOTEL CAPITAL RESERVE FUND" shall have the meaning set forth in Subsection 5.17.1.

1.92.1 "HOTEL FRANCHISOR" shall have the meaning set forth in Subsection 15.3.1.

1.93.1 "HOTEL LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.94.1 "IMMEDIATE FAMILY" shall have the meaning set forth in Subsection 4.3.1.1(e)(4).

1.95.1 "IMPROVEMENT PROJECT" shall have the meaning set forth in Subsection 5.5.

1.96.1 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems (including, without limitation, all utility lines, transformer vaults and other utility facilities existing on the Full Service Hotel Property as of the Effective Date or that are constructed or installed by Lessee upon the Full Service Hotel Property, to the extent not owned by a utility company or other third party provider), docks, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Full Service Hotel Property, whether existing as of the Effective Date or as constructed by Lessee, any Sublessee, or otherwise, as the case may be.

1.97.1 "IMPROVEMENT COSTS" shall mean the total actual out-of-pocket cost to the Lessee of planning, designing, financing and constructing the Redevelopment Work in accordance with the Final Plans and Specifications, as of the applicable calculation date. The Improvement Costs shall include all Hard Costs and Soft Costs (without duplication) incurred in connection with the Redevelopment Work, including but not limited to: costs of grading and site preparation; costs of construction and required onsite and offsite improvements, including architectural, engineering and design fees, reproduction costs, and development, permit, and inspection fees charged by any public agency incurred and paid by the lessee; general contractor's fee; premium for performance or completion bonds; title insurance premiums and endorsement costs; survey costs; hazardous materials remediation costs; construction loan interest actually paid by Lessee; consulting and professional fees (including without limitation legal, accounting, environmental and financial consulting fees) paid to third parties with respect to the design and

construction of the Redevelopment Work; all ad valorem property taxes and assessments imposed with respect to the Full Service Hotel Property; insurance premiums; and costs of securing the Redevelopment Work. Notwithstanding the foregoing, Improvement Costs shall (i) exclude any such costs to the extent such costs are reimbursable by tenants under Subleases, whether paid or accrued and (ii) be reduced by any monetary contributions from the County including without limitation contributions towards the cost of constructing parking structures or other improvements included in the Redevelopment Work.

1.98.1 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.99.1 "INITIAL CURE PERIOD" shall have the meaning set forth in Subsection 13.6.3.1(b)(1)).

1.100.1 "INSTITUTIONAL LENDER" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least $2,000,000,000 and capital/statutory surplus or shareholder's equity of at least $500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender). Institutional Lender shall mean and include the Affiliates of such Institutional Lender without regard to such Affiliate's total assets or shareholder equity. Institutional Lender shall not include any so-called "sovereign wealth funds" unless otherwise approved by County in its sole discretion.

1.101.1 "INTERIM MILESTONE(S)" shall have the meaning set forth in Subsection 5.3.2.1.

1.102.1 "INTERIM MILESTONE DATE" shall have the meaning set forth in Subsection 5.3.1.1.

1.103.1 "LATE FEE" shall have the meaning set forth in Subsection 4.2.3.1(e).

1.104.1 "LCP" means the Dana Point Local Coastal Program Amendment 1-08, as amended from time to time.

1.105.1 "LEASE" shall have the meaning set forth in the preamble above.

1.106.1 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.107.1 "LESSEE" shall have the meaning set forth in the preamble to this Lease and Subsection 16.5.

1.1.108 "LESSEE BUSINESS OPERATION" shall have the meaning set forth in Subsection1.84.1.

1.1.109 "LESSEE SALE PRICE" shall have the meaning set forth in Subsection 12.2.4.1.

1.1.110 "LESSEE'S DELIVERABLES" shall have the meaning set forth in Subsection 5.4.1.1.

1.1.111 "LESSEE'S FINAL SUBMITTALS" shall have the meaning set forth in Subsection 5.4.3.1.

1.1.112 "LIP" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.1.113 "LOAN AMOUNT" shall have the meaning set forth in Subsection 4.3.1.1(g).

1.1.114 "MAJOR SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.115 "MAJOR SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.116 "MATERIAL MODIFICATION" shall mean, with respect to the Full Service Hotel Component, an Alteration or any modification, revision or other change to the Redevelopment Work, for the Full Service Hotel Component with respect to which any one of the following applies: (a) for purposes of the Redevelopment Work, the modification(s), individually or in the aggregate, result in a decrease in the previously approved Budget for the Full Service Hotel Component by more than ten percent (10%) (provided any decreases to the Required Cost Amount for the Full Service Hotel Component shall require the County's prior written consent, in its sole and absolute discretion); (b) for purposes of Alterations, the total estimated cost of the same, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, exceeds ten percent (10%) of the Improvement Costs for the Full Service Hotel Component, adjusted to reflect the percentage change in the ENR Index from the date on which the Redevelopment Work for the Full Service Hotel Component was substantially complete until the date on which Lessee calculates the total estimated cost of the Alterations; (c) the proposed Alteration or modification is structural in nature; (d) the proposed Alteration or modification is not in compliance with the Permitted Uses under this Lease; (e) the proposed Alteration or modification, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, (i) reduces the total interior square footage of the Improvements within the Full Service Hotel Component by more than five percent (5%), (ii) reduces the number of parking spaces within the Full Service Hotel Component by more than five percent (5%), except for a corresponding reduction in the number of parking spaces required for the Improvements within the Full Service Hotel Component (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the interior square footage of the Improvements within the Full Service Hotel Component or changes in the Applicable Law regarding the number of parking spaces required for the Improvements within the Full Service Hotel Component (without variance), or (iii) would result in a reduction of five percent (5%) or more of the number of guest rooms originally permitted by the Governmental Authorities for the Full Service Hotel; (f) for purposes of the Redevelopment Work, the proposed modification would, by itself or when taken with other proposed modifications, result in a delay to the Construction Schedule therefor by more than one hundred eighty (180) days in the aggregate; and (g) the proposed Alteration is a new building, structure,

dock, anchorage facility, parking area or roadway, other than those contemplated by the Redevelopment Work. Notwithstanding anything to the contrary contained in this Lease: (1) Material Modifications under subsections (a) and (f) above shall be subject to the County's review and approval in the sole and absolute discretion of the Chief Real Estate Officer, and otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease, and (2) all other Material Modifications to the Redevelopment Work or Alterations, as applicable, shall, in all instances in this Lease, be subject to the County's review and approval of the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed, and shall otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease.

1.1.117 "MEMORANDUM" shall have the meaning set forth in Section 17.15.

1.1.118 "MINIMUM STANDARDS" shall mean the requirements set forth on **Exhibit G** attached hereto, as modified by County or the CREO Office from time to time in a manner consistent with commercially reasonable standards applicable to other comparable hotel projects in the County.

1.1.119 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.1.120 "MS4" shall have the meaning set forth in Subsection 10.2.2.1(a)(4).

1.1.121 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.122 "NPDES" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.1.123 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.8.7.1.

1.1.124 "OFFERED PROPERTY" shall have the meaning set forth in Section 11.13.

1.1.125 "OPERATING COVENANT EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.126 "OPERATING YEAR" shall mean each twelve (12) month period beginning on the Full Service Hotel Operation Date.

1.1.127 "OPTION" shall have the meaning set forth in the Recitals to this Lease.

1.1.128 "OPTION AGREEMENT" shall have the meaning set forth in the Recitals to this Lease.

1.1.129 "ORIGINAL EFFECTIVE DATE" shall have the meaning set forth in the Recitals to this Lease.

1.1.130 "ORIGINAL HARBOR LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.131 "OWNERSHIP INTERESTS" shall have the meaning set forth in Subsection 13.1.1.1(1).

1.1.132 "PA/DSS" shall have the meaning set forth in Section 11.7.

1.1.133 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.134 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.5.4.1(b).

1.1.135 "PCI/DSS" shall have the meaning set forth in Section 11.7.

1.1.136 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.1.

1.1.137 "PERCENTAGE SHARE" shall have the meaning set forth in Subsection 4.3.1.1(h), 4.3.4.1(a) and 4.3.4.1(b).

1.1.138"PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.5.4.1(a).

1.1.139"PERMITTED EVENTS" shall have the meaning set forth in Section 11.9.

1.1.140 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.141 "POST TERM PERSONAL PROPERTY REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.1.

1.1.142 "PRELIMINARY PLANS" shall have the meaning set forth in Subsection 5.4.2.1.

1.1.143 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.1.

1.1.144 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.145 "PRIOR HARBOR LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.146 "PROPERTY MANAGER" shall have the meaning set forth in Section 11.2.

1.1.147 "PROPOSED TRANSFER" shall have the meaning set forth in Subsection 12.2.4.1.

1.1.148 "PURCHASE MONEY NOTE" shall have the meaning set forth in Subsection 4.3.2.1(c).

1.1.149"RECEIVING WATERS" shall have the meaning set forth in Subsection 10.2.2.1(a)(4).

1.1.150 "RECORDS" shall have the meaning set forth in Subsection 15.1.

1.151.1 "RECOVERY PLAN" means, with respect to the Full Service Hotel Property, a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Redevelopment Work for the Full Service Hotel Property in order to enable Contractor to: (a) achieve Interim Milestones as proposed in the Recovery Plan and approved by the CREO for the Full Service Hotel Property by the applicable Interim Milestone Date; and/or (b) achieve the CO Date for Full Service Hotel, on or before the Required Construction Completion Date. The Recovery Plan shall be submitted consistent with the terms of Subsection 7.3.1.

1.1.152 "RECOVERY PLAN NOTICE" shall have the meaning set forth in Subsection 5.7.3.1 of this Lease.

1.1.153 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.154.1 "REQUIRED CONSTRUCTION COMMENCEMENT DATE" means, if the Full Service Hotel is built, March 7, 2030.

1.155.1 "REQUIRED CONSTRUCTION COMPLETION DATE" means, if the Full Service Hotel is built, August 4, 2032.

1.156.1 "REQUIRED COST AMOUNT" means Ninety Million Dollars ($90,000,000.00).

1.1.157 "REQUIRED COST ADJUSTMENT DATE" shall have the meaning set forth in Section 5.2.

1.1.158 "RIGHT OF FIRST OFFER" shall have the meaning set forth in Section 11.13.

1.1.159 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.160 "SELECT SERVICE HOTEL" means the select service hotel to be constructed on the Select Service Hotel Property, and comprised of approximately 169 rooms and related amenities.

1.1.161 "SOFT COSTS" means architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, permits and fees, testing and inspection costs, financing costs, interest reserves or interest accrual required by or in connection with Lessee's initial construction financing, legal, accounting and insurance (including title insurance) relating to the Redevelopment Work, but in no event may such amounts be duplicative.

1.1.162 "STATE" shall mean the State of California.

1.1.163 "STORMWATER PERMITS" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.1.164 "SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.165 "SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.166 "SUBSTANTIAL COMPLETION" means the completion of the Redevelopment Work or other work of Improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.167 "TERM" shall have the meaning set forth in Section 2.1.

1.1.168 "TIDELANDS GRANT" shall have the meaning set forth in Subsection 1.2.2.1.

1.1.169 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 17.3.

1.1.170 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.1.

1.1.171 "UNAUTHORIZED BOAT BROKERAGE" shall have the meaning set forth in Subsection 3.2.2.1(g).

1.1.172 "UNINSURED LOSS" shall have the meaning set forth in Section 10.4.

1.1.173 "UNREASONABLE COUNTY ACTION" shall have the meaning set forth in Subsection 5.7.2.1(a).

1.1.174 "UTILITY EASEMENT" shall have the meaning set forth in Subsection 1.2.4.1.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, as successor-in-

interest to DPHP, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Full Service Hotel Property for the Term and upon the terms and conditions and subject to the requirements set forth herein.

2.1.1 As-Is. Except as provided in Subsection 1.2.3.1, Lessee accepts the Full Service Hotel Property in its present condition notwithstanding the fact that there may be certain defects in the Full Service Hotel Property, whether or not known to either Party as of the Effective Date. Lessee represents that, pursuant to the Option Agreement, its Affiliate DPHP was afforded a reasonable opportunity to conduct a thorough due diligence investigation of the Full Service Hotel Property prior to DPHP's exercise of the Option and that, prior to the Original Effective Date, DPHP performed all investigations of the Full Service Hotel Property that it deemed necessary or appropriate in order to evaluate the condition of the Full Service Hotel Property and the viability of the Full Service Hotel Property for Lessee's intended purposes. Lessee hereby accepts the Full Service Hotel Property on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Full Service Hotel Property, including without limitation: (a) the quality, nature, adequacy and physical condition and aspects of the Full Service Hotel Property, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (b) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (c) the existence, quality, nature, adequacy and physical condition of utilities serving the Full Service Hotel Property, (d) the development potential of the Full Service Hotel Property, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Full Service Hotel Property for any particular purpose, (e) the zoning, entitlements or other legal status of the Full Service Hotel Property, and any public or private restrictions affecting use or occupancy of the Full Service Hotel Property, (f) the compliance of the Full Service Hotel Property with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the applicable Governmental Authorities ("Applicable Laws"), including, without limitation, the Coastal Act and relevant provisions of the Americans with Disabilities Act, (g) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Full Service Hotel Property, the adjoining or neighboring properties, or ground or other subsurface waters, (h) the quality of any labor and materials used in any Improvements, (i) the condition of title to the Full Service Hotel Property, and (j) the economics of the operation of the Full Service Hotel Property.

2.2.1 Tidelands Grant. This Lease and the rights and privileges granted Lessee in and to the Full Service Hotel Property are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California), as amended from time to time ("**Tidelands Grant**"). Nothing contained in this Lease or in any document related hereto shall be construed to imply (a) the conveyance to Lessee of rights in the Full Service Hotel Property which exceed those owned by the County, or (b) any representation or warranty, either express or implied, relating to the nature or condition of the Full Service Hotel Property, or County's interest therein.

2.3.1 Title. Subject to the limitations set forth in this Section 1.2, County represents that County owns fee title to the Full Service Hotel Property and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the Full Service Hotel Property, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Full Service Hotel Property pursuant to the terms and conditions of this Lease.

2.4.1 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to: (a) all encumbrances, reservations, licenses, easements and rights of way existing as of the Effective Date and disclosed to Lessee, whether in the County Documents, referenced in this Lease or otherwise, in, to, over or affecting the Full Service Hotel Property for any purpose whatsoever; (b) any other encumbrances, reservations, licenses, leases, easements and rights of way consented to by Lessee in writing; (c) all matters of record (including, without limitation, the Tidelands Grant); and (d) the right of County and/or City to install, construct, maintain, service and operate such existing or new sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements (each, a "**Utility Easement**") as may be reasonably required across, upon or under the Full Service Hotel Property, together with the right of County and/or City to convey such easements and transfer such rights to others; provided, however, that no new Utility Easement shall be located within the Project without the prior written consent of Lessee, which consent shall not be unreasonably withheld, unless the same is necessary for County to comply with its obligations under this Lease, in which case Lessee's consent shall not be required (and in such case, no such Utility Easement shall be located within the footprint of any then-existing building located on the Full Service Hotel Property). Furthermore, for the avoidance of doubt, County hereby reserves for itself, its invitees, licensees, tenants and the general public, and Lessee shall not prevent, obstruct or materially interfere in any way with, the free flow and passage of: (i) vehicles upon and across all streets and roadways as the same may exist from time to time at the Full Service Hotel Property, (ii) pedestrians upon and across all sidewalks, walkways, pathways and other access ways as the same may exist from time to time at the Full Service Hotel Property, and (iii) vessels within the waterways of the Full Service Hotel Property, excluding temporary obstructions or interference that are necessary for construction, operational, or development activities being conducted by Lessee pursuant to, and in accordance with, the terms and conditions of this Lease; provided that any such temporary obstructions or interference shall not pose a health, safety, or security threat to the public, nor shall the same be permitted to remain in place longer than the permitted duration of the underlying construction, operational, or development activity to which it relates as required under this Lease.

2.5.1 Excluded Improvements. Notwithstanding anything to the contrary set forth in this Lease, the "Full Service Hotel Property" shall not include the MS4 (including, without limitation, any sewer or storm drain) or other improvements, whether existing as of the Effective Date or installed thereafter, which have been dedicated to (and such dedication has been accepted by) the City or County ("**Excluded Improvements**"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such Excluded Improvements, if any.

2.6.1 Quarterly Reporting. Lessee will submit to the County a quarterly written report continuing through the term of the Lease, as more fully outlined below ("**Quarterly Report**"). Each Quarterly Report shall cover operations and redevelopment activities for the Full Service Hotel Property for the applicable quarter and shall be prepared in a clear and reasonably detailed format.

Each Quarterly Report shall include, at a minimum, updates regarding: (a) leasing and licensing activity, including material changes in occupancy; (b) revenues and expenditures in a reasonable summary form, including identification of material changes, as necessary; (c) progress of development and capital improvement activities, including schedule status, entitlements, substantial compliance, permitting, construction, and approvals; and (d) any other additional information reasonable requested by the Chief Real Estate Officer relating to the operation or redevelopment of the Full Service Hotel Property.

The Quarterly Report will be submitted to the Chief Real Estate Officer prior to the end of the months of April, July, October and January, delivered via email in a single consolidated document, and maybe combined with Quarterly Reporting for the Hotel Component and/or other Components of the Harbor Property

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease shall be sixty-six (66) years ("**Term**") (subject to adjustment of the Term consistent with Section 8.3 hereof) and shall commence on the Effective Date. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on **[66 YEARS** from Effective Date of Hotel Component Lease**]**. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. For the avoidance of doubt, and by way of example, Lease Year 1 as used in this Lease shall mean and refer to the calendar year in which the Effective Date occurs, with the following calendar year being Lease Year 2 and so on.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing, or hereafter constructed by Lessee, upon the Full Service Hotel Property, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

3.1.1 County's Election to Receive Improvements. All Improvements located on, in, or under the Full Service Hotel Property (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Full Service Hotel Property as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee upon the expiration of the Term or earlier termination of this Lease. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, (b) permit a Sublessee to exercise a

right under its Sublease to remove any so-called Sublessee "trade-dress" items installed in or on the interior of space subleased to such Sublessee, provided that Lessee shall be responsible for repairing (or causing its Sublessee to repair) any damage to the Improvements incurred in connection with the removal of such items; or (c) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Full Service Hotel Property, any signage identifying Lessee (as opposed to other signage used in the operation of the Full Service Hotel Property and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Full Service Hotel Property for the Permitted Uses.

3.2.1 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Personal Property Removal Period described below), Lessee shall remove, at its sole cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Full Service Hotel Property or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property prior to the expiration of the Term, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Full Service Hotel Property or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof. County shall be under no obligation to Lessee to effectuate any such sale of furniture, equipment and other personal property, or, in the case of a sale, to obtain any required level of compensation therefor. Notwithstanding the foregoing, (i) Lessee shall have the right, exercisable by delivering written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the removal of the personal property and surrender the Full Service Hotel Property to County pursuant to Lessee's obligations under this Subsection 2.3.2.1 to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Personal Property Removal Period**"); and (ii) all of Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Full Service Hotel Property) shall be applicable during the Post Term Personal Property Removal Period, including without limitation, Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Personal Property Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term Personal Property Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Personal Property Removal Period shall be paid by Lessee, in one lump sum prior to the commencement of the Post Term Personal Property Removal Period.

3. USE OF THE HOTEL PROPERTY.

3.1 Specific Primary Use. Subject to Subsection 3.2.2(h) below:

1.1.1 The Full Service Hotel Property and the Improvements thereon shall be used by Lessee solely for the operation and management of hotels, hospitality and related amenities including the following uses and services: (a) hotel, restaurant and limited retail; (b) filming or

other television or motion picture activities; (c) catering, banquet and event activities and meeting rooms; (d) spa and recreational activities normally found in first class hotels; (e) ancillary bar, lounge and rooftop venues normally found in first class hotels; (f) cleaning and laundry service, gift shop, resort retail sales, magazine stand, barber or beauty services, travel services, airline ticket services and, subject to the limitations in Subsection 3.2.2.1(h) below, automobile rental; (g) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (h) boater services facilities and operations, including support buildings for marina users and guest services associated with harbor operations; (i) rental and provision of non-motorized recreational equipment, including paddleboards, surfboards, kayaks, bicycles, and similar recreational amenities; (j) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (k) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

1.2.1 All of the aforementioned uses, as they relate specifically to the Full Service Hotel Property, shall be referred to herein as the "**Permitted Uses**" of the Full Service Hotel Property. Except as specifically provided herein, the Full Service Hotel Property shall not, without the prior written consent of the Chief Real Estate Officer in the Chief Real Estate Officer's sole and absolute discretion, be used for any purpose other than the Permitted Uses. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

2.1.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Full Service Hotel Property, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Full Service Hotel Property, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Full Service Hotel Property be permitted to be operated or maintained in a manner that renders the Full Service Hotel Property or any part thereof a fire hazard.

2.2.1 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Full Service Hotel Property and Improvements as set forth in this Lease, the following uses of the Full Service Hotel Property are expressly prohibited:

(a) The Full Service Hotel Property shall not be used or developed in any way which violates any Applicable Law, the CDP, the LCP or the Tidelands Grant.

(b) The Full Service Hotel Property shall not be used or developed in any way in a manner inconsistent with the Permitted Uses.

(c) No condition shall be permitted to exist upon the Full Service Hotel Property which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Full Service Hotel Property which create a danger to the health or

safety of any persons occupying, using, working at, or patronizing the Full Service Hotel Property.

(d) Without the prior written reasonable approval of Chief Real Estate Officer, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "**antennae**") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Full Service Hotel Property, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain Chief Real Estate Officer's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further that the prior approval by the Chief Real Estate Officer shall not be required for (i) any satellite dish or communication antennae installed as an incident to the use of subleased space for purposes other than the operation of a satellite or communications business, and that is not greater than eighteen inches (18") in diameter and is screened from general view and (ii) the erection of cellular towers by Lessee or its designees provided it is approved by the City and is screened from general view or incorporated into an architectural element of the Improvements.

(e) No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Full Service Hotel Property, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as may be necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

(f) No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Full Service Hotel Property, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Full Service Hotel Property, including, without limitation, into subsurface waters, provided, however, (i) Hazardous Substances may be stored or used on the Full Service Hotel Property, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws, and (ii) Lessee shall have no responsibility for Hazardous Substances released on or under the Full Service Hotel Property as a result of defects or deficiencies in the Excluded Improvements or the existing breakwater adjacent to the Full Service Hotel Property identified on **Exhibit H** attached hereto (the "**Breakwater**"), or drainage from the existing drainage channel which empties into the harbor that does not originate from the Full Service Hotel Property (except to the extent caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees), or boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor. This Subsection 3.2.2.1(f) shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Full Service Hotel Property or any Improvement as long as (I)

such Hazardous Substances did not originate at or from the Full Service Hotel Property, and (II) with respect to Hazardous Substances that did not originate at or from the Full Service Hotel Property, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees (collectively, the "**Lessee Parties**").

(g) No portion of the Full Service Hotel Property shall be used for the sale or lease, or for the display, storage or exhibition for sale or lease, of new or used boats or watercraft ("**Unauthorized Boat Brokerage**"), provided, however, that special events located on all or part of the Full Service Hotel Property which involve the sale, lease, display, storage or exhibition of new or used boats or watercraft, shall not be deemed an Unauthorized Boat Brokerage.

(h) In addition to the foregoing restrictions, and without limiting the same, notwithstanding anything in this Lease to the contrary, Lessee shall not lease or permit the use of any portion of the Full Service Hotel Property for the following: (i) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building); (ii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (iii) any mortuary; (iv) any establishment selling or exhibiting pornographic materials (except for so-called "adult" material customarily offered on an incidental basis only in first-class hotels, bookstores and/or video stores normally found in first class shopping centers); (v) any massage parlor (which shall not include therapeutic massage normally found in first class shopping centers, such as Massage Envy), topless club or "strip joint"; (vi) any heavy manufacturing, refining, smelting, agricultural or mining operation; (vii) any automobile repair business; (viii) any automobile rental business or automobile dealership which maintains its automobile inventory on-site; (ix) any use which is a public or private nuisance, or (x) any uses prohibited under County ordinances.

3.3 Active Public Use.

3.1.1 The Parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Dana Point Harbor by and for the benefit of the public, without discrimination as to race, gender, religion, or sexual orientation, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will (a) operate the Full Service Hotel Property and Improvements located thereon fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, "**Operating Covenant Exceptions**")) to accomplish these objectives and consistent with the operation of other comparable facilities or businesses within the County, (b) not to abandon or vacate the Full Service Hotel Property at any time, and (c) use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days and Hours of Operation. All Improvements on the Full Service Hotel Property shall be open every day of the year in a manner consistent with the following:

4.1.1 Guest Rooms, Front Desk, and Security: These operations shall be maintained 24 hours per day, 7 days per week, without exception.

4.2.1 Amenities and Commercial Spaces: Restaurants, bars, pools, spas, retail shops, and other amenity spaces may operate during hours typical for first-class Southern California hotels, marinas, and associated commercial amenities.

4.3.1 Temporary Closures: Lessee may temporarily close any portion of the Property for health or human safety reasons, or while such portions are undergoing construction, Renovation, Alterations, or Redevelopment Work, without violating this section.

4.4.1 Holiday Closures: Non-essential amenities and commercial spaces may follow holiday closures customary to Dana Point Harbor operations. Essential operations, including guest rooms, front desk, and security, must remain open during such holidays.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs, flags and banners which are placed on, or are visible from, the exterior of any Improvements shall be consistent with the Permitted Uses, and shall comply with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations), and Local Coastal Program Section 8.5.3, including requirements for size, placement, style, illumination, materials, and protection of scenic views and shall only be of such size, design, wording and color as shall have been specifically submitted to and approved in writing in advance by the City through the applicable entitlements for the applicable Improvement Project. Because the currently approved Dana Point Harbor Sign Program applies only to the Commercial Core Component, any signage for the Hotel Property or other areas not yet covered by an adopted Sign Program shall require prior written approval from the CREO Office, which approval shall be limited to confirmation that the proposed Sign Program complies with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations), the Local Coastal Program (Section 8.5.3), and City approvals. Any sign, banner, flag, or similar item that is inconsistent with the Permitted Uses, the applicable Sign Program, LCP sign requirements, or CREO Office approved design may be removed by the CREO Office at Lessee's sole cost if not removed within thirty (30) days following delivery of written notice to Lessee.

3.6 Compliance with Agreements and Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses, permits or approvals related to or affecting the use, operation, maintenance, repair or improvement of the Full Service Hotel Property and/or Improvements. Without limitation of the foregoing, Lessee shall comply with (a) all conditions and requirements of the CDP, LCP and Tidelands Grant, (b) all conditions and requirements set forth in any development agreement(s) entered into by and between Lessee and the City and/or other public agencies with respect to the Redevelopment Work, and (c) all public access requirements of the LCP. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Full Service Hotel Property and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other retail, commercial, hospitality, restaurant, marina and public park facilities in Orange County, and delivered in writing to Lessee, provided such rules and regulations do not materially and adversely impact Lessee's operations or materially increase Lessee's expenses.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The Parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County, except as set forth in Subsection 10.7 below. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Full Service Hotel Property and Improvements, including without limitation the parking areas included within the Full Service Hotel Property.

1.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid prior to delinquency, directly to the applicable utility providers, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Full Service Hotel Property.

1.2.1 Taxes and Assessments. Lessee shall pay before delinquency all lawful taxes, assessments, fees, and charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Full Service Hotel Property for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Full Service Hotel Property. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option, Lessee's exercise thereof, or the execution of this Lease. Lessee shall have the right to contest the amount of any assessment imposed against the Full Service Hotel Property or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee; and provided further, Lessee shall pay under protest such assessment pending the outcome of such proceedings so long as neither the tax parcel nor the Full Service Hotel Property are in danger of being forfeited. County shall not be required to join in any proceedings to contest any assessment unless the provisions of any law, rule or regulation require such proceedings to be brought by or in the name of the County, in which event the County shall join in such proceedings or permit the same to be brought in its name. Lessee will defend, indemnify and save harmless County from any Claims related to such proceedings in accordance with Section 8.1 below. **In accordance with Section 107.6 of the California Revenue and Taxation Code, Lessee is specifically informed, and hereby acknowledges and agrees, that the Full Service Hotel Property and any fixtures, equipment, or other improvements installed or constructed thereon shall be subject to possessory interest taxes and assessments, and that such taxes and assessments shall be paid by Lessee prior to delinquency. Lessee**

shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

1.3.1 No Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by Applicable Law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

4.2 Rental Payments; Payment; Adjustments. Throughout the Term, Lessee shall pay to County (a) the Annual Minimum Rent described in Subsection 4.2.1.1 below, and (b) the Percentage Rent described in Subsection 4.2.2.1 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

2.1.1 Annual Minimum Rent and Monthly Minimum Rent.

(a) Initial Annual Minimum Rent; Payment. During the Term, Lessee shall pay to County, for the Full Service Hotel Property, the minimum rent set forth on **Exhibit F** attached hereto (subject to adjustment pursuant to Subsection 4.2.1.1(b) below) (the "**Annual Minimum Rent**"). Provided that Tenant faithfully performs all of the terms and conditions of this Lease and there is no Event of Default, the Annual Minimum Rent for the Full Service Hotel Property will be abated during the period (the "**Abatement Period**") beginning on the commencement of demolition of the existing Marina Inn for the Redevelopment Work for the Full Service Hotel Property and ending on the CO Date for the Full Service Hotel, and such date shall be referred to in this Lease as the "**Hotel Deemed Completion Date**". For purposes hereof, the date upon which the commencement of the Redevelopment Work has occurred will be the first date that visible construction activity for demolition of the existing Marina Inn (as opposed to the delivery of goods and materials or erection of fencing) has occurred ("**Commencement of Construction**"). Lessee shall provide written notice to County of the Commencement of Construction and the CO Date promptly upon the occurrence thereof. Annual Minimum Rent for each Lease Year shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent for such Lease Year (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is less than a full calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

(b) Adjustments to Annual Minimum Rent. The Annual Minimum Rent for the Full Service Hotel Property shall be adjusted as set forth on **Exhibit F** attached hereto.

2.2.1 Percentage Rent. Except as provided in Subsection 4.2.2(e) below, beginning in the fifth (5th) Operating Year, Lessee shall pay to County, an amount ("**Percentage Rent**") for any given month equal to (i) the aggregate of all amounts set forth below in Subsection

4.2.2.1(a), to the extent Gross Receipts are generated from the Full Service Hotel Property, less (ii) (A) the Annual Minimum Rent payable by Lessee for the Full Service Hotel Property during such month, and (B) all amounts required to be paid by Lessee to reimburse to any tenant at the Full Service Hotel Property whose tenancy predates the Effective Date a security deposit, to the extent the required amounts are not transferred to Lessee by County as of the Effective Date.

(a) Categories of Percentage Rent. Gross Receipts from each transaction, sale or activity of Lessee (or from any Sublessee pursuant to Subsection 4.2.2.1(c)) on, from or within the Full Service Hotel Property, or as a result of operations from the Full Service Hotel Property (e.g., internet sales), shall be reported under one or more of the following percentage categories, as applicable:

(1) (x) THREE PERCENT (3%) of Gross Receipts from the Full Service Hotel room revenue, commencing on the FOURTH (4th) anniversary of the Full Service Hotel Operation Date and continuing through the eighteenth (18th) anniversary of the Effective Date, and (y) FOUR PERCENT (4%) of Gross Receipts from the Full Service Hotel room revenue thereafter;

(2) TWO PERCENT (2%) of Gross Receipts from other hotel operations, including, but not limited to hotel parking, banquet events, restaurants, lounges, bars, rooftop venues, spa services, resort fees and other hotel services and activities commencing on the Effective Date;

(b) Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be included in the calculation of Gross Receipts.

(c) Sublessees in Business. Subject to Subsection 1.1.84(b)(13) above, if a Sublessee directly pays any common area maintenance payments, common area operating expense or real property tax reimbursements in lieu of reimbursement of such expenses under its lease for the space it occupies, then such costs and expenses shall be added to and included in the Gross Receipts under the applicable provision in Subsection 4.2.2.1(a) above.

(d) No Expansion of Permitted Uses. Lessee acknowledges that (i) Article 3 of this Lease provides for the Permitted Uses of the Full Service Hotel Property and that the Percentage Rent categories listed in Subsection 4.2.2.1(a) above may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses, and (ii) the Percentage Rent categories set forth in Subsection 4.2.2.1(a) above are intended merely as a guideline in determining the appropriate categories for charging Percentage Rent.

(e) Performance Payment. In the event that, in any of its first, second, third or fourth Operating Years, the Full Service Hotel achieves a net operating income (calculated pursuant to generally accepted accounting principles on an annual basis) that is more than one hundred fifteen percent (115%) of the NOI forecasted on the proforma approved by the County as part of its approval of the hotel construction financing ("**Proforma NOI**") for the Full Service Hotel for such Operating Year, Lessee shall pay to County, as

performance percentage rent ("**Performance Percentage Rent"),** in addition to Annual Minimum Rent for such period, twenty percent (20%) of the amount by which actual net operating income exceeds the one hundred fifteen percent (115%) threshold. Lessee shall report any Performance Percentage Rent due for first, second, third or fourth Operating Years at the end of the applicable Operating Year. By way of example, if the Proforma NOI in Operating Year 3 of the Full Service Hotel is $4,000,000 and the actual net operating income in Operating Year 3 of the Full Service Hotel is $6,000,000 (which is 150% of the Proforma NOI), Lessee shall pay to County the Annual Minimum Rent for Operating Year 3 applicable to the Full Service Hotel in the amount of $145,000, *plus* $280,000, which is twenty percent (20%) of the amount by which actual NOI exceeds 115% of the Proforma NOI. As used herein, **"NOI"** means, for any applicable period, the total Gross Receipts derived from the ownership and operation of the Full Service Hotel (including, without limitation, room revenue, food and beverage revenue, and other ancillary income), **less all operating and fixed expenses** incurred in the ordinary course of operating the Full Service Hotel, including without limitation administrative and general expenses, payroll, information and telecom, utilities, maintenance and repairs, capital expenditures and FF&E reserves, property taxes, insurance, sales and marketing, equipment rentals and leases, rent payable under this Lease, franchise fees and management fees; **provided, however, that NOI shall exclude** (i) debt service (including principal and interest), (ii) federal, state, and local income taxes, (iii) depreciation and amortization,), (v) financing costs, and (vi) any non-recurring, extraordinary, or non-operating income or expenses.

(f) New Categories of Percentage Rent.

(1) If, with the prior written approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently a Permitted Use and as to which there is no specific Percentage Rent category set forth in Subsection 4.2.2.1(a) above applicable to such additional or related use, then concurrent with the approval by County or Chief Real Estate Officer of such specific additional use, Chief Real Estate Officer and Lessee shall negotiate in good faith to establish the specific Percentage Rent to be applied to such use.

(2) If, without the prior written approval of Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease, then Lessee shall pay to County SEVENTY-FIVE PERCENT (75%) of Gross Receipts generated by such non-permitted use as Percentage Rent therefor.

2.3.1 Payment and Late Fees.

(a) Monthly Minimum Rent Payment. Monthly Minimum Rent shall be paid by Lessee to County in advance on or before the first (1st) day of each calendar month during the Term. Concurrently with each payment of Monthly Minimum Rent, Lessee shall deliver to County a statement setting forth the amount of Monthly Minimum Rent being paid hereunder as more particularly described on **Exhibit F** attached hereto.

(b) Percentage Rent; Reporting and Payment. On the last business day of each month during the Term, Lessee shall, with respect to the Full Service Hotel Property, (i) deliver to the County a separate report (in a form acceptable to County, and signed by Lessee) summarizing (A) the total Gross Receipts generated from operations on the Full Service Hotel Property during the preceding calendar month (including Gross Receipts generated by Sublessees, if reported under its Sublease, and Gross Receipts generated in connection with any Lessee Business Operation), including such backup as County may reasonably require from time to time, and shall include a breakdown of Gross Receipts by sub-component as described in Subsection 4.2.3(a) above, and (B) the amount of Percentage Rent resulting therefrom (including by sub-component and Performance Percentage Rent, as applicable), and (ii) concurrently with its delivery of such report to the County, pay to County a sum equal to the total of the percentages listed in Subsection 4.2.2.1 above generated from operations on the Full Service Hotel Property for such previous month, less the installment of Monthly Minimum Rent applicable to the Full Service Hotel Property and paid to County for such previous month. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.3.1(c) below. Lessee agrees to and shall comply with, and shall cause all Sublessees (other than those described in Subsection 4.2.2.1(c)) to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 15 of this Lease.

(c) Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Annual Minimum Rent otherwise due under this Subsection 4.2.3.1 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent.

(d) Delivery of Payments; No Statements. All payments under this Lease shall be made via wire transfer to the following:

Bank Name:	Wells Fargo Bank
Account Name:	OCCR Dana Point Harbor
Routing / ABA:	121000248
Account #:	4121802219
Lease Name:	Dana Point Harbor

The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) days' written notice to Lessee. Lessee

acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

(e) Late Fees; Interest. In the event any payment under this Lease is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") equal to five percent (5%) of the delinquent amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, such late charge shall be waived to the extent Lessee cures such failure within five (5) business days following Lessee's receipt of written notice from County that the same was not received when due. Any unpaid rent due, together with any Late Fees thereon, shall bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 13 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Full Service Hotel Property shall be limited to a maximum of three (3) years.

4.3 Payment Upon Changes of Ownership & Financing Events. Except as otherwise provided in this Subsection 4.3, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer), or (b) a Financing Event, Lessee shall pay to County (i) an administrative charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**"), plus (ii) in the event the proposed Change of Ownership or Financing Event is consummated, a Percentage Share, subject to the remaining provisions of this Section 4.3. Notwithstanding anything herein to the contrary, Excluded Transfers shall not be deemed to create an obligation to pay County a Percentage Share and no Percentage Share shall be payable in connection with either (A) the initial construction financing obtained in connection with the Redevelopment Work, or (B) the initial capitalization of Lessee with the closing of the initial hotel construction financing for purposes of performing the Redevelopment Work (Initial capitalization means the one-time equity contributions and direct funding made by Lessee or its Affiliates solely in connection with, and on or before the closing of, the initial Hotel Construction Financing for purposes of completing the Redevelopment Work, and shall not include any related-party (but not member) loans or refinancings occurring after the closing of the Hotel Construction Financing), or (C) in the event that all or any portion of the proceeds of a Financing Event are reinvested in the Full Service Hotel Property and Improvements, in which case Lessee shall provide all documentation of the use of such proceeds to the County for review and audit, if deemed necessary in the reasonable discretion

of the County and such reinvestment shall be limited to Improvements previously approved by the County (which approval shall not be unreasonably withheld, conditioned, or delayed), or (D) in the event that the Loan Amount is equal to or less than the amount of (i) existing loans being paid off in connection with such Financing Event, *plus* (ii) reasonable and customary costs, fees and expenses of an Institutional Lender incurred by Lessee attributable solely to such Financing Event, excluding Lessee's internal and administrative costs and fees related to the Financing Event, which shall be documented and provided to the County in advance of the Financing Event as a condition to such Financing Event being considered an Excluded Transfer. In the event only a portion of the proceeds from a Financing Event are reinvested pursuant to part (C) of the preceding sentence, only such portion of the proceeds shall be exempt from Percentage Share. For any portion of Financing Event proceeds that Lessee asserts are reinvested in the Hotel Property and Improvements, Lessee shall: (a) reinvest such proceeds within twelve (12) months after the closing of the Financing Event; (b) provide the County, within sixty (60) days of each expenditure, with documentation reasonably acceptable to the County verifying such reinvestment, including invoices, contracts, and proof of payment; and (c) identify the total reinvested amount so the exempt portion may be calculated. Only amounts actually reinvested in County-approved Improvements shall be excluded from the Percentage Share. The provisions of this Section 4.3 shall apply to all transfers of Beneficial Interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of this Section 4.3, and the principles set forth herein, shall apply to any transfer or series of transfers (except those excluded pursuant to this Lease), whether or not structured for the purpose of avoiding the obligation to pay a Percentage Share set forth in this Section 4.3 and which, when viewed together, would otherwise constitute a Change of Ownership.

3.1.1 Definitions. For purposes of this Lease:

(a) "**Aggregate Transfer**" shall mean the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute Beneficial Interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than Excluded Transfers) occurring since the later of (i) the Effective Date, or (ii) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

(b) "**Beneficial Interest**" shall mean the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the

relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the Beneficial Interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

(c) "**Change of Ownership**" shall mean (i) any transfer by Lessee of a thirty-two percent (32%) or greater direct ownership interest in the Lessee's leasehold estate under this Lease, (ii) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a thirty-two percent (32%) or greater direct ownership interest in such Major Sublease, (iii) any transaction or series of related transactions not described in Subsections 4.3.1.1(c)(i) or (ii) which constitute an Aggregate Transfer of thirty-two percent (32%) or more of the Beneficial Interests in Lessee or a Major Sublessee, and/or (iv) a Change of Control of Lessee or a Major Sublessee.

(d) "**Change of Control**" shall mean any transaction whereby person(s) or entity(ies) in the aggregate acquire(s): (i) a Beneficial Interest in Lessee or a Major Sublessee possessing the voting power (other than voting rights accruing only in the event of a default, breach or event of noncompliance) holding the majority of the voting control of Lessee (whether by merger, consolidation, reorganization, combination, sale or transfer of the Lessee's equity interests (such as membership, stock or partnership interests), voting agreement, proxy, power of attorney or otherwise); or (ii) all or substantially all of the Lessee's assets determined on a consolidated basis.

(e) "**Excluded Transfers**" shall mean Changes of Ownership resulting from the following:

(1) those transactions listed in Section 4.3 (A), (B), (C) and (D);

(2) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or to a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure), including transfers to such transferring partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 4.3.1.1(e)(4) below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

(3) a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection

with a property settlement agreement or decree of dissolution of marriage or legal separation;

(4) a transfer of ownership interests in Lessee or in constituent entities of Lessee (A) to a member of the "**immediate family**" of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (B) to a trust for the benefit of a member of the immediate family of the transferor, or (C) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.3.1.1(e)(4) is the result of gift, devise, intestate succession or operation of law, but expressly excluding any such transfers that are the result of a sale of such ownership interest.

(5) a transfer of a Beneficial Interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

(6) a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership;

(7) any transfer to the County resulting from a Condemnation by County;

(8) any assignment of the Lease by Lessee to a parent, or wholly-owned subsidiary or Affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest or Change of Control of Lessee;

(9) the first Financing Event that occurs to refinance the initial construction loan;

(10) the entering into the Select Service Hotel Lease by County and the lessee thereunder, who is an Affiliate of DPHP; or

(11) the entering into this Lease by County and Lessee.

(f) "**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (without deduction for costs or any other amounts), but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair market value of the interests transferred; provided, if Lessee and County are

unable to agree upon such fair market value, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1.

(g) "**Loan Amount**" shall mean the gross principal amount of any Financing Event after the Effective Date.

(h) "**Percentage Share**" shall mean the applicable amount determined pursuant to Subsection 4.3.4.1 of this Lease.

3.2.1 Determining Value of Changes of Ownership and Financing Events Under Certain Scenarios.

(a) Changes of Ownership Involving Multiple Assets. For purposes of determining the Gross Transfer Proceeds from a transaction or event that involves both a Change of Ownership and also the transfer of other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the ratio of the fair market value of the Beneficial Interest in the Lease being transferred relative to the value of the total consideration payable for all the assets being transferred. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1.

(b) Financing Events Involving Multiple Assets. For purposes of determining the Percentage Share from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the ratio of (i) the fair market value of the Beneficial Interest in the Lease, to (ii) the aggregate fair market value of the assets securing such financing, including the Beneficial Interest in the Lease. The fair market value of such Beneficial Interest in the Lease will be the value attributable to such fair market value by the lender involved in such Financing Event, or, failing any such lender valuation, then in accordance with the procedure set forth in Subsection 4.3.3.1.

(c) Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration in the manner prescribed in Subsection 4.3.3.1.

3.3.1 Determination of Fair Market Value.

(a) Agreement on Fair Market Rental Value; Amendment. In the event the County and Lessee are required to determine the fair market value hereunder (including that of any Component) and the County and Lessee are unable to agree upon the fair market value within thirty (30) days from the end of the applicable response period, if any, or from the date that such fair market value determination is required to be made hereunder if no response period is specified (the "**Outside Agreement Date**") using their best good-faith efforts, then fair market rental value shall be determined in accordance with Subsection 4.3.3.1(b) below. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

(b) Disagreement on Fair Market Rental Value; Arbitration. If County and Lessee fail to reach agreement on or prior to the Outside Agreement Date, then, unless the Parties agree otherwise in writing, the determination of fair market value shall be arbitrated as follows:

(1) Within ten (10) days after the Outside Agreement Date, each Party, at its own cost and by giving notice to the other Party, shall appoint an independent California MAI licensed real estate appraiser and a member of the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, who has no financial interest in County or Lessee, who has no ongoing relationship with County or Lessee and who has at least ten (10) years' experience in appraising fair market values of comparable facilities or businesses within the County and, to the extent available, within the Dana Point and neighboring beach-city sub-market, to appraise and determine the fair market value. If, in the time provided, only one (1) Party shall give notice of appointment of such an appraiser, the single appraiser appointed shall determine the fair market value.

(2) If each Party appoints an appraiser within the allotted timeframe, the two (2) appraisers shall independently, and without consultation, prepare a written determination of the fair market value within thirty (30) days after their appointment taking into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3.1(a) above. Each appraiser shall seal its respective determination after completion. After both determinations are completed, the resulting estimates of fair market value shall be opened simultaneously and compared. If, in the time provided, only one (1) appraiser shall submit a written determination of fair market value, the fair market value shall be the fair market value determined by said single appraiser.

(3) If the values of the two appraisers appointed by the Parties differ, and the Parties do not otherwise then agree as to the determination of fair market value within ten (10) days following the opening of the appraisals, then the two (2) appraisers shall designate a single appraiser, who shall be qualified under the

same criteria as set forth hereinabove for qualification of the initial two (2) appraisers, except that the third appraiser shall not have been previously engaged by County or Lessee for any purpose. If the two (2) appraisers have not agreed on the appraiser after ten (10) days, either County or Lessee, by giving ten (10) days' written notice to the other Party, may apply to the then Presiding Judge of the Superior Court of Orange County, acting in his or her private and nonjudicial capacity, for the selection of a single appraiser who meets the qualifications set forth in this subsection above. The third appraiser shall make an appraisal of the fair market value, taking into account into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3.1(a) above. Within thirty (30) days after selection and without consultation with the first two (2) appraisers, the third party appraiser shall select the fair market value of one of the initial two (2) appraisers that the third appraiser determines is closest, on a dollar basis, to the fair market value determined by the third appraiser. Each Party may submit written material to the third appraiser, with a copy to the other Party, on the issue of fair market value. Such third appraiser shall provide written notice to County and Lessee of its determination of fair market value, and such determination shall be binding upon County and Lessee.

(4) Each Party shall pay the fees and expenses of its own appraiser, and fifty percent (50%) of the fee of the third appraiser, if applicable.

(5) The appraisers shall have no power to modify the provisions of the Lease, and their sole function shall be to determine the fair market rental value in accordance with this subsection.

3.4.1 Determining Percentage Share.

(a) Upon a Change of Ownership. In the event of a Change of Ownership, the "**Percentage Share**" shall be one percent (1%) of the Gross Transfer Proceeds from such Change of Ownership.

(b) Upon a Financing Event. With respect to a Financing Event, the "**Percentage Share**" shall be an amount equal to one percent (1%) of the Loan Amount of such Financing Event.

(c) Limitations; No Duplication. Notwithstanding any contrary provision of this Subsection 4.3.4.1, in the calculation of Gross Transfer Proceeds and Loan Amount derived from a Financing Event taking place concurrently with a Change of Ownership, the Percentage Share shall be based on the greater of the Gross Transfer Proceeds and the Loan Amount.

(d) Calculating Percentage Share. Before any Change of Ownership or Financing Event for which Percentage Share may be due, Lessee shall provide County with its detailed calculation of the Percentage Share. No Change of Ownership or Financing Event shall occur until agreement is reached on the calculation of Percentage

Share; provided, however, that a Change of Ownership or Financing Event shall be permitted to occur without such agreement as long as County and Lessee make mutually acceptable arrangements for the preservation of any additional Percentage Share (plus interest at the Interest Rate) that might be due to County over and above that reflected in the Lessee's calculation should any such dispute be resolved in favor of County. Percentage Share shall be due and payable concurrently with the Change of Ownership or Financing Event giving rise to the obligation to pay Percentage Share (or, with respect to any disputed amount, upon resolution of the dispute) and, in the situation of a Change of Ownership, shall be the joint and several obligation of the transferee and transferor.

3.5.1 Determining Gross Transfer Proceeds.

(a) Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.3.1.1(c)(ii), Subsections 4.3.4.1(a) and 4.3.4.1(b) shall apply (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee, a percentage of which is passed through to County under any provision of this Lease (other than payment of Percentage Share), shall be disregarded in the computation of Gross Transfer Proceeds.

(b) Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in Subsections 4.3.4.1(a) through 4.3.4.1(c) above (e.g., a transfer of a Beneficial Interest in Lessee or a Major Sublessee), Subsections 4.3.4.1(a) through 4.3.4.1(c) shall apply to such Change of Ownership (as applicable).

3.6.1 Payment of Administrative Charge and Percentage Share.

(a) Deposit Towards Administrative Charge. A deposit of Ten Thousand Dollars ($10,000) toward the Administrative Charge shall be due and payable by Lessee to County upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Percentage Share shall be due and payable in accordance with Subsection 4.3.6.1(d) below. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under this Section 4.3. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay to County the balance of the Administrative Charge otherwise allowable under Section 4.3 within thirty (30) days after receipt of the notice from County setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice.

(b) Calculation of Payment. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a

Percentage Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation of the transaction), Lessee shall present (or cause to be presented) to County its calculation of the Percentage Share (if any) anticipated to be derived therefrom ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Percentage Share. Within sixty (60) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Percentage Share set forth therein. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the amount of the Percentage Share in respect thereof, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that, at the closing of the transaction (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Percentage Share, and (ii) Lessee shall deposit the disputed portion of the Percentage Share into an interest bearing escrow account for the mutual benefit of Lessee and County (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed to the Party entitled thereto following the final resolution of the dispute by a court of competent jurisdiction, or earlier settlement of the dispute by the Parties.

(c) Party Responsible for Payment. With respect to a Change of Ownership giving rise to the Administrative Charge and Percentage Share, the obligation to pay the Administrative Charge and Percentage Share shall be the joint and several obligation of the transferee and transferor.

(d) Timing for Payment. The Percentage Share and the balance of the Administrative Charge not already deposited with the County in accordance with Subsection 4.3.1.1(e)(10) above, if any, shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such amounts, regardless of whether or not money is transferred by the parties in connection with such consummation.

(e) Remedies Upon Failure to Make Timely Payment. Any Percentage Share, or part thereof, not paid when due shall be subject to a late fee of five percent (5%) of the amount due, together with interest on such Percentage Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a good faith dispute as to the correct amount of the Percentage Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Percentage Share and, at the closing of the transaction, deposits the disputed portion thereof in an interest bearing escrow account with an escrow holder reasonably acceptable to both Parties and in an escrow opened for the mutual benefit of Lessee and County (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed

portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Percentage Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Percentage Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.3.1.1(c)(ii) above, the Percentage Share shall be payable to County as and when the Lessee's proceeds from the Gross Transfer Proceeds (or the value thereof) are received by Lessee. In the event that the Administrative Charge or Percentage Share is not paid when due with respect to the Beneficial Interest in this Lease, then such failure shall constitute an Event of Default under this Lease and the County shall have the remedies set forth in Subsection 14 hereof in addition to the remedies provided in this Subsection 4.3.6.1(e).

4.4 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County, Lessee shall provide County with an updated schedule listing the names and mailing addresses of (a) all shareholders, partners, members and other holders of equity or Beneficial Interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (b) all shareholders, partners, members and other holders of equity or Beneficial Interests in any of the constituent shareholders, partners, members or other holders of equity or Beneficial Interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a ten percent (10%) or greater Beneficial Interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a ten percent (10%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review all such information so obtained. Lessee agrees to use its commercially reasonable and diligent efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of ten percent (10%) or greater Beneficial Interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Following the Effective Date, Lessee shall perform certain redevelopment and renovation work with respect to the Full Service Hotel Component (collectively, the "**Redevelopment Work**") as set forth for the Full Service Hotel Component in the County-approved Conceptual Plans, Budget, Construction Schedule, Marketing Plan, Financial Plan and Management Plan attached to this Lease as **Exhibit B** (collectively, the "**Approved Proposal Submittals**"). For the avoidance of doubt, the Redevelopment Work shall mean that redevelopment and renovation work set forth in the Approved Proposal Submittals applicable to the Full Service Hotel Component only, and not any work applicable to any other portion of the Harbor Property which is not the Full Service Hotel Property. Lessee shall perform the Redevelopment Work for the Full Service Hotel Component in accordance with (a) the Approved Proposal Submittals, as same may be revised from time to time in accordance with this

Lease, (b) the Final Plans and Specifications, as same may be revised from time to time in accordance with this Lease, (c) all governmental permits and conditions for approval thereof including, without limitation, the LCP and CDP, (d) Lessee's obligations under this Lease, (e) all Applicable Laws, and (f) consistent with the Permitted Uses set forth in Article 3 above.

5.2 Cost of Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). With respect to the Full Service Hotel Component, Lessee shall expend on the Redevelopment Work for the Full Service Hotel Component not less than the Required Cost Amount; provided, however, only Applicable Redevelopment Costs will apply towards the Required Cost Amount. Lessee acknowledges and agrees that (a) the Required Cost Amount for the Full Service Hotel Component is not the maximum amount that Lessee is required to expend for Applicable Redevelopment Costs on the Full Service Hotel Component, and (b) Lessee shall be required to perform the Redevelopment Work for the Full Service Hotel Component in accordance with the requirements and standards set forth in this Article 5 even if the Applicable Redevelopment Costs necessary to do so exceed the applicable Required Cost Amount. Applicable Redevelopment Costs shall not include any soft costs, including without limitation: (i) architectural, design and engineering fees; (ii) governmental permit fees; (iii) project oversight and management fees; (iv) costs for furniture, fixtures and equipment; (v) accounting, legal and insurance costs incurred in connection with the Redevelopment Work; or (v) construction loan fees, costs or interest. The Applicable Redevelopment Costs shall also exclude the Option Price and Extension Fee (as such terms are defined in the Option Agreement), syndication fees and costs, and any imputed cost or value of the existing Improvements as of the Original Effective Date. The Required Cost Amount for the Full Service Hotel Component will be increased as of the date that construction of the Redevelopment Work for the Full Service Hotel Component commences (each, a "**Required Cost Adjustment Date**") by the same percentage increase in the Consumer Price Index during the period from the Original Effective Date through and until the month during which a Required Cost Adjustment Date occurs.

5.3 Schedule of Redevelopment Work.

3.1.1 Subject to Sections 5.3.2.1 and 5.7 below, Lessee shall, with respect to the Full Service Hotel Component, (a) commence the Redevelopment Work no later than the Required Construction Commencement Date for the Full Service Hotel Component, (b) achieve each Interim Milestone by the date (the "**Interim Milestone Date**") set forth for the same in the Construction Schedule for the Full Service Hotel Component, and (c) achieve the CO Date for the Full Service Hotel no later than the Required Construction Completion Date for the Full Service Hotel. Following Commencement of Construction of the Redevelopment Work for the Full Service Hotel Component, Lessee shall diligently continue performance of such Redevelopment Work through completion thereof in accordance with the Construction Schedule, as same may be amended from time to time with the approval of Chief Real Estate Officer pursuant to Subsection 5.3.2.1 below.

3.2.1 A schedule for the commencement, performance and completion of the Redevelopment Work for the Full Service Hotel Component (each, a "**Construction Schedule**") is included in the Approved Proposal Submittals. The Construction Schedule includes, with respect to the Full Service Hotel Component: (a) the Required Construction Commencement Date

for the Full Service Hotel Component, (b) the anticipated CO Date for the Full Service Hotel, (c) the Required Construction Completion Date and (d) all interim milestones between the Required Construction Commencement Date and Required Construction Completion Date (collectively, "**Interim Milestones**" and each, an "**Interim Milestone**") that Lessee and County reasonably agree are relevant to tracking the likelihood that the Redevelopment Work for the Full Service Hotel Component will be completed by the anticipated CO Date for the Full Service Hotel. Lessee shall not make any Material Modifications to the Construction Schedule without the prior written approval of Chief Real Estate Officer obtained in accordance with the procedure set forth below in this Subsection 5.3.2.1. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested Material Modifications to the Construction Schedule within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.3.2.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PROPOSED CHANGE(S) TO THE CONSTRUCTION SCHEDULE. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH CHANGE(S) TO THE CONSTRUCTION SCHEDULE."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to the Construction Schedule in writing within said additional twenty (20) day period shall be deemed approval of the same. Concurrently with any disapproval of such proposed change by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to the proposed change together with its proposed modification that will be necessary to obtain Chief Real Estate Officer's approval. Chief Real Estate Officer's approval of any changes to the Construction Schedule shall not relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Redevelopment Work on or before the respective required dates for such commencement and completion set forth in Subsection 5.3.1.1 above.

3.3.1 Lessee acknowledges that the principal inducement to County to enter into this Lease is the timely commencement, performance and completion by Lessee of the Redevelopment Work. If Lessee fails to comply with its obligations under this Article 5 to commence and complete the Redevelopment Work for the Full Service Hotel Component by the Required Construction Commencement Date and Required Construction Completion Date, respectively (as such dates may be extended pursuant to the provisions of this Article 5 or Section 5.7 below), then such failure shall be deemed an Event of Default giving rise to County's remedies under Section 14.3 below.

3.4.1 Lessee acknowledges that certain private enterprises operating on property leased from County adjacent to the Full Service Hotel Property may require access to their

properties via the Full Service Hotel Property at all times during the course of the Redevelopment Work. Lessee shall schedule the Redevelopment Work in such a way as to minimize interruption with such private business enterprises.

5.4 Plans and Specifications.

4.1.1 Schematics and Narrative. Prior to the Effective Date, as required by the Hotel Lease, DPHP submitted to the Chief Real Estate Officer schematic plans together with a narrative description and construction cost estimate summary which clearly delineating the nature, size, configuration and layout of the Improvements to be constructed by Lessee as part of the Full Service Hotel Component (collectively, "**Lessee's Deliverables**"). Any subsequent Material Modifications to Lessee's Deliverables previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.1.1.

4.2.1 Preliminary Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Lessee's Deliverables pursuant to Subsection 5.4.1.1 and in accordance with the deliverables schedule set forth in the Construction Schedule for the Full Service Hotel Component, , Lessee shall, with respect to the Full Service Hotel Component, submit to Chief Real Estate Officer six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Redevelopment Work applicable to the Full Service Hotel Property (collectively, the "**Preliminary Plans**"). The Preliminary Plans for the Full Service Hotel Property shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the Lessee's Deliverables for the Full Service Hotel Property previously approved by Chief Real Estate Officer and be consistent, in all material respects, with the Lessee's Deliverables, the Approved Proposal Submittals previously approved by Chief Real Estate Officer for the Full Service Hotel Property, or otherwise include a detailed explanation of the reasons for all material deviations from the Approved Proposal Submittals. Lessee shall identify on all documents submitted with the Preliminary Plans to the CREO Office, all Material Modifications and other difference in the scope, size, configuration, arrangement or motif of the designed Improvements from those described in the previously approved Lessee's Deliverables. The Preliminary Plans shall be of a detail and scope that is typically associated with design development drawings. Chief Real Estate Officer shall have thirty (30) days from the receipt within which to approve or reasonably disapprove the Preliminary Plans submitted for the Full Service Hotel Component, provided that it shall be reasonable for the Chief Real Estate Officer to disapprove said preliminary plans on the grounds that, among other things, they include Material Modifications to the applicable Lessee's Deliverables, Construction Schedule or Construction Budget previously approved by Chief Real Estate Officer in accordance with this Section 5.4, or otherwise do not reflect a natural evolution from the previously approved Lessee's Deliverables. Chief Real Estate Officer shall have thirty (30) days following receipt of Preliminary Plans for the Full Service Hotel Component or any subsequent change to the Preliminary Plans for the Full Service Hotel Component, within which to approve or disapprove such Preliminary Plans or Material Modification in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

"PURSUANT TO SUBSECTION 5.4.2.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PRELIMINARY PLANS FOR THE HOTEL COMPONENT OR ANY MATERIAL MODIFICATIONS TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH PRELIMINARY PLANS FOR THE HOTEL COMPONENT ANY SUBSEQUENT CHANGE TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT."

Failure of Chief Real Estate Officer to approve or disapprove such submitted Preliminary Plans for the Full Service Hotel Component or any such submitted change to the Preliminary Plans for the Full Service Hotel Component in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed. Any subsequent Material Modifications to the Preliminary Plans previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.2.1.

4.3.1 Final Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Preliminary Plans for the Full Service Hotel Component, Lessee shall submit for approval by Chief Real Estate Officer six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Redevelopment Work for the Full Service Hotel Component, together with one (1) set of appropriate structural computations, identical to those requested or required by the Chief Real Estate Officer incident to the issuance of building permits under the relevant provisions of the Orange County Building Code (collectively, "**Lessee's Final Submittals**"). Lessee shall file duplicate copies of Lessee's Final Submittals with the CREO Office, together with the necessary and appropriate applications for building permits. Lessee shall clearly identify in the Lessee's Final Submittals all differences in the scope, size, configuration, arrangement or motif of the Redevelopment Work from those described in Lessee's Preliminary Plans previously approved for the Full Service Hotel Component. Chief Real Estate Officer shall have thirty (30) days after receipt of Lessee's Final Submittals for the Full Service Hotel Component within which to approve or disapprove such submission, and Chief Real Estate Officer may disapprove such submission only on the grounds that (a) they do not reflect a natural evolution from or that they materially differ from Lessee's Preliminary Plans previously approved for the Full Service Hotel Component, or (b) any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Chief Real Estate Officer as a part of the previously approved Lessee's Preliminary Plans do not meet the requirements for the Improvements set forth in this Article 5. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

"PURSUANT TO SUBSECTION 5.4.3.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS

LETTER TO APPROVE OR DISAPPROVE LESSEE'S FINAL SUBMITTALS. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF LESSEE'S FINAL SUBMITTALS."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to Lessee's Final Submittals in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed.

Concurrently with any disapproval by Chief Real Estate Officer of Lessee's Final Submittals or any subsequent Material Modification thereto, County shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Chief Real Estate Officer's reasons for objecting Lessee's Final Submittals or Material Modifications thereto. Chief Real Estate Officer's approval shall not be required of any non-Material Modification. Any subsequent Material Modifications to any previously approved Lessee's Final Submittals (the "**Final Plans and Specifications**") shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.3.1.

5.5 Conditions Precedent to the Commencement of Construction. Lessee shall not commence any Redevelopment Work or Alterations (including, without limitation, grading or other construction-related activities) (each, an "**Improvement Project**") until each and all of the following conditions have been satisfied:

5.1.1 Permits and Other Approvals. Lessee shall have (a) provided the CREO Office with reasonably satisfactory evidence that Lessee has met all requirements of applicable Governmental Authorities for the commencement of the applicable Improvement Project, and (b) obtained, and furnished the CREO Office with copies of, all permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the commencement of such Improvement Project. With respect to the Redevelopment Work, commencing on the Effective Date and continuing on or before the fifteenth (15th) day of each calendar month thereafter until the commencement of such work, Lessee shall provide County with a written status report documenting Lessee's efforts to obtain all required permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the Redevelopment Work. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

5.2.1 Selection of Improvement Project Professionals. Chief Real Estate Officer shall have provided Lessee with written approval of (a) Lessee's choice of general contractor(s), architect(s) of record, and all licensed engineers of record (including civil and structural) for the Improvement Project, and (b) the terms and conditions of the form contracts to be entered into by and between Lessee and such contractors, architects and engineers with respect to the Improvement Project.

5.3.1 Approval of Improvement Project Contracts. Chief Real Estate Officer shall have provided Lessee with written approval of all contracts to be entered into between Lessee and all general contractor(s), architect(s), licensed engineer(s) of record (including civil and structural) approved pursuant to Subsection 5.5.2.1 above.

5.4.1 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have purchased and furnished County with copies of the following corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the Commencement of Construction of the applicable Improvement Project, which bonds (or other security) must be in form and content reasonably satisfactory to County or provide evidence of construction financing and cash deposits in an amount equal to not less than one hundred percent (100%) of the amount of all Hard Costs for the applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above:

(a) For each applicable Improvement Project, a corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State, with a coverage limit of not less than one hundred percent (100%) of the amount of all Hard Costs for the current applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above. The Performance Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld. The Performance Bond shall name Lessee as principal, said issuer as surety, County as obligee and any Encumbrance Holder as additional obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvement Project.

(b) For each applicable Improvement Project, a corporate surety payment bond, issued by a surety company licensed to transact business as such in the State, with Lessee as principal, said company as surety, County as obligee and any Encumbrance Holder as additional obligee, with a coverage limit of not less than one hundred percent (100%) of the total construction cost anticipated to be incurred in connection the Improvement Project, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the construction of the Improvement Project or for labor used thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld.

In the event that construction is performed by a licensed general contractor on behalf of Lessee in accordance with this Lease, and provided that such contractor provides County with a bond or bonds compliant with this Subsection and are in all material respects reasonably satisfactory to County and otherwise compliant with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required above.

5.5.1 Alternative Security. If Lessee elects not to provide the Payment Bonds and/or the Performance Bonds as set forth above, then Lessee shall provide County any of the following alternative security for each applicable Improvement Project: (a) a completion guaranty, in form and substance reasonably acceptable to Chief Real Estate Officer, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Chief Real Estate Officer, to comply with the terms of such guaranty in view of the potential financial responsibility involved, or (b) a letter of credit on such terms and issued by such bank as Chief Real Estate Officer may approve in Chief Real Estate Officer's sole discretion, in an amount equal to one hundred percent (100%) of the anticipated construction costs for the Improvement Project, and allowing County to draw thereon to complete construction of the Improvement Project if (i) same is not completed by Lessee prior to the required completion date set forth in the applicable construction contract, or (ii) an Event of Default has occurred under this Lease and remains uncured following the expiration of any applicable cure periods under this Lease; or any combination of the above and the bonds described in Subsection 5.5.2.1 above. In addition, Chief Real Estate Officer shall have the authority to accept in lieu of the Payment Bonds, so- called "Subguard" insurance in such amount, on such terms and issued by such carrier as Chief Real Estate Officer may require in Chief Real Estate Officer's sole discretion. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co- beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.5.5.1 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County and opining that the applicable Improvement Project does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.5.2.1 above.

5.6.1 Evidence of Financing. Lessee shall have provided County with evidence that it has access to sufficient financial resources, whether in the form of debt or equity, to complete construction of the Improvement Project within the applicable time periods approved for such construction work and such evidence shall be subject to the approval of Chief Real Estate Officer in Chief Real Estate Officer's reasonable discretion. Without limiting the generality of the foregoing, Lessee shall deliver to the CREO Office, for Chief Real Estate Officer's review and approval, copies of all notes, guaranties, construction loan and/or permanent loan commitments, as applicable, evidence of equity commitments, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Full Service Hotel Property. With regard to the Redevelopment Work, Lessee acknowledges and agrees that, prior to commencing with the Redevelopment Work, it shall be required to satisfy this condition with respect to the Full Service Hotel Component. Lessee shall keep County apprised of the status of its discussions and negotiations with the potential sources of Lessee's funding for the Improvement Project, including the identity of the sources (for both construction and permanent financing) that Lessee is considering for the Full Service Hotel Component from time to time.

5.7.1 Environmental Requirements. Lessee acknowledges that the Full Service Hotel project is governed by an approved Environmental Impact Report ("**EIR**") and a certified Coastal Development Permit ("**CDP**"). Prior to Commencement of Construction, Lessee shall provide evidence that all Redevelopment Work for the Full Service Hotel is consistent with the scope, assumptions, and mitigation measures set forth in the applicable EIR and CDP approvals.

If Lessee proposes any development, redevelopment, or renovation plans that would materially change the scope of the approved Redevelopment Work as analyzed in the applicable EIR or CDP, Lessee shall, at its sole cost and expense, submit to the CREO Office an environmental analysis sufficient to determine whether additional environmental review under CEQA is required, including any supplemental or subsequent environmental review, and shall not proceed with such changes unless and until required environmental approvals are obtained.

5.6 County Cooperation. County, in its proprietary capacity, shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work and Alterations, as applicable. Such cooperative efforts may include the County's joinder in any application for such approval, consent, permit or variance, where joinder therein by the County is required or helpful; provided, however, that such cooperation by County shall be at Lessee's sole cost and expense, and Lessee shall reimburse County for the Actual Cost incurred by the County in connection with such joinder or cooperative efforts within two (2) business days after Lessee's receipt of written demand from County. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code, (b) such approvals in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the Redevelopment Work and Alterations on the Full Service Hotel Property, or the operation and use of such Improvements, (c) the County's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease, and (d) the County's duty to cooperate shall be limited to those items or matters that the County has otherwise approved or consented to in accordance with the terms of the Lease, to the extent the County's approval or consent is required.

5.7 Delays in Commencement and Completion of Redevelopment Work.

7.1.1 Force Majeure. Following Commencement of Construction of the Redevelopment Work for the Full Service Hotel Property, Lessee shall thereafter diligently pursue the completion of the Redevelopment Work for the Full Service Hotel Property by the Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in commencing construction, achieving an Interim Milestone for the Full Service Hotel Property by the applicable Interim Milestone Date, or completing the Redevelopment Work for the Full Service Hotel Property, and in each case such delay is due to Force Majeure, then the Required Construction Commencement Date, Interim Milestone Date and/or the CO Date for the Full Service Hotel shall be extended by the period of the delay caused by such Force Majeure, but only to the extent that a Force Majeure event actually causes a delay in the commencement and/or completion of construction (as applicable). Notwithstanding the foregoing, any extension of time in the Construction Schedule as a result of a Force Majeure event shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Chief Real Estate Officer in writing of the commencement of such delay within ten (10) days after Lessee's discovery of the Force Majeure event. Lessee and Chief Real Estate Officer shall discuss and attempt to agree on the length of time of any entitled delay due to a Force Majeure event. If they are unable to agree within thirty (30) days after

County's receipt of written notice from Lessee of the occurrence of a Force Majeure event, then the length of permitted change to the Construction Schedule shall be determined by arbitration pursuant to Section 5.16 below.

7.2.1 Unreasonable County Action.

(a) In the case of the Redevelopment Work, the definition of Force Majeure shall also include delays in the commencement and completion of the Redevelopment Work due to Unreasonable County Action. For the purposes of this Lease, "**Unreasonable County Action**" means any of the following that occurs after the Effective Date: (i) the County's failure to provide required joinder, if any, as fee title owner of the Full Service Hotel Property, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Redevelopment Work for the Full Service Hotel Component after same have been approved by the CREO Office; or (ii) County's failure, within a reasonable time following receipt of written notice from Lessee requesting same, to take such actions, in its proprietary capacity and at no cost or expense to County, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Redevelopment Work; or (iii) the taking by the County of actions in its proprietary capacity, without Lessee's consent, which are in conflict with County's obligations under this Lease and actually delay the receipt of any permits or approvals required for the Redevelopment Work; or (iv) the County's failure to comply with the time periods imposed upon the County under Section 5.4 above. Nothing contained in Section 5.6 above, this Section 5.7 or any other provisions of this Lease shall be construed as obligating the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. County's failure to expedite County's customary regulatory permit or approval process shall not be deemed an Unreasonable County Action. Notwithstanding anything to the contrary in this Section, Unreasonable County Action will only entitle Lessee to an extension of time, if (A) within five (5) days following Lessee's discovery of the alleged Unreasonable County Action, Lessee notifies the CREO Office in writing of the specific conduct comprising the alleged Unreasonable County Action, and the next opportunity, if any, for County to rectify such alleged conduct, and (B) County fails to cure the alleged Unreasonable County Action by the cure date set forth in such notice. If Lessee fails to deliver such notice to the CREO Office, then notwithstanding any contrary provision of this Section 5.7, Lessee shall not be entitled to any extension for any delay caused by an alleged Unreasonable County Action that occurred prior to the date of Lessee's notice described in this Subsection (a).

(b) Within ten (10) business days following the CREO Office's receipt of a notice alleging Unreasonable County Action, Chief Real Estate Officer shall meet with Lessee or its authorized representative in order to determine whether any Unreasonable County Action has occurred and, if so, how such Unreasonable County Action can be rectified and the duration of the delay caused by such Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred and that County can and will take rectifying action, then Lessee shall be entitled to an extension of the applicable Construction Schedule dates actually impacted by such Unreasonable County Action, subject to the length of such extension not exceeding the actual amount of delay directly caused by the Unreasonable County Action. If Chief Real Estate Officer

determines that Unreasonable County Action has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Chief Real Estate Officer shall establish the length of the delay likely to be caused by the Unreasonable County Action and the applicable Construction Schedule dates will be extended accordingly.

(c) If, within ten (10) business days following the CREO Office's receipt of Lessee's notice alleging Unreasonable County Action, Chief Real Estate Officer and Lessee have not agreed in writing as to whether delay due to Unreasonable County Action has occurred or the length of such delay, then the matter shall be determined by arbitration pursuant to Section 5.16 below.

7.3.1 Recovery Plans. If progress of the Redevelopment Work for the Full Service Hotel Component falls materially behind schedule and the Chief Real Estate Officer reasonably determines that Lessee is in jeopardy of not achieving the CO Date for the Full Service Hotel on or before the Required Construction Completion Date, then County may issue a written notice (each a "**Recovery Plan Notice**") to Lessee identifying areas of concern and requiring that Lessee provide a Recovery Plan detailing the measures to be implemented by Lessee in order to recover any lost time in the Construction Schedule. Lessee shall, within fifteen (15) days after receipt of a Recovery Plan Notice, provide a Recovery Plan to County. Within thirty (30) days after County's receipt of a Recovery Plan from Lessee, County shall instruct Lessee in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto required by County (a "**Construction Change Directive**"). Upon Lessee's receipt of the Construction Change Directive, Lessee shall instruct its contractors to implement the Recovery Plan as soon as reasonably possible and any additional costs associated with implementation of the Recovery Plan shall be borne by Lessee. Lessee's failure (a) to provide a Recovery Plan within the time requirements provided for in this Subsection 7.3.1, or (b) to implement immediately a Recovery Plan upon receipt of a Construction Change Directive to do so, shall each be a material breach of this Agreement.

5.8 Manner of Construction.

8.1.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein including, without limitation, the Redevelopment Work and Alterations, shall be accomplished by Lessee with due diligence, in a first-class workmanlike matter, with good and sufficient materials and in compliance with all Applicable Laws and Lessee's obligations under this Lease. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience to the general public (including without limitation owners and tenants of neighboring properties and slips) caused by such work and shall make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County, its employees, contractors and agents harmless from and against all Claims arising out of or in connection with the performance of such work, except to the extent that such Claims are caused by the willful misconduct or active or sole gross negligence of County, its employees,

contractors or agents. Lessee shall, during the course of such work, (a) utilize such measures customarily used in connection with commercial construction projects to control dust, noise and other undesirable consequences of construction work, and (b) use commercially reasonable efforts to minimize the materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

8.2.1 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Full Service Hotel Property to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Full Service Hotel Property and other persons.

8.3.1 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

8.4.1 Compliance with Insurance, Construction Documents and Laws; Issuance of Permits. With respect to any and all construction work on the Full Service Hotel Property, including without limitation the Redevelopment Work and Alterations, Lessee shall (a) not commence such work until after satisfaction of the conditions set forth in Section 5.5 and providing County with evidence of its compliance with the insurance requirements for such work set forth in Article 9 below, (b) complete such work in substantial compliance with applicable construction documents submitted to and approved by County in accordance with the review and approval procedures set forth in Sections 5.3 and 5.4, and (c) cause such work to be performed in compliance with all required permits and Applicable Laws then in effect, including, without limitation, the LCP and CDP. Lessee shall have the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for such work and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

8.5.1 Notice to Chief Real Estate Officer; Damage to County Improvements. Lessee further agrees to keep the CREO Office apprised of the progress of the Redevelopment Work and any Alterations so that Chief Real Estate Officer may timely inspect the Full Service Hotel Property to assure proper safeguarding of any County-owned improvements existing on or around the Full Service Hotel Property, including but not limited to seawalls and neighboring properties. If any County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Full Service Hotel Property to make such repairs at Lessee's sole cost and expense, in which event Lessee shall reimburse County for all Actual Costs incurred by County in making such repairs within two (2) business days after Lessee's receipt of written demand from County.

8.6.1 Rights of Access. Representatives of the County shall, following reasonable advance written notice to Lessee, have the right to access the Full Service Hotel Property and the Improvements thereon, for the purpose of ascertaining compliance with the terms

and conditions of this Lease, including but not limited to the inspection of construction work being performed. Lessee shall have the right to have a representative present to accompany the representatives of County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage to person or property, County shall have the right to enter upon the Full Service Hotel Property immediately and without notice to or accompaniment by Lessee. In addition, ~~to the extent~~provided that neither Lessee ~~or~~nor any Lessee Parties ~~are not~~is using meeting or banquet rooms ~~or spaces~~ at the Full Service Hotel Property for Lessee's or Lessee Parties activities~~, and such meeting rooms~~ or ~~spaces are not reserved for use by any third party~~business operations, the County may request to use such ~~meeting~~ rooms ~~or spaces~~ for County sponsored meetings consistent with any other applicable policies and procedures for ~~the~~ Lessee's facility~~.~~ for meeting and banquet rooms. Such requests shall be made in writing no more than six (6) times per calendar year and shall be made no more than thirty (30) calendar days in advance, unless Lessee permits an earlier reservation in its reasonable discretion, but in no event shall such usage be on weekends, state/federal holidays, nor in June, July, August, or December. Lessee shall not unreasonably withhold or delay approval of County's request for use of rooms nor shall such use by County interrupt Lessee's use of the Full Service Hotel Property. County's access to and use ~~shall~~of meeting and banquet rooms be at no cost to County ~~or Lessee~~for room usage, and County is responsible for other costs consistent with applicable policies for use of meeting or banquet rooms by others, unless otherwise negotiated between County and Lessee. If a paying third-party requests use of the room, after County's reservation, the Lessee shall notify the County and County shall move its use to an alternate time or location upon agreement of Lessee. Notwithstanding the above, the Lessee reserves the right to cancel, in its reasonable discretion, any County meeting or banquet room use if the Lessee determines that there is a negative impact to its business or Lessee Parties by such use. To the extent that an Encumbrance Holder objects to this provision and provides such objection in writing, County's right to use meeting and banquet rooms under this provision shall be cancelled.

8.7.1 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work or any Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Orange a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, (a) two (2) sets of records drawings and specifications of the Improvements (or such portions thereof as affected by the work and for which as-build plans are customarily prepared), prepared accordance with industry standards and delivered in AutoCad, Revit, or other mutually accepted CAD format and/or BIM format, together with PDF copies for general reference (the "**As-Built Plans**"); (b) a digital storage device or secure electronic transfer, containing the As-Built Plans in a format compatible with County's then current computer aided design and mapping systems, including CAD files and any available native files, with copies of all CAD Files converted to Acrobat Reader (*.pdf format)) ("**CAD Files**"), and (c) a final statement of construction costs for the construction of such Improvements, reasonably detailed by trade and major cost category, all of which may be accomplished by digital delivery.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Redevelopment Work or Alterations shall provide, in form and content satisfactory to County, that (a) all plans and drawings prepared by such architects, design professionals or contractors relating to the Full Service Hotel Property will be deemed "work for hire" and owned by Lessee, (b) such plans and drawings are assigned by Lessee to

County as security for Lessee's performance hereunder, and (c) upon the termination of this Lease for any reason, ownership of such plans and drawings will be deemed vested in County.

5.10 Alterations; Prior Approval Required. Lessee shall not make any Alterations that constitute a Material Modification without the prior written approval of Chief Real Estate Officer, the standard for which approval shall be as set forth in Subsection 1.1.116 above. Notwithstanding anything in this Article 5 to the contrary, all Alterations shall be made and performed by Lessee subject to the terms and conditions of Sections 5.4 through 5.6, inclusive, as well as Sections 5.8 through 5.14, inclusive. For the avoidance of doubt, prior to, and as a condition precedent to any rights under this Lease to commence construction of any Alterations, Lessee shall submit to the CREO Office, for Chief Real Estate Officer's approval, the plans, specifications, budget, schedule and other materials listed above in Section 5.4 pertaining to such Alterations.

5.11 Permitted Alterations. For the avoidance of doubt, no Alteration which is: (a) required by a Governmental Authority in connection with obtaining such Governmental Authority's approval of the applicable Alteration or (b) required to be performed by Lessee in order to comply with Applicable Laws, shall require the prior approval of County unless the same would otherwise constitute a Material Modification as set forth in Subsection 1.1.116 above. Prior to commencing any Alteration involving an expenditure in excess of One Million Dollars ($1,000,000) or where the aggregate cost of Alterations performed within any twelve (12) month period exceeds $1,000,000, Lessee shall (i) provide County with written notice of such anticipated Alteration(s) (including a description of the work to be done, the dollar amount of the Alterations already performed by Lessee during the immediately preceding twelve (12) month period, the estimated budget for the proposed Alterations, and copies of the permits obtained for such work), and (ii) upon completion of such work, furnish to County a copy of As-Built Plans and CAD Files reflecting the work performed.

5.12 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Full Service Hotel Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Full Service Hotel Property or County.

5.13 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Full Service Hotel Property any notices which County may deem necessary for the protection of County, the Full Service Hotel Property and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days' prior written notice of the commencement of any work to be done on the Full Service Hotel Property in order to enable County timely to post such notices.

5.14 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Full Service Hotel Property and the Improvements thereon. Lessee shall have the right to

contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Full Service Hotel Property and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any Claims on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. In the event any lien is recorded on the Full Service Hotel Property, Lessee shall, within twenty (20) days after receipt of notice thereof, furnish a bond which, in accordance with the provisions of Applicable Law, results in the removal of such lien from the Full Service Hotel Property.

5.15 Capital Reserve Fund for Full Service Hotel Component.

15.1.1 Commencing on the Hotel Deemed Completion Date and continuing thereafter through the balance of the Term, Lessee shall establish and maintain a capital replacement reserve fund with a reputable financial institution reasonably acceptable to the Chief Real Estate Officer (the "**Hotel Capital Reserve Fund**") and shall deposit into said fund a minimum of the following amounts: (i) for Operating Year 1, one percent (1%) of Gross Receipts derived from the Full Service Hotel Property for said year; (ii) for Operating Year 2, two percent (2%) of the of Gross Receipts derived from the Full Service Hotel Property for said year; (iii) for Operating Years 3 through 5, three percent (3%) of Gross Receipts derived from the Full Service Hotel Property for each said year; (iv) for Operating Years 6 through 10, four percent (4%) of Gross Receipts derived from the Hotel Property for each such year; and (v) beginning in Operating Year 11 and continuing for each subsequent Operating Year through the balance of the Term, five percent (5%) of Gross Receipts derived from the Full Service Hotel Property for each such year. All interest and earnings on funds deposited into the Hotel Capital Reserve Fund shall be kept in said fund but shall not be credited against the minimum deposits required hereunder. For purposes hereof, "**Operating Year**" shall mean each year following the Hotel Deemed Completion Date.

15.2.1 Within thirty (30) days after the close of each Operating Year during the Term, Lessee shall submit to Lessor (a) evidence certified by Lessee's Chief Financial Officer or an independent account, that Lessee has deposited the required minimum amount in the Hotel Capital Reserve Fund for the previous Operating Year (based upon Lessee's accounting for Gross Receipts that is due at that time), (b) an itemization of all withdrawals from and expenditures of funds deposited into the Hotel Capital Reserve Fund in the preceding Operating Year and the purpose thereof, and (c) the balance remaining in the Hotel Capital Reserve Fund at the time the annual report is prepared. County shall have the right to review, verify, and request clarification of the annual report, and Lessee shall provide supporting documentation upon reasonable request.

15.3.1 The Hotel Capital Reserve Fund shall not be pledged or encumbered, except to (i) a permitted Encumbrance Holder, (ii) a Property Manager (as defined below), or (iii) or to an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J** (each, a "**Hotel Franchisor**"), and all funds shall be used only for capital expenditures for additions, replacements, renovations, or significant upgrades of or to the Improvements on the Full Service Hotel Property, including fixtures and equipment, that have a useful life of not less than five (5) years which benefit the Full Service

Hotel Property and maintain the Full Service Hotel in first-class condition consistent with the operation, maintenance, and appearance of professionally managed, institutional-grade hotels in Southern California, and in conformance with the Minimum Standards set forth in this Lease. All expenditure shall be approved in advance by the Chief Real Estate Officer, which approval(s) shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee acknowledges that its responsibility to maintain, repair, and replace the Full Service Hotel and related Improvements as required hereunder shall not be limited or restricted based on the amount of funds held from time to time in the Hotel Capital Reserve Fund.

15.4.1 Upon the expiration or earlier termination of this Lease, all funds in the Hotel Capital Reserve Fund shall first be allocated to any repairs, maintenance, replacements, and renewals necessary to place the Full Service Hotel in the physical condition required by this Lease, as reasonably determined by County, and any excess shall be the sole property of Lessee. County may direct the use of such funds to complete these obligations, including engaging contractors if Lessee fails to perform. Any excess remaining after such use shall be the sole property of Lessee.

15.5.1 Notwithstanding anything to the contrary in this Subsection 5.15, in the event a permitted Encumbrance Holder, Property Manager or Hotel Franchisor requires that Lessee maintain a capital reserve fund for the Full Service Hotel at the Full Service Hotel Property (a "**Replacement Reserve Fund**"), such Replacement Reserve Fund, to the extent that it is equal to or greater than the Replacement Reserve Fund, shall satisfy the requirement of Lessee to open and maintain the Hotel Capital Reserve Fund hereunder and the Hotel Capital Reserve Fund shall not be required while a Replacement Reserve Fund exists. In the event that a Replacement Reserve Fund is in place after the opening of the Hotel Capital Reserve Fund, Lessee shall be entitled to disburse any and all funds held in the Hotel Capital Reserve Fund to the Replacement Reserve Fund and close the Hotel Capital Reserve Fund thereafter. Any Replacement Reserve Fund shall be subject to the same annual reporting, audit, and fund-use requirements set forth herein for the Hotel Capital Reserve Fund.

5.16 Expedited Arbitration. Given the importance of completing the Redevelopment Work in accordance with the Construction Schedule, the Parties acknowledge and agree that it will be in both Parties' best interests to submit to expedited binding arbitration in accordance with the procedures set forth in this Section 5.16, all disputes between the Parties concerning the reasonableness of the Chief Real Estate Officer's withholding of approvals required pursuant to this Article 5 with respect to the Redevelopment Work. Therefore, if Lessee delivers written notice to County disputing the reasons for any denial or withholding of such approvals, then either Party shall have the right to submit such dispute to expedited, binding arbitration before an arbitrator selected by the Parties in accordance with the American Arbitration Association's (the "**AAA**") Dispute Resolution Board Guideline Specification, Section 1.02 (D) (the "**DRB Specification**"), dated December 1, 2000. As soon as reasonably possible following the Effective Date, the Parties shall initiate the procedure to nominate an arbitrator in accordance with the DRB Specification and with no direct or indirect affiliation with either Party, with the intention that such arbitrator shall, to the extent reasonably possible, be the arbitrator appointed to decide on all disputes between the Parties to be decided by arbitration pursuant to this Section 5.16. When evaluating claims regarding the reasonableness of the County's withholding any approval, the arbitrator shall be instructed to give primary consideration to the Parties' intent as reflected by the provisions set forth in this Lease and may consult with, or seek information from, either or both Parties, or any

other persons with special knowledge or expertise relating to the dispute in question including, without limitation, any architect or contractor engaged to perform work at the Full Service Hotel Property. The arbitrator shall be instructed to adjudicate solely on the reasonableness of the County's denial of approval, and to deliver written notice of his/her findings to both Parties as soon as reasonably possible. The arbitrator's determination as to the reasonableness of a denial of approval shall be final and binding on the Parties. Each Party shall be responsible for one-half (1/2) of (a) the Arbitrator's fees and costs, and (b) costs associated with renting a venue for the arbitration. If two or more disputes exist at the same time that are the subject of arbitration in accordance with this Section 5.16, then the Parties shall use their commercially reasonable best efforts to cause all such disputes to be arbitrated in one arbitration proceeding, rather than successive proceedings or concurrent but separate proceedings.

6. CONDEMNATION.

6.1 Definitions.

1.1.1 Condemnation. "**Condemnation**" means (a) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (b) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

1.2.1 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Full Service Hotel Property; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

1.3.1 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

1.4.1 Condemnor. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Full Service Hotel Property, any Improvements on the Full Service Hotel Property or any interest in this Lease by Condemnation, the rights and obligations of the Parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Full Service Hotel Property is totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Full Service Hotel Property or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Full Service Hotel Property is rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Full Service Hotel Property shall be deemed unsuitable

for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the Full Service Hotel Property could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5 below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Full Service Hotel Property as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Full Service Hotel Property is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Full Service Hotel Property not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Full Service Hotel Property not so taken to the fair market value of the entire Full Service Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Full Service Hotel Property which remains after the Partial Taking bears to the fair market value of the entire Full Service Hotel Property immediately prior to the Partial Taking. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waivers. Each Party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either Party to petition the Orange County Superior Court to terminate this Lease in the event of a Partial Taking of the Full Service Hotel Property.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

7.1.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Full Service Hotel Property and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, the Chief Real Estate Officer and Lessee shall promptly meet and negotiate in good faith to resolve any dispute. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (a) the then value of County's interest in the Full Service Hotel Property (including its interest hereunder), and (b) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments. In case of a Condemnation described in this Subsection 6.7.1.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

7.2.1 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Subsection 6.7.1.1 above.

7.3.1 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of: (i) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Full Service Hotel Property (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term, plus (ii) the present value of the portion of the Full Service Hotel Property (with the Improvements thereon) subject to the taking from and after the expiration of the Term, or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Full Service Hotel Property (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term; and then,

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Full Service Hotel Property plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then,

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Full Service Hotel Property, determined as of the date of such taking, less payments made under paragraph "Second" above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4; and then,

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Lease, and such total Condemnation or Partial Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment to Lessee of all sums held by County or third parties in the Security Deposit.

7.4.1 Disputes. Any dispute under this Article 6 concerning the fair market value of the Full Service Hotel Property or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the Parties, shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to One Hundred Thousand Dollars ($100,000.00) until such time as the Redevelopment Work for the Full Service Hotel Property has been completed and the CO Date for the Full Service Hotel has occurred (the "**Final CO Date**"). Following the Final CO Date, such sum shall be reduced to Forty Thousand Dollars ($40,000.00). As long as no Event of Default by Lessee then exists under the Lease, such sum shall be reduced to Zero Dollars ($0.00) upon the date which is ten (10) years following the Final CO Date. The Security Deposit shall secure Lessee's performance of all the terms, covenants, and conditions of this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, (b) any other Events of Default of Lessee under this Lease, and (c) any other amounts or damages to which County is entitled under this Lease. The Security Deposit shall be applied at the discretion of County, and may be commingled by County with County's other funds. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other

approved investment instrument acceptable to County with respect to form, content and issuer, in County's sole discretion. To the extent the Security Deposit is cash, a letter of credit or other non-interest bearing form, no interest shall accrue or be paid thereon. However, if the Security Deposit is in a form of a certificate of deposit, savings deposit, or is otherwise interest bearing, then as long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease. Regardless of the form of the Security Deposit, all or any portion of the principal sum thereof shall be available unconditionally to Chief Real Estate Officer for correcting any default or breach of this Lease by Lessee and Lessee's successors or assigns, or for payment of expenses incurred by County as a result of an Event of Default hereunder by Lessee or Lessee's successors or assigns, as set forth herein.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 14.1.2.1, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

7.4 Waivers. Lessee hereby waives the provisions of California Civil Code Section 1950.7, and all other provisions of Applicable Law, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

8. INDEMNITY; RELEASE; LEASE CHALLENGE.

8.1 Indemnification. Except to the extent caused by the willful misconduct or active or sole gross negligence of any County Indemnified Party, from and after the Original Effective Date, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County, the Board, and their respective, officers, elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, tenants, licensees, invitees, successors and assigns (collectively, "**County Indemnified Parties**" and each individually, "**County Indemnified Party**") and the Full Service Hotel Property, from any and all claims, costs, losses, demands, damages, expenses (including, without limitation, expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County) or liability (collectively, "**Claims**"), to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Full Service Hotel Property or the Improvements by Lessee or its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, including any occurrence in or on the Full Service Hotel Property or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any Applicable Law, (d) the performance of the Redevelopment Work, the Renovation Work or any Alterations by Lessee or Lessee's agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, or (e) challenges to the term of this Lease brought by any party, including any agency with oversight of public tidelands ("**Lease Challenge**"). The obligation of Lessee to so relieve, defend, indemnify, protect, and save harmless the County Indemnified Parties shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. If any County Indemnified Party or the Full Service Hotel Property is named as co-defendant in a lawsuit that is the subject of this Article 8, Lessee shall immediately notify County of such fact in writing and shall represent such County Indemnified Party or Full Service Hotel Property in such legal action unless County undertakes to represent such County Indemnified Party or Full Service Hotel Property as co-defendant in such legal action, in which event, Lessee shall pay to County its litigation costs, expenses, and attorneys' fees. If, in connection with any such lawsuit, judgment is entered against any County Indemnified Party or the Full Service Hotel Property and Lessee by a court of competent jurisdiction because of the concurrent liability of such County Indemnified Party and Lessee, County and Lessee agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.2 Release. Lessee hereby releases and waives all Claims and recourse against the County Indemnified Parties, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, except Claims arising from the willful misconduct or active or sole gross negligence of County Indemnified Parties. For the avoidance of doubt, and without limiting the foregoing, Lessee hereby waives, withdraws, releases, and relinquishes any and all Claims (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County and the County Indemnified Parties which Lessee now has or may have or asserts in the future which are based upon any (a) defects in the physical condition of the Full Service Hotel Property and the soil

thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument, except as set forth in Section 10.12, or (b) injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Lessee, of Lessee's employees, invitees, customers, or of any other person in or about the Full Service Hotel Property or the Improvements caused by or resulting from any peril which may affect the Full Service Hotel Property or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Full Service Hotel Property or the Improvements, whether such damage or injury results from conditions arising upon the Full Service Hotel Property or from other sources. Without limiting the generality of the waivers set forth in this subsection, and notwithstanding anything in this Lease to the contrary, at no time shall County be responsible or liable to Lessee for any lost profits, lost economic opportunities or any form of consequential, punitive or exemplary damages as the result of any actual or alleged breach by County of its obligations under this Lease. It is the intention of the Parties that the foregoing release shall be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. Lessee realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit County, the County Indemnified Parties and the Full Service Hotel Property from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Lessee hereby expressly waives any and all rights and benefits conferred upon it by 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.

By initialing this subsection below, Lessee acknowledges that it has read, is familiar with, and waives all benefit of the provisions of California Civil Code Section 1542 set forth above to the extent described in this subsection, and agrees to all of the provisions of Section 8.2 above.

_____
Lessee's Initials

8.3 Lease Challenge. Notwithstanding anything to the contrary in this Lease, including without limitation Sections 8.1 and 8.2 hereof, in the event of a Lease Challenge (whether or not such Lease Challenge prevails), the terms and conditions of this Section 8.3 shall prevail. If any Claim is asserted by any third party challenging the validity, enforceability or effectiveness of the approval of this Lease or the authority to enter into this Lease for the Term set forth herein, County shall reasonably cooperate with Lessee, at Lessee's sole cost and expense, in defending, resolving or mooting such challenge, and, notwithstanding anything to the contrary in this Lease, before County may seek indemnification from Lessee arising from such challenge pursuant to the terms and conditions of this Lease, Lessee shall have the right, exercisable by written notice to County,

to cause the Term of this Lease to be reduced, reformed, reverted or otherwise modified to the longest term then permitted by Applicable Law, including the Tidelands Grant. Upon Lessee's exercise of such right, County and Lessee shall promptly execute and record, if applicable, an amendment, memorandum, stipulation, corrective instrument, or other document reasonably necessary to evidence such reduced, reformed, reverted or modified terms to comply with Applicable Law, including the Tidelands Grant, or re-execute and record, if applicable, a lease to replace this Lease, in the same form of this Lease except for those terms necessary to comply with Applicable Law, including the Tidelands Grant. No such reformation, reversion, modification, termination or reinstatement shall constitute a default by Lessee, shall give rise to any termination right in favor of County, or shall otherwise affect the validity or enforceability of this Lease except solely with respect to the length of the Term as so reduced, reformed, reverted or modified or the reinstatement of the Prior Harbor Lease, as applicable. County shall not settle, compromise, confess judgment, or agree to any relief in connection with any such challenge without Lessee's prior written consent, which consent may be withheld in Lessee's reasonable discretion if such settlement, compromise, judgment, or relief would affect the Term, Lessee's leasehold estate, Lessee's use rights, Lessee's financing, or Lessee's rights or obligations under this Lease

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease, Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State by the Insurance Commissioner and having a "general policyholders rating" of at least A- and VIII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency. Notwithstanding anything to the contrary in this Lease, in the event DPHP or any Affiliate of DPHP provides and maintains the insurance required pursuant to this Article 9 for the entire Harbor Property, Lessee shall be deemed to be in full compliance with the requirements of this Article 9.

1.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent). Coverage shall include products completed operations, personal and advertising injury, contractual liability, abuse/misconduct, and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	$20,000,000
Products/Completed Operations Aggregate:	$2,000,000
Personal and Advertising Injury:	$1,000,000
Contractual Liability:	$1,000,000
Abuse/Misconduct:	$1,000,000
Each Occurrence:	$1,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least Two Million Dollars ($2,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1.1

(c) excess liability policies must "follow form" and afford no less coverage than the primary coverage.

1.2.1 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than Two Million Dollars ($2,000,000) combined single limit , for each accident and providing coverage for all "owned", "scheduled", "hired", "non-owned" vehicles, or coverage for "any auto." Coverage may be satisfied through a combination of primary coverage and excess liability. During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

1.3.1 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State and for which Lessee is responsible (if applicable), and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

1.4.1 Commercial Property insurance covering damage to the Full Service Hotel Property, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or its equivalent, excluding earthquake, and including Ordinance or Law Coverage, written for $5,000,000, provided that upon the commencement of construction of the Full Service Hotel, such limit shall be the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Full Service Hotel Property and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Full Service Hotel Property or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this Subsection 9.1.4.1 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5.1 below is carried.

1.5.1 For construction projects on the Full Service Hotel Property, including the Redevelopment Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to reasonably determine the coverage and coverage limit required on a project-by-project basis):

(a) Builder's Risk Course of Construction. Such insurance shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or equivalent. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, mechanical / cold testing, preservation of property, excavation costs, landscaping, shrubs

and plants, wind/hail, water damage, flood, earth movement and full collapse coverage during construction (without restricting collapse coverage to specified perils). This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

(b) General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (i) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (ii) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

(c) Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Redevelopment Work or Alterations. Such insurance shall include coverage for all "owned," "scheduled", "hired", and "non-owned" automobiles, or coverage for "any auto."

(d) Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, consultants, etc.). If coverage is written on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5.1(d) shall be (i) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Chief Real Estate Officer for the prime architect in connection with any subsequent Alterations), and (ii) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Chief Real Estate Officer shall have the discretion to reduce the coverage limits under this clause (ii) if appropriate in the judgment of Chief Real Estate Officer based on the nature and scope of the services being provided.

(e) Contractors Pollution Liability. Such insurance shall be required if construction requires remediation of pollutants. Such insurance shall also cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of pollutants in compliance with governmental mandate or order. If the pollutants will be removed from the construction site, pollution liability shall also include Non-Owned Disposal Sites (NODS). Pollution Liability coverage is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for the Redevelopment Work or Alterations. If coverage is written

on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project.

1.6.1 If the use of the Full Service Hotel Property or Improvements involves any manufacture, distribution, selling, or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

1.7.1 Contractor's Pollution Liability by Lessee no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants, and Non-Owned Disposal Sites (NODS). If coverage is written on a claims made form, it shall also provide an extended two-three year reporting period commencing upon termination or cancellation of the construction project.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4.1 and 9.1.5.1(a) shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 13.8, upon the occurrence of any loss, in the event the proceeds of property and builder's risk insurance are more than $500,000, the insurance proceeds above such amount shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that the first $500,000 of such insurance proceeds, or if the insurance proceeds received with respect to a loss are less than $500,000 (in each case as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 13.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee. Notwithstanding anything to the contrary contained in this Lease, the settlement, collection and application of casualty insurance proceeds shall be governed by the terms of the loan documents entered into between Lessee and Lessee's Encumbrance Holder.

9.3 General Insurance Requirements. A duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, has been filed with the CREO Office and evidence of the insurance coverage required under Subsection 9.1.5.1 shall be required to be delivered by Lessee

prior to the commencement of any Redevelopment Work or Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $50,000 or such other commercially reasonable amount as approved by the Chief Real Estate Officer; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the CREO Office or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with the CREO Office. Subject to the limitations set forth above in this Article 9, any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(1) that County and its respective Board and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(2) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(3) ill insurance policies, shall waive all right of subrogation against County and its respective Board and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(4) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(5) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(6) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(7) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(8) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(9) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor. In the event the coverage required hereunder becomes obsolete or unavailable from domestic insurance companies meeting the requirements of this Lease (excluding customized policies such as those from Lloyds of London), the parties shall reasonably cooperate to modify the coverage on commercially reasonable terms.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1.1, 9.1.2.1 and 9.1.3.1 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date, consistent with the amounts of such liability insurance then being required by County for other comparable facilities or businesses within the County, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Full Service Hotel Property and such other developments. In no event shall the amounts of liability insurance be decreased as a result of such adjustment. Following such adjustment, the Parties shall execute an amendment to this Lease setting forth the adjusted insurance provisions.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Full Service Hotel Property which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within seventy-two (72) hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Continuously throughout the Term, Lessee shall maintain the Full Service Hotel Property, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Improvements), in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws and in conformance with the Minimum Standards at Lessee's sole cost and expense; provided, however, prior to the earlier of the CO Date or the Required Construction Completion Date for the Full Service Hotel Property, Lessee shall not be obligated to perform any capital improvements for the Full Service Hotel Property that would otherwise be required in order to comply with the Minimum Standards if (A) such capital improvements would need to be removed, replaced or substantially altered in

connection with the Redevelopment Work, or (B) would be materially more expensive to construct or install as an isolated improvement relative to the cost to construct or install such improvement as a part of the Redevelopment Work, as reasonably approved by County. Upon completion of the Redevelopment Work, the Full Service Hotel Property shall be maintained at a level commensurate with the operation and maintenance of institutional grade hotels in the Southern California area and, at a minimum, in conformance with the Minimum Standards. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Full Service Hotel Property and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Full Service Hotel Property in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Full Service Hotel Property under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Chief Real Estate Officer to Lessee incident to the provisions of this Article 10. For the avoidance of doubt, and by way of example, Lessee's responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace each of the following (the location of each of which is identified on Exhibit H attached hereto unless otherwise specified elsewhere in this Lease): (a) seawall (provided, however, that Lessee's replacement obligation for the seawall shall be limited to replacing specific segments or portions thereof located on the Full Service Hotel Property only on as-needed basis, subject to and in compliance with all Applicable Laws, because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall unless the entire seawall is damaged or destroyed, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property, Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates), or (ii) third parties that are not agents, employees, tenants of Lessee or its Affiliates, or contractors working at the direction of the Lessee or its Affiliates); (b) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Full Service Hotel Property; (c) shelters, restrooms and park-scape within the parks located within the Full Service Hotel Property designated on Exhibit A-1; ; and (d) all trees and parking lots within the Full Service Hotel Property boundaries.

Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Full Service Hotel Property and the building footprints on the Full Service Hotel Property at a level commensurate with the standards set forth above with respect to the Full Service Hotel Property. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Full Service Hotel Property free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Full Service Hotel Property at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Full Service Hotel

Property. The exclusion of the Excluded Improvements from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Improvements caused by Lessee, its agents, employees, Sublessees or contractors, or by Improvements installed or constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Specific Maintenance Obligations. Without limiting the generality of Lessee's maintenance obligations in Section 10.1 above, the following provisions shall also apply during the Term:

2.1.1 Intentionally Deleted.

2.2.1 Environmental Policies; Water Quality and MS4 Program.

(a) Protection of Environment. Without limiting Lessee's obligations elsewhere in this Lease, during the Term, Lessee shall take all reasonable measures available to:

(1) Avoid contributing any pollutants to the atmosphere or any littering of land or water caused by or originating in, on, or about Lessee's facilities.

(2) Maintain a reasonable noise level on the Full Service Hotel Property so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

(3) Ensure that lighting fixtures on the Full Service Hotel Property do not emit light in a manner that could negatively affect neighboring homeowners, or the safe operation of cars, boats, or airplanes in the area.

(4) Prevent all pollutants from Lessee's operations on the Full Service Hotel Property from being discharged, including petroleum products of any nature, in accordance with any applicable permits, provided that (i) Lessee is in compliance with all applicable laws and permit conditions, (ii) any such permitted discharge does not result in a violation of Applicable Law or applicable permit conditions, and (iii) any required Landlord consent has been obtained. Lessee and all of Lessee's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants emanating from the Full Service Hotel Property do not enter the Municipal Separate Storm Sewer System (including but not limited to curbs and gutters and drainage channel) (collectively, "**MS4**"), or directly impact "**Receiving Waters**", which include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean.

(5) The County may enter the Full Service Hotel Property and/or review Lessee records at reasonable times and upon reasonable notice (except in emergency circumstances) to assure that activities conducted on the Full Service Hotel Property comply with the requirements of this Subsection.

(b) Water Quality and MS4. During the Term, Lessee shall comply with any water quality management requirements applicable to the Full Service Hotel Property that are adopted or implemented pursuant to National Pollutant Discharge Elimination System ("**NPDES**") permits by the County, the Orange County Flood Control District and cities within the County, as co-permittees (hereinafter collectively referred to as "**County Parties**") as such requirements relate to the permits addressed in this subsection. Such requirements are imposed to comply with permitting or similar obligations imposed on the County Parties, and may be amended or modified from time to time, provided that they applied on a non-discriminatory basis. Such requirements shall include, without limitation, the following:

(1) The Parties acknowledge that the Premises are located within the jurisdiction of the County of Orange and may also be subject to the jurisdiction of the City or other applicable municipal agencies. The Parties further acknowledge that water quality and MS4 requirements applicable to the Full Service Hotel Property may be enforced by the County, the City, or other applicable regulatory agencies having jurisdiction over the Full Service Hotel Property, consistent with their respective authorities under applicable law. Enforcement of such requirements shall be administered by the applicable regulatory authority having jurisdiction over the subject matter.

(2) Lessee and all of Lessee's Sublessees, agents, employees and contractors shall use commercially reasonable and diligent efforts to conduct operations under this Lease so as to ensure that pollutants generated from the Full Service Hotel Property do not enter the MS4, and do not directly impact Receiving Waters.

(3) The San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County Parties. The NPDES permits regulate the discharge of pollutants from areas within the County, including the Full Service Hotel Property leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the MS4 or Receiving Waters. For the avoidance of doubt, the County Parties shall retain the right to enter upon the Full Service Hotel Property to perform such actions as are necessary or to the extent reasonably necessary for the County Parties to comply with the terms, conditions and requirements of the NPDES, Stormwater Permits, and similar water quality rules and regulations promulgated from time to time by federal, state and/or local regulatory agencies.

(4) To ensure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction. The DAMP and LIP establish Best Management Practices ("**BMPs**") that must be implemented by parties using properties within the County. As used herein, a BMP is defined as a technique, measure, or structural

control that is used under given conditions to manage the quantity of stormwater and improve its quality in a cost-effective manner. These BMPs are found within the County's LIP and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as ("**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

(5) BMP Fact Sheets that apply to uses authorized under this Lease include, but are not limited to, the BMP Fact Sheets that are attached hereto as **Exhibit I.** These BMP Fact Sheets may be modified during the Term of the Lease, and Lessee shall be solely responsible for monitoring, obtaining, and complying with any such modified BMP Fact Sheets, as updated from time to time by applicable regulatory authorities, regardless of whether notice is provided by Landlord. Lessee, its agents, contractors, representatives and employees and all persons authorized by Lessee to conduct activities on the Full Service Hotel Property, shall, throughout the Term of the Lease, comply with the BMP Fact Sheets, as amended, with all applicable Stormwater Permits requirements. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

(6) Lessee may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the CREO Office for review and approval prior to implementation.

(7) Chief Real Estate Officer or designated representative may enter the Full Service Hotel Property and/or review Lessee's records at any reasonable time during normal business hours to ensure that activities conducted on the Full Service Hotel Property comply with the requirements of this section. Lessee may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

(8) While Lessee is permitted to use the existing sanitary sewer and MS4 infrastructure on or serving the Full Service Hotel Property for discharges permitted under Applicable Law, County reserves the right to require Lessee to participate in a water quality management plan to minimize impacts on harbor and ocean waters on a non-discriminatory basis similar to other retail, commercial, hospitality, restaurant, marina and public park facilities in the County if required in order to comply with permitting or similar obligations imposed on the County Parties.

(9) Notwithstanding anything to the contrary contained herein, Lessee shall not be responsible for remediating, managing or reducing contamination emanating from the existing drainage channel which discharges into the harbor, except to the extent that such contamination is caused by or results from the acts or omissions of Lessee or any Lessee's Parties' in connection with their use or occupancy of the Full Service Hotel Property. Lessee shall not be responsible for

pollutants entering into the drainage channel from boat-related products (including paint and its components such as lead, copper, and zinc) originating from vessels in the harbor; provided, however, that Lessee shall remain responsible to the extent any such pollutants are caused or materially contributed to by Lessee or Lessee Parties. The Parties acknowledge that the Harbor was listed as impaired for copper, zinc, and bacteria in the water column in 2010, with a Total Maximum Daily Load requirement targeted for completion (and in place) in 2019. The cost of compliance for any existing or future compliance with the foregoing Total Maximum Daily Load requirement shall not be borne by the Lessee, however this clause shall not limit Lessee's other obligations under this Subsection 10.2.2.1.

10.3 Maintenance Deficiencies.

3.1.1 Notice; Time to Cure. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.2.2.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Subsection 10.3.1.1), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 14 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

3.2.1 Determination of Deficiency Period. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.3 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to the CREO Office within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with the CREO Office, then Chief Real Estate Officer shall exercise Chief Real Estate Officer's reasonable discretion in considering Lessee's

contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date the CREO Office receives written notice of such contest and continuing until Chief Real Estate Officer notifies Lessee in writing that Chief Real Estate Officer accepts or denies Lessee's contest. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.3 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.3 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.4 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Full Service Hotel Property or any Improvements located thereon (other than the Excluded Improvements, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or to Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.4, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Full Service Hotel Property where all or substantially all of the Improvements on the Full Service Hotel Property (other than the Excluded Improvements) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

4.1.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.4.1.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

4.2.1 No more than sixty (60) days following the giving of the notice required by Subsection 10.4.1.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Full Service Hotel Property; secure the Full Service Hotel Property against trespassers; and, at County's election, remove all remaining Improvements on the Full Service Hotel Property.

4.3.1 No more than sixty (60) days following the giving of the notice required under Subsection 10.4.1.1, Lessee delivers to County a quitclaim deed to the Full Service Hotel Property in recordable form, in form and content satisfactory to County and/or with such other

documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Full Service Hotel Property and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

4.4.1 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.4.1.1 County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.5 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Full Service Hotel Property where the damage or destruction results from a cause required to be insured against by this Lease.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Chief Real Estate Officer may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as reasonably established by Chief Real Estate Officer, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 14.5.

10.7 County Obligation to Make Repairs; Breakwater and Bridge Structure. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Full Service Hotel Property; provided, however, that Chief Real Estate Officer shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the Breakwater and the structural aspects of the bridge depicted on **Exhibit H** attached hereto (the "**Bridge Structure**") (both of which structures the Parties acknowledge and agree are not part of the Full Service Hotel Property) if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, or otherwise. Chief Real Estate Officer shall undertake such maintenance, repair and replacement, if any, with due diligence consistent with the funding provided. In the event the Breakwater or the Bridge Structure is in imminent danger of collapse or has collapsed, Chief Real Estate Officer shall promptly request funding from the Board for repair or replacement as may be necessary to avoid or repair such collapse. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Breakwater or the Bridge Structure. Furthermore, nothing herein shall relieve Lessee from liability for any damage to either the Breakwater or the Bridge Structure caused by Lessee, its agents, employees, Sublessees or contractors, or by the construction of the Improvements by or on behalf of Lessee.

10.8 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Full Service Hotel Property. Any entry by County onto the Full Service Hotel Property pursuant to this Section 10.8, and any entry onto the Full Service Hotel Property to perform work on the Breakwater pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (a) prior to entry onto the Full Service Hotel Property, County shall cause each of

its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Full Service Hotel Property, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee and any then-current Encumbrance Holder as an additional insured; (b) County's contractors shall comply with industry standard safety requirements; and (c) County shall repair, or cause its contractors to repair, any damage to the Full Service Hotel Property caused by the activities of County and/or it contractors on the Full Service Hotel Property pursuant to this Section 10.8 or Section 10.7. If repair of the Breakwater requires access to the Full Service Hotel Property, County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.9 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Full Service Hotel Property or the Improvements from any cause whatsoever.

10.10 Waivers. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of any statutes (including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code) or court decisions which provide a party to a Lease with a right to abatement of rent or termination of this Lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

10.11 Accessibility Disclosure. In compliance with its disclosure obligations under Section 1938 of the California Civil Code, County hereby notifies Lessee that, as of the Effective Date, the Full Service Hotel Property has not been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, County hereby advises Lessee as follows:

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If Lessee elects to have a Certified Access Specialist ("**CASp**") inspect the Full Service Hotel Property, then Lessee shall: (a) provide County with prior written notice of such election and mutually agree with County on the arrangements for the time and manner of the CASp inspection, (b) promptly give County a copy of the resulting report (the "**CASp Report**") upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CASp Report and for completing any repairs or modifications that are necessary to correct violations of construction-

related accessibility standards noted in the CASp Report and any additional work necessitated thereby (all of which Lessee shall complete as expeditiously as possible following the issuance of the CASp Report and in compliance with this Lease (including without limitation Section 5), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CASp Report to any person other than County (and except as necessary for Lessee to complete the repairs and corrections of violations noted in the CASp Report) without first obtaining the prior written consent of County (which consent shall not be unreasonably withheld) or if disclosure is required by law. Lessee's obligation to indemnify County and the County Indemnified Parties under Section 8.1 above shall apply equally to Claims arising out of any CASp investigation initiated by Lessee, including as a result of any violations discovered thereby.

10.12 Dana Point Harbor Water Quality. Notwithstanding anything to the contrary set forth in this Lease, Lessee shall not be responsible during the Term for the cost of undertaking any improvements required to: (a) improve the circulation of water in the Dana Point Harbor, (b) to improve the water quality in the Dana Point Harbor, or (c) to engage in other activities designed to improve the environmental condition of Dana Point Harbor over the condition as it exists on the Original Effective Date, and/or as might be required as a part of the Redevelopment Work. The foregoing shall not negate or limit Lessee's responsibilities under Subsections 3.2.2.1(f) or 10.2.2.1.

11. OPERATIONAL OBLIGATIONS OF LESSEE.

11.1 Standards of Operation. Continuously throughout the Term, Lessee shall operate the Full Service Hotel Property in a manner reasonably comparable to other comparable facilities or businesses within the County, and in accordance with the Minimum Standards. The Minimum Standards shall not be modified without the prior written consent of the Chief Real Estate Officer, which consent may be granted or withheld in the Chief Real Estate Officer's sole discretion.

11.2 Property Manager. Continuously throughout the Term, Lessee shall employ a competent manager for the Full Service Hotel Property ("**Property Manager**"), who shall be responsible for the day to day full-time management, operation, maintenance, cleanliness, and general order of the Full Service Hotel Property. The Property Manager shall have the requisite skill, experience and expertise for the type of operation being conducted on the Full Service Hotel Property and (i) the Property Manager and Hotel Franchisor shall each be an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, (ii) the executive management of each of the Property Manager and Hotel Franchisor responsible for the management of the Full Service Hotel shall have a minimum of ten (10) years' experience in the successful franchising of hotels of comparable quality to the Full Service Hotel to be operated and maintained on the Full Service Hotel Property, and (iii) each of the Property Manager and Hotel Franchisor shall have or will be in a position to participate in a nationwide reservation system. County hereby approves the Property Managers and Hotel Franchisors identified on **Exhibit J** without the need for further County consent; provided, however, prior to engaging such pre-approved Property Manager or Hotel Franchisor, Lessee shall nevertheless be required to provide County with the information that would have been required of Lessee if the County's approval of such Property Manager or Hotel Franchisor were required. Any Property Manager or Hotel Franchisor that is not a pre-approved Property Manager

per **Exhibit J** or that is not an Affiliate of Lessee shall be subject to Chief Real Estate Officer's prior written approval, which approval shall not be unreasonably withheld. Concurrently with submitting its request for approval of a Property Manager or Hotel Franchisor, Lessee shall submit to Chief Real Estate Officer all information needed to demonstrate compliance with the criteria set forth herein and thereafter, upon Chief Real Estate Officer's request, Lessee shall cooperate with County and provide such additional information as Chief Real Estate Officer may reasonably request relating to such criteria or other factors bearing upon Chief Real Estate Officer's approval of the Property Manager. If Chief Real Estate Officer disapproves a proposed Property Manager or Hotel Franchisor, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Each approved Property Manager and Hotel Franchisor shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Full Service Hotel Property, including the authority to enforce compliance by Lessee's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall provide County with the name and contact information for the Property Manager (and Hotel Franchisor) for the Full Service Hotel Property, and shall continuously throughout the Term update such information as changes occur. Lessee expressly agrees that any notice herein required to be served upon Lessee may, at the option of County or Chief Real Estate Officer, be personally served upon the Property Manager and that such service shall have the same force and effect as service upon Lessee. If during the Term in the reasonable judgment of Chief Real Estate Officer the then current Property Manager or Hotel Franchisor is performing in an unsatisfactory manner, then the Chief Real Estate Officer shall advise Lessee of the particular deficiencies in such operations and Lessee shall use commercially reasonable and diligent efforts to cause such Property Manager or Hotel Franchisor, as applicable, to correct such behavior or shall replace such Property Manager or Hotel Franchisor with a new management firm or Hotel Franchisor which complies with the requirements above. If during the Term the then current Property Manager or Hotel Franchisor terminates its contract, then Lessee shall have the right to replace such Property Manager or Hotel Franchisor with another Property Manager or Hotel Franchisor which complies with the requirements above. Notwithstanding anything in this Lease to the contrary, and for the avoidance of doubt, Lessee shall be solely responsible to County for the continued operation of the Full Service Hotel Property in accordance with the terms and conditions of this Lease, and Lessee's employment of a Property Manager or a Hotel Franchisor to assist Lessee with the same shall not relieve Lessee of liability for any breach of such obligations.

11.3 Right to Work and Minimum Wage Laws.

3.1.1 In accordance with the United States Immigration Reform and Control Act of 1986, Lessee shall require its employees that directly or indirectly service the Full Service Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Lessee shall also require and verify that its contractors or any other persons servicing the Full Service Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

3.2.1 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and California Labor Code Section 1178.5, Lessee shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service

the Full Service Hotel Property, in any manner whatsoever. Lessee shall require and verify that all its contractors or other persons servicing the Full Service Hotel Property on behalf of the Lessee also pay their employees no less than the greater of the Federal or California Minimum Wage.

3.3.1 Lessee shall comply and verify that its contractors comply with all other Federal and State laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Full Service Hotel Property or terms and conditions of this Lease.

3.4.1 Notwithstanding the minimum wage requirements provided for in this Section 11.3, Lessee, where applicable, shall comply or cause its contractors or subcontractors to comply with the prevailing wage and related requirements, as provided for in Subsection 11.4 below.

11.4 Labor Code Compliance. Lessee acknowledges and agrees that all construction performed by or on behalf of Lessee per the terms of this Lease shall be governed by, and performed in accordance with, all Applicable Laws, including without limitation, and to the extent applicable, the California Labor Code and the provisions thereunder concerning the payment of prevailing wage.

11.5 Public Contract Code Compliance. To the extent required by Applicable Law, Lessee shall comply, and shall cause its Sublessees, contractors and subcontractors to comply, with all County ordinances and public contracting laws regarding public works contracts, including, but not limited to, the bidding requirements under the California Public Contracts Code.

11.6 Pricing. Lessee shall at all times maintain a complete list or schedule of the prices charged by Lessee for all goods or services, or combinations thereof, supplied to the public on or from the Full Service Hotel Property, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. The foregoing shall not be deemed a requirement for Lessee to maintain such lists or schedules of the prices charged by Sublessees. Said prices will be "market rate" pricing as reasonably determined by Lessee; provided, however, that in all events such prices shall be consistent with the limitations on pricing as mandated by the Tidelands Grant

11.7 Payment Card Compliance. Should Lessee conduct credit/debit card transactions in conjunction with Lessee's business with the County, on behalf of the County, or as part of the business that Lessee conducts on the Full Service Hotel Property, Lessee covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant with such standards, or any successor standards, during the entire duration of its conduct of such activities, provided such standards remain applicable. Notwithstanding the foregoing, with respect to the Full Service Hotel Property, Lessee shall be permitted to comply with the payment card standards imposed by a Hotel Franchisor, Property Manager or operator under a management agreement or a franchise agreement under the "flag" of a national or regional hotel chain, provided such standards are reasonably similar to the PCI/DSS and PA/DSS standards. Lessee agrees to immediately notify County in the event Lessee should ever become aware that it is non-compliant of this Subsection 11.7 at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days after

Lessee's actual knowledge of the commencement of any such interruption. Upon demand by County, Lessee shall provide to County written certification of Lessee's PCI/DSS and/or PA/DSS compliance, or, if applicable, proof that any other standard implemented by Lessee as contemplated above complies with the PCI/DSS and/or PA/DSS standards and that Lessee complies with the same.

11.8 Administration of County Space. For the avoidance of doubt, County does not grant or delegate to Lessee any of County's governmental powers (statutory, implied, administrative, or otherwise) with respect to the Full Service Hotel Property.

11.9 Holiday and Event Coordination. Lessee agrees that County shall have the right from time to time to host or co-host certain community events or displays on or about the Full Service Hotel Property that typically coincide with various holidays on up to five (5) occasions per year, including without limitation those listed on **Exhibit K** attached hereto (the "**Permitted Events**"). County shall coordinate the location, dates, duration and scope of the Permitted Events with Lessee prior to the occurrence of the same in each instance. County shall provide Lessee with a proposed calendar of such proposed events no later than September 30 of each calendar year proposing the Permitted Events for the following calendar year. The Permitted Events shall be conducted within those portions of the Full Service Hotel Property reasonably approved by Lessee. Lessee and County agree to reasonably cooperate with each other in connection with the Permitted Events, including the planning and execution of the Permitted Events, provided that all costs and expenses associated with the Permitted Events shall be borne by County or other sponsoring party (including, but not limited to, the City), including but not limited to, advertising, promotions, marketing, signage and wayfinding, additional lighting requirements, valet services, extraordinary parking management services, catering, staging, entertainment, decorations, materials and supplies, staffing, security, utilities, clean-up, etc. For the avoidance of doubt, Lessee shall not conduct, nor permit any of its Sublessees to conduct, any events or other activities within the waterways of Dana Point Harbor without first obtaining all applicable permits for the same.

12. ASSIGNMENT AND SUBLEASE.

12.1 Subleases.

1.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession, or other interest in the Full Service Hotel Property or the Improvements, or a right to use the Full Service Hotel Property or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Full Service Hotel Property is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**". **FOR THE AVOIDANCE OF DOUBT, WITH RESPECT TO THE FULL SERVICE HOTEL PROPERTY, NO PROPERTY MANAGER OR HOTEL FRANCHISOR SHALL CONSTITUTE A "SUBLESSEE" OR A "MAJOR SUBLESSEE" HEREUNDER AND NO HOTEL FRANCHISE OR HOTEL OR PROPERTY MANAGEMENT AGREEMENT, ROOM RESERVATION OR EVENT**

AREA RESERVATION SHALL CONSTITUTE A "SUBLEASE" OR A "MAJOR SUBLEASE" HEREUNDER, BUT THE SAME SHALL BE SUBJECT TO THE COUNTY'S PRIOR WRITTEN APPROVAL AS AND TO THE EXTENT SET FORTH IN SECTION 11.2 ABOVE.

1.2.1 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease or Approved Retail Sublease, or (b) any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Chief Real Estate Officer for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Chief Real Estate Officer shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Chief Real Estate Officer. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Full Service Hotel Property subject to the Sublease. If Chief Real Estate Officer disapproves a Sublease, Chief Real Estate Officer shall notify Lessee in writing of the reason or reasons for such disapproval.

1.3.1 No Approval Required. Notwithstanding any contrary provision of this Article 12, but subject to Section 3.1 of this Lease, Lessee shall not be required to obtain County's approval of (a) any Sublease or license of retail space in the ordinary course, as long as such Sublease or license agreement pertains to no more than 10,000 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease), there are no substantive revisions to any of the required lease provisions described on **Exhibit M** attached hereto, and the term of such Sublease or license does not exceed one hundred twenty (120) months, inclusive of any option or renewal periods (each, an "**Approved Retail Sublease**").

1.4.1 Non-Disturbance Agreements. With respect to (i) a property management agreement, hotel management agreement or hotel franchise agreement; or (ii) any Sublease approved by County that (a) is with a Sublessee that is a national or regional retailer or restaurant chain, and (b) pertains to more than 7,500 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease); County agrees, upon written request from Lessee, to execute and deliver a non-disturbance and attornment agreement using County's standard form.

1.5.1 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable entity of other comparable facilities or businesses. With respect to the Full Service Hotel Component, County agrees that each of the national or regional hotel chains and management companies listed on **Exhibit J** shall be deemed to be reputable. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Full Service Hotel Property, not less than forty- five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 12.2.

12.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 12, Lessee shall not, without the prior written consent of County (which consent shall be based upon factors including, without limitation, those described in **Exhibit C** hereto ("**Assignment Standards**"), which shall be applied in a commercially reasonable manner), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege herein, or enter into a Major Sublease affecting the Full Service Hotel Property, or license the use of all or substantially all of the Full Service Hotel Property. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For the avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County's consent even if it is an Excluded Transfer. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning at least one-third of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

2.1.1 County's Use of Discretion and Limitation on Permissible Assignees. Prior to the CO Date for the Full Service Hotel, County shall have the right to withhold its consent to any assignment or Major Sublease for the Full Service Hotel Property in County's sole and absolute discretion. After the CO Date for the Full Service Hotel, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease for the Full Service Hotel Property. If County withholds its consent to an assignment or Major Sublease after the CO Date for the Full Service Hotel, County shall notify Lessee in writing of the reason or reasons for such disapproval.

2.2.1 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest herein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any other process of law including, without limitation, bankruptcy proceedings.

2.3.1 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

(a) Prior to entering into any agreement requiring the approval of County pursuant to Sections 12.1 or 12.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Sublease, and any other documents which set forth any proposed agreement regarding the Full Service Hotel Property and the information set forth in Subsection 12.2.3.1(e). County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request.

(b) In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

(c) Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 12 and shall provide such response in no more than thirty (30) days.

(d) Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without any duplication with any Administrative Charge payable under Subsection 4.3).

(e) Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(1) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(2) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be

responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(3) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Full Service Hotel Property (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only Beneficial Interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Full Service Hotel Property) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Full Service Hotel Property and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (a) equity capital; (b) sources and uses of funds; (c) terms of financing; (d) debt service coverage and ratio; and (e) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Full Service Hotel Property. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(4) Business Plan. County shall be provided with the proposed assignee's business plan for the Full Service Hotel Property (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Full Service Hotel Property), including pro forma financial projections for the Full Service Hotel Property for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(5) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(6) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(7) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Full Service Hotel Property.

(8) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Full Service Hotel Property and any proposed alterations or improvements to the Full Service Hotel Property. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Full Service Hotel Property, contracts in excess of $25,000 affecting the Full Service Hotel Property, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Full Service Hotel Property. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

(f) Non-disturbance. Upon the written request of Lessee, County shall agree to execute a subordination, non-disturbance and attornment agreement and a ground lessor's estoppel certificate in favor of any Major Sublessee, or any national or regional hotel chains or management companies listed on **Exhibit J** attached hereto, using County's standard form for the same.

(g) Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

2.4.1 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Full Service Hotel Property or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect Beneficial Interest in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 12.2.4.1. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of

five (5) calendar months. During the term of the County Option, Lessee shall make the Full Service Hotel Property and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Full Service Hotel Property or Lessee's books and records pursuant to this Subsection 12.2.4.1 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (a) three percent (3%) of the Lessee Sale Price, plus (b) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (i) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (ii) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (i) or (ii), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (A) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (B) the transfer is consummated not later than twelve (12) months after the later of (i) or (ii) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Full Service Hotel Property subject to the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Full Service Hotel Property, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Full Service Hotel Property retained by Lessee and Annual Minimum Rent shall be reduced as of the date of the acquisition to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Full Service Hotel Property remaining with Lessee to the fair market value of the entire Full Service Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the acquisition. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent paid by Lessee to County prior to the date of such acquisition shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Full Service Hotel Property which remains after such acquisition bears to the fair market value of the entire Full Service Hotel Property immediately prior to such acquisition. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.2.1. Any determinations of fair market value made pursuant to this Section 12.2.4.1 in connection with any arbitration proceeding shall be predicated upon the Income Approach. In the event that County elects to recapture all or any portion of the Full Service Hotel Property as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to

prorate rent and other charges with respect to the termination. County's rights pursuant to this Subsection 12.2.4.1 shall not apply to (I) Financing Events, or (II) those events identified in Subsection 4.3.1.1(e)(3) of this Lease.

2.5.1 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Percentage Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price, plus (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the Parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

12.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for in this Lease, each and all of the provisions, agreements, terms, covenants, and conditions of this Lease contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of Lessee's heirs, executors, administrators, successors and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Furthermore, any transferor of any interest in this Lease or the Full Service Hotel Property or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease. County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

13. ENCUMBRANCES.

13.1 Financing Events.

1.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Section 4.3:

(1) "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or

indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance; for purposes of Subsection 13.1.2 below and Subsections 4.2.4 through 4.3.1.1(e) above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease. Notwithstanding the foregoing, the initial construction financing obtained in connection with the Redevelopment Work, and other exclusions set forth in Section 4.3, above, shall not be deemed a "**Financing Event**".

(2) "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (i) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants), or (ii) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. Notwithstanding the foregoing, that certain Declaration, dated January 27, 2026, between Dana Point Harbor Partners, LLC, and Dana Point Harbor Partners Drystack, LLC, recorded in the Official Records, Orange County as document 2026000019896, and any amendment, extension or modification thereto or assignment thereof shall not be deemed an "Encumbrance" hereunder.

(3) "**Encumbrance Holder**" shall also be deemed to include any and all Affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such Affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease.

(4) "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

1.2.1 County Approval Required. Lessee may, with the prior written consent of Chief Real Estate Officer (except as set forth in Subsection 13.1.3.1 below), which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Chief Real Estate Officer, consummate one or more Financing Event(s). Lessee shall submit to the Chief Real Estate Officer a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event (collectively, the "**Financing Documents**"). The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Chief Real Estate Officer. Lessee shall have the right, but not the obligation, to include draft loan documents in the

preliminary loan package. Chief Real Estate Officer shall have twenty (20) days to grant or withhold approval of the preliminary loan package and its preliminary approval or disapproval of the Financing Event, subject to confirmation that the substantially complete loan documents conform to the preliminary loan package. Chief Real Estate Officer shall have ten (10) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event. If not approved by Chief Real Estate Officer in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Chief Real Estate Officer and, if so requested in writing by Lessee, Chief Real Estate Officer shall within ten (10) days of such request deliver to Lessee a written description of Chief Real Estate Officer's objections to said proposed Financing Event. Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 1.2.1 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

1.3.1 No County Approval Required. Notwithstanding anything to the contrary contained in Subsection 1.2.1 above, so long as Olson Real Estate Group. Inc. or R.D. Olson Investments II, LLC is the manager or managing member of Lessee, then Lessee may consummate one or more Financing Event(s) without the prior written consent of Chief Real Estate Officer, subject to the following terms and conditions:

(a) As soon as reasonably practicable following Lessee's receipt of the Financing Documents (which may include draft documents), but in all cases no later than ten (10) Business Days prior to executing the same, Lessee shall submit the Financing Documents for each applicable Financing Event to the Chief Real Estate Officer for the Chief Real Estate Officer's review for the purpose of confirming the same comport with the requirements set forth in this Subsection 13.1.3.1. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any such approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof.

(b) The Encumbrance Holder shall be an Institutional Lender.

(c) The Encumbrance shall cover no interest in any real property other than Lessee's interest in the Full Service Hotel Property and Improvements or some portion thereof, and the leasehold estate of Lessee under this Lease. The Encumbrance shall be fully subordinate to Lessor's fee title in and to the Full Service Hotel Property and all of Lessor's rights set forth in this Lease and shall state on its face that it does not encumber in any way Lessor's fee interest in the Full Service Hotel Property or Lessor's rights set forth in this Lease.

(d) Prior to the completion of the Redevelopment Work, Encumbrances may be made only for the purposes of financing necessary and appropriate to pay Improvement Costs.

(e) Prior to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Full Service Hotel Property shall not exceed seventy-five percent (75%) of the budgeted Improvement Costs for the Full Service Hotel Property, as the Budget for said Improvement Costs may be revised from time to time in accordance with this Lease.

(f) Subsequent to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Full Service Hotel Property shall not exceed seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Full Service Hotel Property, as determined by either (i) the appraisal selected by the Institutional Lender to conduct the appraisal in connection with the Financing Event (provided such appraisal is actually relied upon by the applicable Encumbrance Holder in connection with Lessee's loan approval) or (ii) a licensed California appraiser retained at Lessee's sole cost and expense who is a member of the Appraisal Institute and who has a minimum of ten (10) years' experience appraising properties comparable to the Full Service Hotel Property and Improvements to be developed on the Full Service Hotel Property, with the Chief Real Estate Officer or his or her designee having the right of reasonable approval or disapproval of the appraisal in connection with this subsection (ii) alternative; provided, however, that Lessee shall not be deemed to be in default of this Subsection 13.1.3.1(f) if a loan or loans secured by Encumbrances recorded prior to completion of the Redevelopment Work in compliance with Subsection 13.1.3.1(e), including any amendment(s) or extension(s) of such loan(s) that do(es) not increase the total outstanding principal balance of such loan(s) and whether or not such amendment(s) or extension(s) occur(s) prior or subsequent to completion of the Redevelopment Work, exceed(s) seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Full Service Hotel Property. In addition, it is understood and agreed that the loan-to-value ratio constraint in this Subsection 13.1.3.1(f) shall be made only at the time Lessor is determining whether to approve or disapprove the proposed Encumbrance and thereafter this Subsection 13.1.3.1(f) shall not limit, restrict, invalidate, or result in the disapproval of any such Encumbrance or any amendment or extension of any such Encumbrance that does not increase the total outstanding principal balance of the loan secured by such Encumbrance if the fair market value of Lessee's leasehold interest in the Full Service Hotel Property that was relied upon by Lessor in approving the Encumbrance declines.

(g) All rights acquired by an Encumbrance Holder under an Encumbrance shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease, and to all rights of County hereunder, none of which covenants, conditions, and restrictions is or shall be waived by County by reason of the giving of such Encumbrance. Notwithstanding the foreclosure of any such Encumbrance, Lessee shall remain liable for the payment of the accrued but unpaid rent reserved in this Lease while Lessee remains in possession of the Full Service Hotel Property and Improvements.

(h) Promptly upon the recording of an Encumbrance, Lessee shall, at its own expense, cause to be recorded in the Official Records of Orange County a written request executed and acknowledged by County for a copy of all notices of default and all notices of sale under the Encumbrance as provided by Applicable Law to be provided to the Chief

Real Estate Officer. Inclusion of a request for notice having the effect described above in the body of the recorded Encumbrance shall constitute compliance with this provision.

(i) County shall not be required to amend this Lease, nor undertake any additional obligations, nor be obligated to forego any rights under this Lease, in connection with any such Financing Event.

(j) The Encumbrance Holder shall acknowledge in the Encumbrance that any amounts in the Hotel Capital Reserve Fund and the Replacement Reserve Fund, as applicable, shall be administered in accordance with, and shall be subject to, the terms and conditions of this Lease.

13.2 Consent Requirements In The Event of a Foreclosure Transfer.

2.1.1 Definitions. For the purposes of this Lease:

(a) "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof.

(b) "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer.

(c) "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

2.2.1 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer and, notwithstanding anything to the contrary in this Lease, no Percentage Share shall be payable in connection therewith.

2.3.1 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (a) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under Subsection 3.1.1 below, and (b) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults. For clarification purposes, the right to a single transfer under this Subsection 13.2.3 shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Subsection.

2.4.1 Bankruptcies. In the event that County becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), and County or any trustee of County rejects or seeks authority to reject the Lease under 11 U.S.C. Section 365 (or any other or successor provision permitting any similar relief), County understands that Encumbrance Holder and Lessee have agreed that: (i) Lessee shall elect, without further act, unless Encumbrance Holder consents in writing to any other election, to remain in possession for the balance of the term of the Lease and any renewal or extension thereof, pursuant to 11 U.S.C. Section 365(h) (and any other successor provision permitting a similar election); (ii) any purported election by the Lessee to treat the Lease as terminated shall be void and of no effect, unless Encumbrance Holder consents in writing thereto; and (iii) the lien of the Security Instrument shall not be impaired by such rejection. In the event that the Lessee becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), County shall give prompt notice to Encumbrance Holder of any notice it receives of a request by the Lessee or any trustee of the Lessee for authority to reject the Lease.

13.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

3.1.1 Any Encumbrance Holder which is an Institutional Lender, shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 2.3.1 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (a) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (b) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

3.2.1 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 3.1.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults).

3.3.1 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Full Service Hotel Property, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Administrative Charge nor Percentage Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Subsection 3.7.1 below, following any Foreclosure

Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 3.3.1 shall also inure to the benefit of the Lessee.

3.4.1 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

3.5.1 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 2.3.1, shall trigger (a) any obligation to pay an Administrative Charge nor Percentage Share, (b) any acceleration of any financial obligation of Lessee under this Lease, (c) any recapture right on the part of County, or (d) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 2.3.1, shall be deemed to be excluded from the definition of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Subsection 2.3.1), so that there may be more than one "single subsequent transfer" benefited by this Subsection.

3.6.1 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Redevelopment Work described in Section 5.1 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 3.6.1 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

3.7.1 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (a) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (b) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

3.8.1 The occurrence of a default or event of default under an Encumbrance or related document or instrument evidencing or securing a loan shall not, in and of itself constitute a default or event of default under this Lease, provided, however, that the circumstances giving rise to such default or event of default under the Encumbrance or related document or instrument evidencing or securing the Loan may also constitute a default or event of default under this Lease. In such an event, except as expressly set forth herein, County shall not be prohibited from exercising its rights or remedies to address any such default or event of default pursuant to the terms and conditions of this Lease.

3.9.1 Upon delivery by Encumbrance Holder of a written notice to County that Encumbrance Holder has commenced a Foreclosure (as defined herein) (such written notice to include a written notice of event of default delivered previously or contemporaneously to Lessee), any and all entitlement, permitting, construction and related obligations of Lessee under the Lease, including, without limitation, the Required Cost Amounts obligations (the "**Construction Obligations**") shall be tolled. If Encumbrance Holder or an affiliate of Encumbrance Holder shall become Foreclosure Transferee upon completion of a Foreclosure, then such tolling of the Construction Obligations shall continue for five (5) years after the date of completion of such Foreclosure (the "**Tolling Period**") so long as such Encumbrance Holder as Foreclosure Transferee is diligently pursuing a sale of the Leasehold interest of Lessee, including, without limitation, by engaging a nationally recognized broker or other broker with experience marketing and selling marinas and actively marketing the Full Service Hotel Property. The tolling of all Construction Obligations shall cease immediately upon either (i) a third party (unaffiliated with Encumbrance Holder) becoming a Foreclosure Transferee upon completion of a Foreclosure or (ii) Encumbrance Holder as Foreclosure Transferee completing a sale of the leasehold interest of Lessee to a third- party Foreclosure Transferee during the Tolling Period (each, a "**Tolling Termination**"). Upon a Tolling Termination, a third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a reasonable construction schedule for such remaining Construction Obligations (and not any dates or time periods set forth in the Lease) as determined by an independent construction inspector agreed to between County and Foreclosure Transferee (a "**Reset Construction Schedule**"). Upon the expiration of the Tolling Period, so long as no Tolling Termination has occurred and so long as Encumbrance Holder is the Foreclosure Transferee, such Foreclosure Transferee shall diligently pursue completion of the Construction Obligations and shall not be subject to any Reset Construction Schedule or any dates or time periods set forth in the Lease, provided, however, that if Encumbrance Holder as Foreclosure Transferee assigns the leasehold interest of Lessee to a third party after expiration of the Tolling Period, then such third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a Reset Construction Schedule.

3.10.1 County acknowledges that, if Encumbrance Holder or any other party succeeds to the interest of Lessee under the Lease as a result of a Foreclosure Transfer, the Foreclosure Transferee shall be deemed to have agreed to perform all of such Lessee's obligations only for so long as such purchaser is the owner of the leasehold interest of Lessee. The Foreclosure Transferee shall, upon any assignment of the leasehold interest of Lessee, be relieved of all obligations under the Lease. The Foreclosure Transferee shall be entitled to exercise all rights of Lessee under the Lease. County's approval or consent shall not be required in connection with any assignment of the leasehold interest of Lessee to a Foreclosure Transferee or to the first third party (unaffiliated with Encumbrance Holder) Foreclosure Transferee, including, without limitation, with respect to any secured or unsecured lender providing financing for such acquisition or as to such financing (including any underlying financing documents).

3.11.1 So long as any Foreclosure Transferee is the owner of the leasehold interest of Lessee, County shall look solely to the interest of such Foreclosure Transferee in the Full Service Hotel Property and the improvements located thereon in the event of the breach or default by such Foreclosure Transferee under the terms of the Lease and County hereby agrees that any judgment or decree to enforce the obligations of such Foreclosure Transferee shall be enforceable

only to the extent of the interest of such Foreclosure Transferee in the Full Service Hotel Property and such improvements.

13.4 No Subordination. County's rights in the Full Service Hotel Property and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 1.2.1, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Full Service Hotel Property under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

13.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 13) without the prior written consent of each such Encumbrance Holder. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

13.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

6.1.1 Right to Cure. Each Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Full Service Hotel Property Manager, shall have the right, at any time during the term of its Encumbrance, Major Sublease, property management agreement, hotel management agreement or franchise agreement, as applicable, and in accordance with the provisions of this Article 13, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

6.2.1 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 14.5 or imposing the daily payment set forth in Section 10.3), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Encumbrance Holder and Major Sublessee which has notified Chief Real Estate Officer in writing of its interest in the Full Service Hotel Property or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Property Manager, shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary

provision hereof, the cure rights set forth in this Section 13.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.3.

6.3.1 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder, Major Sublessee, and, for each approved Hotel Franchisor and Property Manager, in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder, Major Sublessee, and each approved Hotel Franchisor and Property Manager, may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty-five (35) days after its receipt of the aforesaid notice of default (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder, Major Sublessee or the approved Hotel Franchisor or Property Manager.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder, Major Sublessee, Property Manager, or Hotel Franchisor, as follows:

(1) Such party may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 14.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the curing party commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the initial cure period provided to the curing party shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the curing party that Lessee has failed or ceased to cure the default with due diligence. Notwithstanding anything in this Lease to the contrary, if any default by the Lessee is of such a nature that it reasonably cannot be cured by the curing party, or reasonably cannot be cured by the curing party without the curing party obtaining possession of the Full Service Hotel Property, County will not terminate the Lease as long as all rent payments are made and all other defaults which reasonably can be cured by the curing party without the curing party obtaining possession of the Full Service Hotel Property are so cured.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee or an approved Hotel Franchisor or Property Manager, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to

commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in Subsection 13.6.3.1(a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

13.7 New Lease.

7.1.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Subsection 13.7.1.1 within thirty (30) days after the occurrence of such termination, which notice shall state (a) that the Lease has terminated in accordance with this Subsection 13.7.1.1, and (b) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Subsection 13.7.1.1, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Full Service Hotel Property. From and after the effective date of the new lease, the Encumbrance Holder (or its Affiliate) shall have the same rights to a single transfer that are provided in Subsection 2.3.1 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 13. Any other

subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 12 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

In connection with Encumbrance Holder's right to a new lease contained herein, Encumbrance Holder shall not be required to cure any existing non-monetary Event of Default that is personal to Lessee or otherwise not reasonably susceptible to cure by Encumbrance Holder. From and after any termination or rejection of the Lease after which Encumbrance Holder has a right to a New Lease, for so long as Encumbrance Holder has such right, County will not terminate any subleases or the rights of any sublessee except in the case of a default under any such sublease beyond any applicable notice and cure periods. During such period County shall receive all rent and other payments due from all sublessees as agent of the Encumbrance Holder, and shall deposit such amounts in a segregated account in trust for the Encumbrance Holder, and upon execution of a new lease, shall account to the sublessees thereunder for such amounts. The collection of such amounts by County under this Section shall not be deemed an acceptance by County for its own account of the attornment of any sublessee unless County shall have agreed in writing with such sublessee that its tenancy shall be continued in the event that a new lease is not entered into pursuant to this Section. In the event a new lease is so entered into, County shall not object to any requirement that all sublessees under such subleases shall attorn to the new tenant thereunder.

7.2.1 Priority of New Lease. The new lease made pursuant to Subsection 13.7.1.1 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Full Service Hotel Property first arising or attaching to the Full Service Hotel Property from and after the Effective Date, and any future fee mortgagee or other future holder of any lien on the fee interest in the Full Service Hotel Property is hereby given notice of the provisions hereof.

13.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (a) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Full Service Hotel Property (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (b) any funds required to be held in the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

13.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or

other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Full Service Hotel Property following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

13.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Full Service Hotel Property shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

13.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Full Service Hotel Property, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13.12 No Amendment. Without the written consent of each Encumbrance Holder, this Lease shall not be amended, modified, cancelled or terminated by joint action of County and Lessee, and any attempted amendment, modification, cancellation or termination shall be of no force and effect. County shall not recognize any cancellation, surrender or termination by Lessee alone without in each case the prior written consent of the Encumbrance Holder, and any attempted cancellation, surrender or termination shall be of no force and effect.

14. DEFAULT.

14.1 Events of Default. The following are deemed to be "**Events of Default**" and, each an "**Event of Default**" hereunder:

1.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Hotel Capital Reserve Fund, if applicable), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon at the Applicable Rate and the applicable Late Fee, within such ten (10) day period.

1.2.1 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

1.3.1 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other non-monetary promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty (30) days after written notice of Lessee's failure to perform from Chief Real Estate Officer; provided, however, that where Lessee's performance of such non-monetary covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty

(30) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Subsection 14.1.3.1, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond the thirty (30) day period shall not be applicable to any failure of Lessee to comply with the Required Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may extended pursuant to Section 5.7).

1.4.1 Non-Use of Property. The abandonment (as defined in California Civil Code Section 1951.3), vacation, or discontinuance of use of the Full Service Hotel Property, or any substantial portion thereof, for a period of thirty (30) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, if an individual Sublessee of retail, office or restaurant space on the Full Service Hotel Property fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 14.1.4.1 if Lessee uses its reasonable and diligent efforts to recover possession of the applicable space from the Sublessee and re-subleases such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances. In addition, notwithstanding any contrary provision of this Subsection 14.1.4.1, an Event of Default shall not be triggered under this Subsection 14.1.4.1 due to the termination of operations by a Sublessee as long as Lessee diligently attempts to re-sublease and re-open such Sublessee's space as soon as reasonably possible after Lessee obtains possession of the Sublessee's space.

Any notice required to be given by County pursuant to Section 14.1 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

14.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

14.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 13.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

3.1.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination effective thirty (30) days thereafter. Upon the expiration of such thirty (30) day period absent cure by Lessee, this Lease and all of Lessee's rights in the Full Service Hotel Property and in all Improvements shall terminate. Promptly after such termination, Lessee shall surrender and vacate the Full Service Hotel Property and all Improvements in broom-clean condition, and County may re-enter and take possession of the Full Service Hotel Property and all

remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 14.4.4.1. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Full Service Hotel Property as is reasonably necessary to permit Lessee to comply with its removal obligations.

3.2.1 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Full Service Hotel Property and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the Parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

3.3.1 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 14.3.2.1, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Full Service Hotel Property unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 14.2, hereof. County agrees to use reasonable efforts to mitigate damages.

14.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section 14.3, County shall be entitled to recover from Lessee as damages:

4.1.1 The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof; plus

4.2.1 The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

4.3.1 The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

4.4.1 Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Full Service Hotel Property, expenses of reletting, including necessary repair, renovation and alteration of the Full Service Hotel Property, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, expert witness costs, any unpaid Administrative Charges and any other reasonable costs; plus

4.5.1 Any other amount which County may by law hereafter be permitted to recover from Lessee to compensate County for the detriment caused by Lessee's default.

The term "rent" as used herein shall be deemed to be and to mean the Annual Minimum Rent, Percentage Rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease. All such sums, other than the Annual Minimum Rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Subsections 14.4.1.1 and 14.4.2.1 above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Subsection 14.4.3.1 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Applicable Rate.

14.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder, or Major Sublessee, as provided in the last sentence of this Section 14.5), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (a) one hundred ten percent (110%) of the amount expended by County to cure such default, and (b) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders, or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

14.6 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease. County's pursuit of any of the remedies provided for in this Lease shall not preclude its pursuit of any of the other remedies or relief available to County at law, in equity or otherwise (whether or not stated in this Lease), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rental due to County hereunder or of any damages accruing to County by reason of the violation of any of the terms, provisions, and covenants herein contained (except as may otherwise be expressly provided herein).

14.7 No Waiver; Surrender. County's acceptance of rental following an Event of Default shall not be construed as County's waiver of such Event of Default. No waiver by County of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Full Service Hotel Property, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

14.8 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Lease or the Full Service Hotel Property, provided County provides written notice to Lessee of the identity of such person and the address of such person prior to the delivery of the foregoing notice from Lessee specifying in detail County's failure to perform. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall be limited to the value of County's equity interest in the Full Service Hotel Property and its right to insurance proceeds in connection with the policies required under Article 9 hereof, and nothing else. Any and all claims or actions against County accruing hereunder shall be absolutely barred unless such action is commenced within twelve (12) months of the event or action giving rise to the default.

14.9 Waiver. Lessee hereby waives any and all rights of reinstatement, redemption or relief from forfeiture granted under any present and future laws (including without limitation under California Civil Code Section 3275 or California Code of Civil Procedure Sections 1174 and 1179) in the event County obtains the right to possession of the Full Service Hotel Property by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise.

15. ACCOUNTING.

15.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, and other sums due under this Lease, Lessee and all Sublessees in connection with any Lessee Business Operation shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Chief Real Estate Officer, true, accurate, and complete records (as defined herein below) and double-entry books of account for the current and five (5) prior Lease Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Full Service Hotel Property separate and apart from those in connection with Lessee's (or an applicable Sublessee's, as applicable) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize the accrual basis of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. If Lessee elects to use an alternative method, including a cash or modified accrual method, Lessee shall utilize the same method of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. For example, Lessee shall not utilize the cash basis for monthly Gross Receipts statements while also utilizing the accrual basis for the annual audited Supplemental Statement of

Gross Receipts. For purposes hereof, "**records**" shall mean full and accurate books and accounts, records, cash receipts, and other pertinent data as necessary or appropriate for the purpose of this Lease as reasonably determined by the Auditor-Controller showing Lessee's financial operations pertaining to this Lease and the Full Service Hotel Property. Such books and records shall be organized in a manner that separately itemizes each of the separate components of Gross Receipts.

15.2 Cash Registers. To the extent retail sales are conducted on the Full Service Hotel Property in connection with any Lessee Business Operation, or other cash or credit sales of goods or services are conducted in connection with any Lessee Business Operation, all such sales shall be recorded by means of cash registers, point-of-sale computers, or other comparable devices as reasonably determined by the Auditor-Controller which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the CREO Office in advance of installation for Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 15.2 include Lessee's obligation to insure that Lessee's Sublessees in connection with any Lessee Business Operation (including licensees, permittees, concessionaires and any other occupants of any portion of the Full Service Hotel Property which constitute any Lessee Business Operation) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent and other sums due under this Lease.

15.3 Statement; Payment. No later than the last business day of each calendar month, Lessee shall deliver to County a detailed statement showing (a) the Gross Receipts during the preceding calendar month, (b) Lessee's calculation of the amount payable to County under Section 4.2, and (c) Lessee's calculation of the deposits required to be made into each sub-fund for the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable, and accompany such statement with remittance of the amount so shown to be due. For the avoidance of doubt, such statement shall include all gross revenues prior to the permitted deductions under Section 1.1.84.1(b) so that County can verify the calculation of Gross Receipts.

15.4 Availability of Records; County's Audit Right.

4.1.1 Retention of Records; Examination. Books of account and records for the then current and five (5) prior Lease Years as hereinabove required shall be kept or made available at the Full Service Hotel Property or at another location within the County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records for the previous five (5) year period, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Full Service Hotel Property and the compliance of Lessee with the terms of this Lease and other governmental requirements. Except in the event of

a dispute between the parties and otherwise except as required by Applicable Law, including without limitation the California Public Records Act (Government Code Sections 6250 *et seq.*), Lessee's books and records shall remain confidential. No contingency based auditor shall be permitted to participate in such audit.

4.2.1 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Full Service Hotel Property at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

4.3.1 Survival. This Section 15.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

15.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's in connection with any Lessee Business Operation) original records and books of account at the Full Service Hotel Property or at a location within the County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Lessee in accordance with this Lease and the rent due as determined by said audit, then Lessee shall pay the County's Actual Cost of County's audit, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Subsection 4.2.3.1.

15.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major commercial real estate management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

15.7 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

15.8 Annual Financial Statements. Within ninety (90) days after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements, including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2.1(a) (including, without limitation, an income statement showing profits and losses, as well as a balance sheet) prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning such financial statements and Gross Receipts (or other fair representation as approved by Auditor-Controller). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Full

Service Hotel Property, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Full Service Hotel Property.

15.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Full Service Hotel Property which constitute a Lessee Business Operation (and shall include language in all applicable Subleases requiring each applicable Sublessee) to comply with all terms of this Article 15 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements (including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2.1(a))) and unqualified opinions (or other fair representation as approved by Auditor-Controller) as to Gross Receipts. County shall provide written notice to Lessee of the failure of any Sublessee in connection with any Lessee Business Operation or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 15.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

15.10 Inadequacy of Records. In the event that Lessee or any Major Sublessee (including applicable licensees or concessionaires) fails to keep the records required by this Article 15 such that a Certified Public Accountant or Auditor-Controller is unable to issue an unqualified opinion as to Gross Receipts (or other fair representation as approved by Auditor-Controller), such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Full Service Hotel Property, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in the County with comparable business operations, or any other method as reasonably determined by Chief Real Estate Officer and shall utilize such methodology as Chief Real Estate Officer deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of five percent (5%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

16. DEFINITION OF TERMS; INTERPRETATION.

16.1 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

16.2 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but

technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

16.3 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

16.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

16.5 "County" and "Lessee". In any provision relating to the conduct, acts or omissions of Lessee, the term "**Lessee**" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Full Service Hotel Property with Lessee's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Full Service Hotel Property with County's expressed or implied permission.

16.6 Business Days. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

16.7 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.8 Time For Chief Real Estate Officer Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Chief Real Estate Officer is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Chief Real Estate Officer either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Chief Real Estate Officer (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Chief Real Estate Officer does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

16.9 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Chief Real Estate Officer determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or the Board, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default

hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

17. MISCELLANEOUS.

17.1 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein (all of which are incorporated herein by this reference), constitutes the entire agreement between County and Lessee relative to the leasing of the Full Service Hotel Property. County and Lessee hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

17.2 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Full Service Hotel Property throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

17.3 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

17.4 Holding Over.

4.1.1 No Renewal or Extension of Term. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided with respect to any Post Term Personal Property Removal Period.

4.2.1 Failure to Surrender; No Consent. Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Full Service Hotel Property to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 17.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Full Service Hotel Property upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Full Service Hotel Property will cause County to incur such lost profits.

17.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving Party, any waiver by either Party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either Party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that Party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re- enter the Full Service Hotel Property or of either Party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either Party shall be construed as being exhausted by the exercise thereof in one or more instances.

17.6 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Full Service Hotel Property in the case of an Event of Default, or in case of abandonment or vacation of the Full Service Hotel Property by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Full Service Hotel Property and remove any and all persons and property whatsoever situated upon the Full Service Hotel Property and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee. Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Full Service Hotel Property in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

17.7 Notice and Service of Process.

7.1.1 Notice Requirement. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 17.7.

7.2.1 Service of Process. If Lessee is not a resident of the State, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with the CREO Office a designation of a natural person residing in the County, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee. If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

7.3.1 Method of Delivery. Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with the CREO Office, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

7.4.1 Required Additional Recipients. Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

7.5.1 Addresses. As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY:	County Executive Office County Administration North 400 W. Civic Center Dr., 5th Floor Santa Ana, California 92701 Attn: Chief Real Estate Officer Fax: (714) 834-6166
With a Copy to:	Office of County Counsel County Administration North 400 W. Civic Center Dr., 2nd Floor Santa Ana, California 92701 Attn: Michael Haubert, Senior Deputy Fax: (714) 834-2359
and to:	Director OC Parks 13042 Old Myford Road Irvine, California 92602 Fax: (714) 834-2359

LESSEE:	[_____] c/o R.D. Olson Development 520 Newport Center Drive, Suite 600 Newport Beach, California 92660 Attn: Robert D. Olson Fax: (949) 271-1080
and to:	Bellwether Financial Group, Inc. 610 Newport Center Drive, Suite 490 Newport Beach, California 92660 Attn: Joe Ueberroth Fax: (949) 723-7786
and to:	Burnham Ward Properties, LLC 860 Newport Center Drive, Suite 100 Newport Beach, California 92660 Attn: Scott Burnham and Bryon Ward Fax: (949) 760-0430

Either Party shall have the right to change its notice address by written notice to the other Party of such change in accordance with the provisions of this Section 17.7.

17.8 Brokers. If Lessee has engaged a broker in this transaction pursuant to a separate agreement, Lessee shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Lessee hereby agrees to indemnify, defend and hold the County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by County in connection with any Claim by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Lessee's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Lessee. No broker, finder or other agent of any Party hereto shall be a third-party beneficiary of this Lease.

17.9 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Lessee. County and Lessee mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Lessee or any other party.

17.10 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

17.11 Attorneys' Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

17.12 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County.

17.13 Estoppel Certificates. Each Party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other Party, an estoppel certificate stating: (a) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (b) that, to the best knowledge of such Party, the other Party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (c) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. County shall provide its response to any request for an estoppel certificate using its standard form. Prospective purchasers, Major Sublessees, Property Managers, Hotel Franchisors and Encumbrance Holders may rely on such statements.

17.14 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

17.15 Memorandum of Lease. This Lease itself shall not be recorded, but the Parties hereto shall execute and acknowledge a memorandum of lease ("**Memorandum**"), in recordable form and otherwise satisfactory to the Parties hereto, for recording as soon as is practicable on or following the Effective Date. Lessee shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.16 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.17 Venue**.** The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in the County, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.18 Nondiscrimination. Lessee agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

17.19 Public Records. Lessee acknowledges that any written information submitted to and/or obtained by County from Lessee or any other person or entity having to do with or related to this Lease and/or the Full Service Hotel Property, either pursuant to this Lease or otherwise is a

public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq*.) as now in force or hereafter amended, or any Applicable Laws in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Lessee fifteen (15) days' written notice prior to turning over such records so that Lessee can take any necessary action.

17.20 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.21 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

17.22 Obligations of DPHP and Lessee. Wherever in this Lease the phrase "during the Term", "continuously throughout the Term", "from the Original Effective Date" or phrases of similar import, such language shall mean and be the obligation of DPHP from the Original Effective Date until the Effective Date and mean and be the obligation of Lessee from and after the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

Docusign Envelope ID: 1D739305-2512-8FD4-82BE-D9C9D6F0727E

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

[HOTEL SPE], LLC, a California limited liability company

BURNHAM-WARD PROPERTIES, LLC, a California limited liability company, Manager

By:_____
Name:_____
Title:_____

BELLWETHER FINANCIAL GROUP, INC. a California corporation, Manager

By:_____
Name:_____
Title:_____

OLSON REAL ESTATE GROUP, INC., a California corporation (dba RD Olson Development), Manager

By:_____
Name:_____
Title:_____

COUNTY OF ORANGE,
a political subdivision of the State of California

By:_____
Chief Real Estate Officer

APPROVED AS TO FORM:

County Counsel

By: DocuSigned by: Michael Haubert 7B6E2C12981F4B9...

EXHIBIT A-1

DEPICTION OF HARBOR PROPERTY

EXHIBIT A-2

LEGAL DESCRIPTION OF FULL SERVICE HOTEL PROPERTY

EXHIBIT A-3

DEPICTION OF FULL SERVICE HOTEL PROPERTY

EXHIBIT B

APPROVED PROPOSAL SUBMITTALS

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 12.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Full Service Hotel Property, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Full Service Hotel Property, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (a) discriminatory employment practices which violate any federal, state or local law; or (b) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease; provided however, that a transfer of

ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Full Service Hotel Property or any Improvements thereon.

7. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the CREO Office and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Dana Point Harbor.

EXHIBIT D

INTENTIONALLY OMITTED

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

RENT SCHEDULE

Period	Annual Minimum Rent
Operating Year 1	$45,500
Operating Year 2	$85,000
Operating Year 3	$145,000
Operating Year 4	$145,000
Operating Year 5	$145,000

Notwithstanding anything in the foregoing schedule to the contrary including, without limitation, the Operating Year schedule, above, and any adjustment provisions, Annual Minimum Rent for the Full Service Hotel Property shall be abated for the Abatement Period as set forth in Subsection 4.2.1.1(a).

Upon the expiration of the Abatement Period, Annual Minimum Rental for the Full Service Hotel Property shall be payable based on the foregoing schedule, which schedule only covers Operating Years 1 through 5, and adjustments to the same shall occur thereafter as set forth below. For purposes of this Lease, "**Operating Year**" shall mean each successive twelve (12) month period during the Term commencing on the date on which the Full Service Hotel opens (the "**Initial Opening Date**"), and each successive twelve (12) month period thereafter.

The Annual Minimum Rent for the Full Service Hotel Property shall increase at the commencement of the 6th Operating Year and every five (5) years thereafter upon the commencement of every fifth (5th) Operating Year (each, an "**Adjustment Date**") by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Full Service Hotel Property for the immediately prior Operating Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said Consumer Price Index for the month of December for the Operating Year that is five (5) years prior to the applicable Adjustment Date shall be considered the "**Base Period**." Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

EXHIBIT G

MINIMUM STANDARDS

1. Services. At all times Lessee shall provide diligent, first class, professional and competent hotel and real property management consistent with upper-upscale hospitality standards for similarly situated coastal full-service hotels or comparable coastal hospitality standards for similarly situated resort hotels for the Full Service Hotel Property. Lessee shall employ a competent on-site operations manager who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order of the Full Service Hotel Property or separate Property Managers for the Full Service Hotel Property. Such person shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Full Service Hotel Property, including the authority to enforce compliance by Lessee's tenants, agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall notify County in writing of the name of the manager currently so employed, as well as successor managers.

2. Public Services. The ultimate purpose of this Lease is the provision of public access to publicly accessible areas of the Full Service Hotel Property for the benefit of the public, and all facilities and services shall be made available to the public without discrimination. Lessee shall operate the Full Service Hotel Property under sound business practices. Lessee shall provide adequate security measures to reasonably protect persons and property on the Full Service Hotel Property. Lessee hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the Full Service Hotel Property and the Harbor Patrol function is to provide emergency and marine oriented law enforcement and fire services to the boating public. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Full Service Hotel Property.

3. Parking Management Plan. Lessee shall operate the Full Service Hotel Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County in its reasonable discretion. The Parking Management Plan shall be updated annually by Lessee during the term of this Lease and shall be made available to County at any time upon written request from the County. The purpose of the plan is to provide the public an adequate number of parking spaces, efficient internal traffic circulation, and access to the Full Service Hotel Property. The Plan shall include, but not be limited to the following issues and considerations:

a) Required and optional use mix;

b) Employee parking;

c) Contingency for off-site parking during overflow conditions;

d) Controlled parking;

e) Valet parking program;

f) Site plan of parking areas;

g) Parking signage program; and

h) Rideshare, shuttle, and alternative mobility management strategies during peak demand periods and special events.

All parking shall comply with applicable parking standards as regulated by any governmental agency with jurisdiction. Lessee agrees to comply with any Harbor-wide parking program or shared parking arrangement as may be required by the County on terms and conditions reasonably satisfactory to Lessee.

6. Entry Gates. Any County authorized controlled parking area shall be attended by Lessee's employees or controlled by automated systems. Such automated systems shall be convenient and efficient with regard to public use, capable of processing each type of transaction made for the various activities within the Full Service Hotel Property, including cashless payment systems.

7. Leasing. The leasing program shall consider the following criteria, not listed in any order of priority, and including but not limited to:

a. Use consistent with the Tidelands Grant from the State of California;

b. Feasible use that will produce a market value rental return;

c. Optimum land utilization;

d. Appropriate required and optional use mix;

e. Compatibility with other uses on the Full Service Hotel Property and within Dana Point Harbor;

f. High degree of public service;

g. Parking constraints and traffic circulation;

h. Aesthetics associated with the character of Dana Point Harbor; and

i. Compliance with the terms and conditions of this Lease.

8. Protection of Environment. Lessee shall take reasonable steps to prevent:

a. Littering within the Full Service Hotel Property;

b. Excessive noise from emanating within the Full Service Hotel Property;

c. Excessive light and glare from light fixtures within the Full Service Hotel Property that could impact the safe operation of automobiles, watercraft and airplanes in the area.

d. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source, into the waters within or adjacent to the Full Service Hotel Property or other activities that are harmful to water quality.

9. Protection Measures. Reasonable steps to prevent littering, excessive noise, and discharge of pollutants into the waters within the Full Service Hotel Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Full Service Hotel Property against littering, production of excessive noise and discharge of pollutants into the waters within the Full Service Hotel Property shall be posted in conspicuous places within the Full Service Hotel Property. All such signs shall be approved by the County.

b. All leases and rental agreements with tenants (except for hotel room rentals and event space rentals) shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Full Service Hotel Property constitute a material breach of such leases and rental agreements.

10. Policy and Procedures to be established by Lessee.

a. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Full Service Hotel Property. Lessee further agrees to maintain a written policy and procedures manual (hereinafter referred to as "Policy and Procedures Manual") on the Full Service Hotel Property pertinent to the conduct of the required and optional services and uses provided for by this Lease. The Policy and Procedures Manual shall include, but not be limited to, maintenance standards, stormwater management and run-off management, storage and disposal of flammable liquids and hazardous materials, waste management and recycling programs, discharge of waste from boats, emergency preparedness and evacuation procedures (including fire, seismic, tsunami, and coastal hazard events), guest conduct and nuisance management policies, and sustainability and environmental compliance procedures applicable to the Full Service Hotel Property.

b. Upon written request Lessee shall furnish the County a copy of said Policy and Procedures Manual. Should County, upon review and conference with Lessee, decide any part of said Policy and Procedures Manual is not in accordance with any applicable governmental code, law, rule, and/or regulation, Lessee, upon written notice from County, shall modify said Policy and Procedures Manual to the satisfaction of the County. Primary consideration shall be the health, safety, and welfare of the public and protection of the environment.

EXHIBIT H

DEPICTION OF PROPERTY STRUCTURES

[Attached hereto]

EXHIBIT I

BEST MANAGEMENT PRACTICES FACT SHEETS

Best Management Practices can be found at: https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/best-management-0(which website may change from time to time)

Lessee shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Lessee's operations. Lessee is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

EXHIBIT J

PRE-APPROVED HOTEL BRANDS AND MANAGEMENT COMPANIES

As of the Effective Date and continuing for the Term of this Lease, the following hotel brands and management companies shall be deemed by the County to be experienced and qualified for purposes of Section 11.2: (i) any hotel management company which is an Affiliate of Lessee, and (ii) all of the following hotel brands and management companies:

Full Service Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Aman; (ii) Clarion Collection offered by Choice Brands; (iii) Starwood Capital Group brands: 1 Hotels, Baccarat Hotels & Resorts; (iv) Destination/Commune Hotels brands: Alila, Joie de Vivre and Thompson Hotels; (v) Denihan Hospitality: The James and Affinia; (vi) Dolce Hotels; (vii) Dream Hotels; (viii) Fairmont Hotels; (iv) Four Seasons Hotels; (x) Hard Rock Hotels; (xi) Hilton Brands: Curio, Canopy, Tapestry, Conrad and Waldorf-Astoria; (xii) Hyatt brands: Andaz, Hyatt Centric, Grand Hyatt, Hyatt Regency, and Park Hyatt; (xiii) IHG Hotel Brands: Intercontinental, Kimpton, Argonaut, Monaco, Palomar; (xiv) Kempinski; (xv) Loews Hotels; (xvi) Magnolia Hotel; (xvii) Mandarin Oriental; (xviii) Marriott International, Inc. management and brands: Autograph Collection, Bulgari, JW Marriott, Marriott, Renaissance Hotels, Ritz-Carlton Hotels, Le Meridien, Luxury Collection, Sheraton Resorts, St. Regis, Edition, Westin Hotels & Resorts, and W Hotel; (xix) Morgan Hotels (all brands); (xx) Montage Hotels & Resorts brands: Montage Hotels and Pendry Hotels; (xxi) Nobu Hotels; (xxii) Omni Hotels; (xxiii) Radisson Blu offered by Carlson; (xxiv) Raffles Hotels and Resorts; (xxv) Rosewood Hotels; (xxvi) Standard International Hotels—all brands; and (xxvii) Viceroy; (xxviii) Pyramid Hotel Group (franchise or independently branded); (xxix) Sage Hospitality Group (franchise or independently branded) .

EXHIBIT K

PERMITTED EVENTS

1. Festival of Whales
2. Fourth of July Fireworks Extravaganza
3. Tall Ships Festival
4. Turkey Trot
5. Holiday Boat Parade

EXHIBIT L

INTENTIONALLY OMITTED

EXHIBIT M

REQUIRED LEASE PROVISIONS

The restriction of the Sublessee's use under Section 1.9 of the Approved Retail Sublease to a Permitted Use pursuant to Section 3.1.1 of this Lease. (1.9 [Use of Premises] of the Approved Retail Sublease)

That the Sublessee shall not do or permit anything to be done in, on, or about the Full Service Hotel Property or bring or keep anything therein which conflicts with this Lease or the restrictive use covenants in this Lease. (3.1(vii) [Permitted Use] of the Approved Retail Sublease).

That the Sublessee agrees that it will not cause Lessee to be in violation of the terms of this Lease and that the Sublease is and shall be subject and subordinate to this Lease, the terms, covenants and conditions thereof, and any amendments and/or modifications thereto. (3.6 [Declaration; Ground Lease] of the Approved Retail Sublease)

That the Sublessee acknowledges and agrees that County is an intended third party beneficiary of Sections 3.1 [Permitted Use], 3.5 [Hazardous Substances], 3.6 [Declaration; Ground Lease], 3.8 [Best Management Practices], 3.9 [Public Contract Code Compliance], 5.4 [Taxes], 8.2 [Non-disturbance and Attornment], 8.3 [Mortgagee Protections], 11.1 [Insurance Requirements; Commercial General Liability Insurance], 11.8 [Waiver of Subrogation], 18.1 [Waiver], 18.2 [Indemnification], 18.3 [Duty to Defend] (if included in such Sublease), 28.2 [Financials] and 30.4 Nonrecourse Lease] and is entitled to enforce such provisions against Sublessee, together with the operative provisions of Sections 3.5, 3.8, 3.9, 8.2 and 30.4 to the extent terms are in favor of County. (3.1, 3.5, 3.6, 3.8, 3.9, 5.4, 8.2, 8.3, 11.1, 11.8, 18.1, 18.2, 18.3, 28.2 and 30.4 of the Approved Retail Sublease)

That if Lessee's interest in the premises subleased pursuant to the Sublease is acquired by County, Sublessee shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Lessee and recognize such successor-in-interest as the Landlord under the Sublease. That if County notifies the Sublessee of a default under this Lease and demands that the Sublessee pay rent and all other sums due under the Sublease to County or successor-in-interest to Lessee, the Sublessee shall honor such demand without inquiry and pay its rent and all other sums due under the Sublease directly to County or successor-in-interest to Lessee pursuant to such notice and shall not thereby incur any obligation or liability to Lessee in connection with any such payments made. The foregoing provisions shall be self-operative, and no further instrument of attornment or non-disturbance shall be required; provided, however, in confirmation of any attornment, the Sublease shall require that Sublessee execute, acknowledge and deliver an instrument that County may reasonably request to evidence such attornment, provided that such attornment further confirms the non-disturbance protection set forth in the Approved Retail Sublease. (8.2 [Non-disturbance and Attornment] of the Approved Retail Sublease)

That Sublessee agrees to notify County by certified mail, return receipt requested, with postage prepaid, of any default on the part of Lessee under the Sublease; that County shall have the right, but not the obligation, to cure any default on the part of Lessee; that the Sublessee agrees that if

County shall succeed to the interest of Lessee under the Sublease, neither the County nor its successors or assigns shall be: liable for any prior act or omission of any prior landlord (including Lessee); subject to any claims, offsets, credits or defenses which Sublessee might have against any prior landlord (including Lessee) (except that County shall not be relieved from the obligation to cure any defaults which are non-monetary, continuing in nature and reasonably susceptible to being cured); bound by any assignment (except as otherwise expressly permitted under this Lease), surrender, release, waiver, amendment or modification of any provisions of the Sublease made without County's prior written consent; or obligated to make any payment to Sublessee or liable for refund of all or any part of any security deposit or other prepaid charge to Sublessee held by any prior landlord (including Lessee) for any purpose unless the County shall have come into exclusive possession of such deposit or charge. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) the Sublessee agrees that, notwithstanding any provisions of the Sublease, no cancellation or termination of the Sublease and no abatement or reduction of the rent payable thereunder shall be effective unless the County has received notice of the same and shall have failed within the period of time provided under the Sublease after receipt of such notice to commence to cure such default and thereafter diligently prosecute such cure to completion, and if the County needs to obtain possession of the Premises to cure such default, to allow the County to obtain possession of the Premises, provided the County commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

That for any Major Sublease, Section 10.1.3 [regarding permitted transfers for which Landlord's consent is not required] of the Approved Retail Sublease shall not be included in such Approved Retail Sublease without County's prior written consent. (10.1.3 [Assignment and Subletting Generally] of the Approved Retail Sublease)

The County shall be named as an additional insured on the commercial general and contractual liability insurance required to be carried by the Sublessee under the Sublease; all such insurance shall be primary and shall provide that any insurance of County shall be noncontributing; the insurance coverage required by Article 11 of the Sublease shall contain a clause pursuant to which the insurance carriers waive all rights of subrogation against County, with respect to losses payable under such policies to the extent such waiver of subrogation is commercially available or if such waiver is granted to Lessee under the Sublease. (Article 11 [Insurance] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) all such policies shall provide that they shall not be amended in any way that would materially adversely affect the interests of County, or cancelled, without at least thirty (30) days prior written notice to County, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the

Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (Article 11 [Insurance] of the Approved Retail Sublease)

That the Sublessee acknowledge that County shall not be liable for any loss, injury or damage to the Sublessee or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts, willful misconduct or sole or active gross negligence of the County. (18.1 [Waiver] of the Approved Retail Sublease)

That the Sublessee shall defend, indemnify and hold harmless County for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises (and use reasonable and diligent efforts to cause such indemnity to also cover common areas) (except to the extent caused by the intentional torts or willful misconduct of County), and (ii) claims arising from Sublessee's omissions or breach of the Sublease together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, reasonable attorneys' fees and expenses at trial and upon appeal. Indemnification obligations shall include the duty to defend. (18.2 [Indemnification] and 18.3 [Duty to Defend] of the Approved Retail Sublease)

That notwithstanding anything to the contrary contained in the Sublease, County shall not be liable in any way or to any extent to the Sublessee under the Sublease, including but not limited to in connection with any breach by Lessor thereunder. If required by a Sublessee that is not a Major Sublessee despite Lessee's reasonable and diligent efforts to avoid the same, the foregoing may carve out claims against County based on its sole or active gross negligence or willful misconduct. (30.4 [Nonrecourse Lease] of the Approved Retail Sublease)

Section 3.8 and Exhibit H of the Approved Retail Sublease regarding Best Management Practices shall not be altered, except to the extent altered by, or with the prior written consent of, County.

The form of SNDA attached as Exhibit I to the Approved Retail Sublease shall not be altered without County's prior written consent if included as an Exhibit.

EXHIBIT D-2

FORM OF SELECT SERVICE HOTEL LEASE

[Attached hereto]

GROUND LEASE AGREEMENT

SELECT SERVICE HOTEL COMPONENT

by and between

COUNTY OF ORANGE

and

_____, LLC

Dated as of _____, 2026

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GROUND LEASE AGREEMENT

DANA POINT HARBOR

(SELECT SERVICE HOTEL COMPONENT)

THIS GROUND LEASE AGREEMENT ("**Lease**") is made and entered into as of the _____ day of _____, 2026 ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**" or "**Lessor**"), as lessor, and _____, a _____ (together with its permitted successors and assigns, "**Lessee**"), as lessee. County/Lessor and Lessee may be referred to herein each, individually, as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, County is the fee owner of that certain real property (the "**Harbor Property**") located in the City of Dana Point and comprised of the land depicted on **Exhibit A-1** attached hereto, together with all the Improvements (as defined below) located thereon as of the commencement of the Prior Harbor Lease (as defined below); and

WHEREAS, County and Dana Point Harbor Partners, LLC, a California limited liability company ("**DPHP**") entered into that certain Option to Lease dated as of July 30, 2018 (the "**Option Agreement**"), pursuant to which County granted DPHP an option (the "**Option**") to lease the Harbor Property in its entirety, upon the terms and conditions more specifically provided in the Prior Harbor Lease (as defined below), including, without limitation, the redevelopment and renovation of the Harbor Property, all in accordance with the terms and provisions thereof; and

WHEREAS, upon exercise of the Option by DPHP, County and DPHP entered into that certain Master Ground Lease Agreement (the "**Original Harbor Lease**") dated as of October 29, 2018 (the "**Original Effective Date**"), pursuant to which County leased the Harbor Property to DPHP in its entirety, upon the terms and conditions more specifically provided therein; and

WHEREAS, the Original Harbor Lease was amended by that certain Tolling Amendment to Master Ground Lease Agreement dated as of April 21, 2020 ("**First Amendment**") and that certain Second Amendment to Master Ground Lease Agreement dated March 9, 2022 ("**Second Amendment**") (the Original Harbor Lease, as amended, the "**Prior Harbor Lease**");

WHEREAS, the leasing of the Harbor Property under the Prior Harbor Lease was split into two leases, which cover the same Harbor Property: (a) that certain Ground Lease Agreement, dated _____, made by and between County and DPHP and relating to the Commercial Core Component and Marina Component (as defined therein) (the "**Commercial Lease**") and (b) that certain Ground Lease Agreement, dated _____, made by and between County and DPHP Hotels, LLC, a California limited liability company ("**DPHP Hotels**"), which is an Affiliate of DPHP, and relating to the Hotel Component (as defined therein) (the "**Hotel Lease**");

WHEREAS, upon entering into the Commercial Lease and the Hotel Lease, the Prior Harbor Lease was terminated and is of no further force nor effect;

WHEREAS, the Hotel Component is anticipated to be comprised of two hotels and related amenities and improvements: (i) the Full Service Hotel (as defined below) and related amenities and improvements (the "**Full Service Hotel Component**") and (ii) the Select Service Hotel (as defined below) and related amenities and improvements (the "**Select Service Hotel Component**"); and

WHEREAS, the Select Service Hotel Component is to be located on that certain real property located in the City of Dana Point and comprised of the land described on **Exhibit A-2** attached hereto and depicted on **Exhibit A-3** attached hereto (the "**Select Service Hotel Property**"); and

WHEREAS, DPHP has determined that, in order to facilitate the financing of the development of the Hotel Component, it is necessary to split the leasing of the Hotel Component under the Hotel Lease into two (2) leases, which cover the same property covered by the Hotel Lease; (a) one lease for the Service Hotel Component (the "**Full Service Hotel Lease**"); and (b) one lease for the Select Service Hotel Component, being this Lease; and

WHEREAS, Lessee is an Affiliate of DPHP Hotels and was formed by the members of DPHP Hotels in order to facilitate the financing of the development of the Select Service Hotel Component, so that this Lease, combined with the Commercial Lease and the Full Service Hotel Lease, shall comprise the same entire Harbor Property originally leased to DPHP under the Prior Harbor Lease; and

WHEREAS, for financing purposes, as of the Effective Date, Lessee and Lessor desire to enter into this Lease, pursuant to which Lessor is willing to lease the Select Service Hotel Property, together with all the improvements currently located thereon as of the Effective Date, to Lessee pursuant to the terms and conditions of this Lease.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. DEFINITIONS AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "AAA" shall have the meaning set forth in Subsection 5.16.

1.2.1 "ABATEMENT PERIOD" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.3.1 "ACCOUNTING YEAR" shall have the meaning set forth in Section 15.7.

1.4.1 "ACTUAL COST" shall mean (a) the out-of-pocket costs and expenses actually incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County's environmental consultant), (b) costs incurred in connection with appraisals,

(c) the reasonable value of services actually provided by County's in-house counsel, and (d) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.5.1 "ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1.1(b).

1.6.1 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Subsection 4.3.

1.7.1 "AFFILIATE" means, with respect to any person (which is used herein includes an individual, trust or entity), which directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person.

1.8.1 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.3.1.1(a).

1.9.1 "ALTERATIONS" means, with respect to the Select Service Hotel Property, the construction of any alterations or modifications to the Improvements located on the Select Service Hotel Property or the construction of any new Improvements on the Select Service Hotel Property, at any time during the Term, excluding the Redevelopment Work.

1.10.1 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.1(d).

1.11.1 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.12.1 "ANNUAL RENT" shall have the meaning set forth in Subsection 4.2.

1.13.1 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 2.1.1.

1.14.1 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the Prime Rate plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.15.1 "APPLICABLE REDEVELOPMENT COSTS" mean, with respect to the Select Service Hotel Component, all reasonable market standard out-of-pocket Hard Costs paid to third parties for the construction of the Redevelopment Work on the Select Service Hotel Component, including the profit, overhead and general conditions paid to the general contractor

that is responsible for the construction of the Redevelopment Work for the Select Service Hotel Component; provided, however, if such general contractor or other third party is an Affiliate of Lessee, then Lessee must be able to demonstrate to County's reasonable satisfaction (which may entail, for example and without limitation, providing County with competitive pricing from unaffiliated third parties, if requested by County), that such amounts are not in excess of then-current competitive market-based rates for comparable quality of work. If County determines that Lessee paid any of its Affiliates any amount in excess of the foregoing limitations, then 120% of such excess shall be deducted from Applicable Redevelopment Costs. For example, if Lessee paid an Affiliated general contractor $2,500,000 for work that it is determined could have been performed, if competitively priced, for $2,000,000, then the Applicable Redevelopment Cost associated with such work shall be $1,900,000 (*i.e.*, 20% of $2,500,000 = $600,000, which amount is then subtracted from the original $2,500,000).

1.16.1 "APPROVED PROPOSAL SUBMITTALS" shall have the meaning set forth in Section 5.1.

1.17.1 "APPROVED RETAIL SUBLEASE" shall have the meaning set forth in Subsection 12.1.3.1.

1.18.1 "AS-BUILT PLANS" shall have the meaning set forth in Subsection 5.8.7.1.

1.19.1 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 12.2.

1.20.1 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Orange, California, or its designee.

1.21.1 "AWARD" shall have the meaning set forth in Subsection 6.1.3.1.

1.22.1 "BASE PERIOD" shall have the meaning set forth in **Exhibit F**.

1.23.1 "BENEFICIAL INTEREST" shall have the meaning set forth in Subsection 4.3.1.1(b).

1.24.1 "BMP FACT SHEETS" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.25.1 "BMPs" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.26.1 "BOARD" shall mean the Board of Supervisors for the County of Orange.

1.27.1 "BREAKWATER" shall have the meaning set forth in Subsection 3.2.2.1(f).

1.28.1 "BRIDGE STRUCTURE" shall have the meaning set forth in Subsection 10.7.

1.29.1 "BUSINESS DAY" shall have the meaning set forth in Section 16.6.

1.30.1 "CAD FILES" shall have the meaning set forth in Subsection 5.8.7.1.

1.31.1 "CALCULATION NOTICE" shall have the meaning set forth in Subsection 4.3.6.1(b)

1.32.1 "CASp" shall have the meaning set forth in Section 10.11.

1.33.1 "CASp REPORT" shall have the meaning set forth in Section 10.11.

1.34.1 "CDP" shall mean the Dana Point Harbor Hotels Project, Coastal Development Permit (CDP19-0017), as amended from time to time.

1.35.1 "CERTIFICATE OF OCCUPANCY" means a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval required for legal use and occupancy of any of the Improvements.

1.36.1 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.3.1.1(c).

1.37.1 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.3.1.1(d).

1.38.1 "CHIEF REAL ESTATE OFFICER" shall mean the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Lessee, such other person as may be designated by the Board.

1.39.1 "CITY" shall mean the City of Dana Point, California.

1.40.1 "CLAIMS" shall have the meaning set forth in Subsection 8.1.

1.41.1 "CO DATE" means the date of the issuance of a Certificate of Occupancy for the Select Service Hotel.

1.42.1 "COASTAL ACT" shall mean the California Coastal Act of 1976, as codified in Public Resources Code, Section 30000 et seq., as amended from time to time.

1.43.1 "COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.44.1 "COMPONENT" means each of three (3) portions of the Harbor Property including the Commercial Core, Hotel and Marina (both Wet Marina and Dry Marina), the boundaries and location of which are identified on **Exhibit A-1**, subject to the reasonable consent of the County.

1.45.1 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.1.

1.46.1 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.1.

1.47.1 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index for Long Beach-Anaheim, California [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)], as published from time to time by the U.S. Bureau of Labor Statistics or, in the event such index is no longer published or otherwise available, such replacement index as is published by the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.48.1 "CONSTRUCTION CHANGE DIRECTIVE" shall have the meaning set forth in Subsection 5.7.3.1.

1.49.1 "CONSTRUCTION SCHEDULE" shall have the meaning set forth in Subsection 5.3.2.1.

1.50.1 "CONTROLLING INTEREST" shall have the meaning set forth in Subsection 12.2.4.1.

1.51.1 "COST" shall have the meaning set forth in Subsection 1.79.1(b)(13).

1.52.1 "COUNTY" shall have the meaning set forth in the preamble to this Lease. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Select Service Hotel Property and not the County in its capacity as a land use or other governmental approval authority.

1.53.1 "COUNTY INDEMNIFIED PARTY" and "COUNTY INDEMNIFIED PARTIES" shall have the meaning set forth in Section 8.1.

1.54.1 "COUNTY OPTION" shall have the meaning set forth in Subsection 12.2.4.1.

1.55.1 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 12.2.4.1.

1.56.1 "COUNTY PARTIES" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.57.1 "CREO OFFICE" shall mean the Office of the Chief Real Estate Officer, County Executive Office, Orange County.

1.58.1 "DAMP" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.59.1 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.1.

1.60.1 "DPHP" shall have the meaning set forth in the Recitals to this Lease.

1.61.1 "DRB SPECIFICATION" shall have the meaning set forth in Subsection 5.16.

1.62.1 "EFFECTIVE DATE" shall have the meaning set forth in the preamble to this Lease.

1.63.1 "ENCUMBRANCE" shall have the meaning set forth in Subsection 13.1.1.1(2).

1.64.1 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1.1(2) and 13.1.1.1(3).

1.65.1 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or, in the event such index is no longer published or otherwise available, such substitute index that is generally recognized and authoritative shall be substituted by the Chief Real Estate Officer.

1.66.1 "EQUITY ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 13.1.1.1(4).

1.67.1 "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1.1(c).

1.68.1 "EVENT(S) OF DEFAULT" shall have the meaning set forth in Section 14.1.

1.69.1 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.3.1(c).

1.70.1 "EXCLUDED DEFAULTS" shall have the meaning set forth in Subsection 13.3.3.1.

1.71.1 "EXCLUDED IMPROVEMENTS" shall have the meaning set forth in Subsection 2.5.1.

1.72.1 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.3.1.1(e).

1.73.1 "EXTENDED TIME" shall have the meaning set forth in Section 16.8.

1.74.1 "FINAL CO DATE" shall have the meaning set forth in Section 7.1.

1.75.1 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.4.3.1.

1.76.1 "FINANCING EVENT" shall have the meaning set forth in Subsection 13.1.1.1(1).

1.77.1 "FIRST OFFER NOTICE" shall have the meaning set forth in Section 11.13.

1.78.1 "FORCE MAJEURE" shall mean any inability of a Party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other natural disaster, civil disturbance, war, organized labor dispute (if unrelated to the specific business practices of Lessee or its Sublessees, or its or their respective contractors, agents, representatives, or consultants), freight embargo, financial crisis, governmental order or other unforeseeable event beyond the reasonable control of the Party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Lessee of the Redevelopment Work for the Select Service Hotel Property, a delay in such construction caused by unforeseen financial crisis, or by a hidden and unforeseeable condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Select Service Hotel Property which Lessee was unaware of and could not reasonably have foreseen as of the commencement of such construction activity, although Lessee shall, to the extent possible, commence and complete the portions, if any, of the work not impacted by such delay within the timeframes set forth in this Lease. In addition, in the case of the construction of the Redevelopment Work, Force Majeure shall also include (a) Unreasonable County Action, as defined in and subject to the terms and conditions of Section 5.7 of this Lease; (b) unforeseen financial crisis that results in an inability to obtain appropriate financing in the reasonable discretion of Lessee, and (c) any delays resulting from legal challenges under the California Environmental Quality Act or otherwise that are brought by third parties that challenge or appeal any governmental approvals or entitlements that are required to be obtained by Lessee before Lessee can commence the Redevelopment Work, an injunction or restraining order against the performance of the Redevelopment Work issued pursuant to a court action, or a delay in processing any approvals or permits by the California Coastal Commission resulting from the failure of the California Coastal Commission to timely respond to a submittal or application or to take action in connection therewith; provided that (i) the plaintiff seeking such injunction or restraining order is not Lessee or any Affiliate of Lessee, (ii) the injunction or restraining order is not being sought as a result of any act or omission which would be a default by Lessee under this Agreement, (iii) Lessee shall diligently pursue and shall exhaust all commercially reasonable efforts to accomplish (x) the defense of such legal challenge to a final, non-appealable judgment regardless of whether Lessee is a named party in the action, (y) the removal of any such restraining order or injunction, as applicable, and/or (z) the response or other action required of the California Coastal Commission, and (iv) in no event shall any delay or series of delays resulting from the circumstances described in this clause (b) result in a delay, when taken in the aggregate, of more than three (3) years.

1.79.1 "FORECLOSURE TRANSFER" shall have the meaning set forth in Subsection 13.2.1.1(a).

1.80.1 "FORECLOSURE TRANSFEREE" shall have the meaning set forth in Subsection 13.2.1.1(b).

1.81.1 "FULL SERVICE HOTEL" means the full service hotel to be constructed on the Full Service Hotel Property, comprised of approximately 130 rooms and designed to provide a full range of guest services and amenities such as meeting rooms, wedding and social event

venue lawn, a pool and jacuzzi, a poolside cabanas, poolside bar, fitness center, and rooftop restaurant and lounge.

1.82.1 "GOVERNMENTAL AUTHORITIES" or "GOVERNMENTAL AUTHORITY" shall mean the City, County, State, United States of America, California Coastal Commission and/or any other local, state or federal governmental or quasi-governmental entity with jurisdiction over the Select Service Hotel Property.

1.83.1 "GROSS RECEIPTS" shall mean, with respect to the Select Service Hotel Component, the aggregate of (A) for any portion of the Select Service Hotel Component which is subject to an arms-length Sublease to a person or entity which is not an Affiliate of Lessee, all money (including, without limitation, "alternative" currencies, such as cryptocurrency and its equivalent), cash receipts, or other things of value received by Lessee, whether for cash or credit, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax reimbursements, percentage rent payments, lease payments and fees and commissions made or earned by Lessee, and (B) for any portion of the Select Service Hotel Component on which Lessee or an Affiliate of Lessee operates a business or enterprise, or generates income from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Select Service Hotel Component, whether delivery of items sold is made from the property or not, whether services are actually performed or not, all money, cash receipts, or other things of value received by Lessee, including but not limited to sales, fees and commissions made or earned by Lessee, from rentals (other than rentals generated from Subleases and covered under Subsection 1.1.93(A) above) and the rendering or supplying of services and the sale of goods, wares or merchandise, hotel room revenues and resort fees, each of which shall be calculated in accordance with the accounting method described in the penultimate sentence of Section 15.1 except as herein otherwise provided and subject to County's reasonable verification rights (such operation described within this Subsection 1.1.93(B)) being referred to herein as a "**Lessee Business Operation**"). There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in Subsection 1.1.93(b)(11) below), insurance and taxes, except as otherwise set forth herein. Notwithstanding the foregoing, and for the avoidance of doubt:

(a) Gross Receipts shall include, among other things, the following items:

(1) entry, rental, license and other fees of any nature or kind charged by Lessee (including but not limited to deposits accepted by Lessee upon the application of such deposit to a transaction or the forfeit of such deposit and excluding any deposit under a Sublease to the extent addressed in (b)(2) below);

(2) sales of merchandise, goods, wares, products, food, beverages and services;

(3) gift certificates at the time sold;

(4) any sums deposited into any coin-operated vending machine or other device maintained on the Select Service Hotel Property, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Lessee or others, and regardless of what percentage thereof Lessee is entitled to receive except for pay telephones and newspaper racks;

(5) any commission or surcharge received by Lessee from the operation of any automatic teller machines on the Select Service Hotel Property;

(6) if pay telephones are owned by Lessee, gross receipts shall be the gross amount deposited or charged for use of the telephones or if pay telephones are owned and operated by a third party, gross receipts shall be the commission or payment received by Lessee;

(7) for newspaper racks gross receipts shall be the commission or payment received by Lessee from racks owned and operated by a third party;

(8) all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty;

(9) all rentals, license fees and similar sums received in connection with any advertising on the Select Service Hotel Property via signage, billboards, and similar;

(10) all rebates, kickbacks, credits (hidden or otherwise), and similar received by Lessee in consideration for granting rights in the Select Service Hotel Property or any portion thereof; and

(11) all other rents received by Lessee by any Sublessee, concessionaire or licensee of Lessee on the Select Service Hotel Property, subject to the exclusions set forth hereinbelow.

(b) Gross Receipts shall not include any of the following items (provided, however, that excluding the amount of the following items from Gross Receipts may not be double counted as a credit towards or offset against the amount of items that are to be included in Gross Receipts):

(1) direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes (other than boater possessory interest tax to the extent received by Lessee), transient occupancy taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement;

(2) security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid

rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application;

(3) goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Select Service Hotel Property;

(4) an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Select Service Hotel Property; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

(5) sales of fixtures, equipment or property which are not Lessee's stock in trade;

(6) receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

(7) interest earned by Lessee on funds arising from the Select Service Hotel Property or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

(8) tips and gratuities paid to employees;

(9) receipts from vending machines used solely by employees of the business operation;

(10) fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this Subsection 1.1.93(a)(10) in connection with a particular business operation shall not exceed the actual charges for such matters;

(11) interest or other charges paid by customers of Sublessees for the extension of credit; or

(12) payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered, actual or estimated allocation of electricity provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Select Service Hotel Property; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity (i.e. the Sublessee is not also separately charged for electricity paid for hereunder). For the purpose of this Subsection (12), the

"**Cost**" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's bill that is allocable to the Sublessee based on such Sublessee's submetered, actual or estimated consumption of electricity, and in paying the portion of any third party meter or submeter reading and service charge to each meter or submeter that is actually read and a direct allocation of the meter or submeter service charge to each such submeter that is serviced. County shall have the right to reasonably challenge the legitimacy or amount of any Cost. The terms and provisions of this Subsection (12) shall also be applicable to other submetered or estimated utility charges, such as water, gas, telephone, internet, sewer and trash, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(13) Bad debt losses shall not be deducted from Gross Receipts unless the obligation being converted to a bad debt loss was previously included in Gross Receipts.

(c) Chief Real Estate Officer, with the reasonable consent of Lessee, Auditor-Controller and County Counsel may further reasonably interpret the definition of Gross Receipts from time to time, provided that Lessee's consent shall not unreasonably prevent County from verifying, auditing, or enforcing the proper calculation of Gross Receipts with such interpretations to be a guideline in implementing Subsection 4.2.2.1(a) of this Lease.

1.1.84 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Subsection 4.3.1.1(f).

1.1.85 "HARBOR PROPERTY" shall have the meaning set forth in the Recitals to this Lease.

1.86.1 "HARD COSTS" means those costs listed in Classifications 01 through 16 of the Construction Specifications Institute (1995 edition), together with contingency earned or awarded to the general contractor, insurance, contractor fees and bonds, but in no event may such amounts be duplicative.

1.87.1 "HAZARDOUS SUBSTANCES" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, which is or shall become regulated by any governmental entity, including without limitation, the County acting in its governmental capacity, the State, or the United States government, including, without limitation, the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws.

1.88.1 "HOTEL COMPONENT" means the Component of the Harbor Property identified as the Hotel on **Exhibit A-1** including, without limitation, the hotel currently known as the "Dana Point Marina Inn" and associated amenities.

1.89.1 "HOTEL DEEMED COMPLETION DATE" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.90.1 "HOTEL CAPITAL RESERVE FUND" shall have the meaning set forth in Subsection 5.17.1.

1.91.1 "HOTEL FRANCHISOR" shall have the meaning set forth in Subsection 15.3.1.

1.92.1 "HOTEL LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.93.1 "IMMEDIATE FAMILY" shall have the meaning set forth in Subsection 4.3.1.1(e)(4).

1.94.1 "IMPROVEMENT PROJECT" shall have the meaning set forth in Subsection 5.5.

1.95.1 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems (including, without limitation, all utility lines, transformer vaults and other utility facilities existing on the Select Service Hotel Property as of the Effective Date or that are constructed or installed by Lessee upon the Select Service Hotel Property, to the extent not owned by a utility company or other third party provider), docks, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Select Service Hotel Property, whether existing as of the Effective Date or as constructed by Lessee, any Sublessee, or otherwise, as the case may be.

1.96.1 "IMPROVEMENT COSTS" shall mean the total actual out-of-pocket cost to the Lessee of planning, designing, financing and constructing the Redevelopment Work in accordance with the Final Plans and Specifications, as of the applicable calculation date. The Improvement Costs shall include all Hard Costs and Soft Costs (without duplication) incurred in connection with the Redevelopment Work, including but not limited to: costs of grading and site preparation; costs of construction and required onsite and offsite improvements, including architectural, engineering and design fees, reproduction costs, and development, permit, and inspection fees charged by any public agency incurred and paid by the lessee; general contractor's fee; premium for performance or completion bonds; title insurance premiums and endorsement costs; survey costs; hazardous materials remediation costs; construction loan interest actually paid by Lessee; consulting and professional fees (including without limitation legal, accounting, environmental and financial consulting fees) paid to third parties with respect to the design and construction of the Redevelopment Work; all ad valorem property taxes and assessments imposed with respect to the Select Service Hotel Property; insurance premiums; and costs of securing the

Redevelopment Work. Notwithstanding the foregoing, Improvement Costs shall (i) exclude any such costs to the extent such costs are reimbursable by tenants under Subleases, whether paid or accrued and (ii) be reduced by any monetary contributions from the County including without limitation contributions towards the cost of constructing parking structures or other improvements included in the Redevelopment Work.

1.97.1 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.98.1 "INITIAL CURE PERIOD" shall have the meaning set forth in Subsection 13.6.3.1(b)(1)).

1.99.1 "INSTITUTIONAL LENDER" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least $2,000,000,000 and capital/statutory surplus or shareholder's equity of at least $500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender). Institutional Lender shall mean and include the Affiliates of such Institutional Lender without regard to such Affiliate's total assets or shareholder equity. Institutional Lender shall not include any so-called "sovereign wealth funds" unless otherwise approved by County in its sole discretion.

1.100.1 "INTERIM MILESTONE(S)" shall have the meaning set forth in Subsection 5.3.2.1.

1.101.1 "INTERIM MILESTONE DATE" shall have the meaning set forth in Subsection 5.3.1.1.

1.102.1 "LATE FEE" shall have the meaning set forth in Subsection 4.2.3.1(e).

1.103.1 "LCP" means the Dana Point Local Coastal Program Amendment 1-08, as amended from time to time.

1.104.1 "LEASE" shall have the meaning set forth in the preamble above.

1.105.1 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.106.1 "LESSEE" shall have the meaning set forth in the preamble to this Lease and Subsection 16.5.

1.1.107 "LESSEE BUSINESS OPERATION" shall have the meaning set forth in Subsection1.84.1.

1.1.108 "LESSEE SALE PRICE" shall have the meaning set forth in Subsection 12.2.4.1.

1.1.109 "LESSEE'S DELIVERABLES" shall have the meaning set forth in Subsection 5.4.1.1.

1.1.110 "LESSEE'S FINAL SUBMITTALS" shall have the meaning set forth in Subsection 5.4.3.1.

1.1.111 "LIP" shall have the meaning set forth in Subsection 10.2.2.1(b)(3).

1.1.112 "LOAN AMOUNT" shall have the meaning set forth in Subsection 4.3.1.1(g).

1.1.113 "MAJOR SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.114 "MAJOR SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.115 "MATERIAL MODIFICATION" shall mean, with respect to the Select Service Hotel Component, an Alteration or any modification, revision or other change to the Redevelopment Work, for the Select Service Hotel Component with respect to which any one of the following applies: (a) for purposes of the Redevelopment Work, the modification(s), individually or in the aggregate, result in a decrease in the previously approved Budget for the Select Service Hotel Component by more than ten percent (10%) (provided any decreases to the Required Cost Amount for the Select Service Hotel Component shall require the County's prior written consent, in its sole and absolute discretion); (b) for purposes of Alterations, the total estimated cost of the same, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, exceeds ten percent (10%) of the Improvement Costs for the Select Service Hotel Component, adjusted to reflect the percentage change in the ENR Index from the date on which the Redevelopment Work for the Select Service Hotel Component was substantially complete until the date on which Lessee calculates the total estimated cost of the Alterations; (c) the proposed Alteration or modification is structural in nature; (d) the proposed Alteration or modification is not in compliance with the Permitted Uses under this Lease; (e) the proposed Alteration or modification, taken individually or in the aggregate with other modifications or Alterations over any consecutive eighteen (18) month period of time, (i) reduces the total interior square footage of the Improvements within the Select Service Hotel Component by more than five percent (5%), (ii) reduces the number of parking spaces within the Select Service Hotel Component by more than five percent (5%), except for a corresponding reduction in the number of parking spaces required for the Improvements within the Select Service Hotel Component (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the interior square footage of the Improvements within the Select Service Hotel Component or changes in the Applicable Law regarding the number of parking spaces required for the Improvements within the Select Service Hotel Component (without variance), or (iii) would result in a reduction of five percent (5%) or more of the number of guest rooms originally permitted by the Governmental Authorities for the Select Service Hotel; (f) for purposes of the Redevelopment Work, the proposed modification would, by itself or when taken with other proposed modifications, result in a delay to the Construction Schedule therefor by more than one hundred eighty (180) days in the aggregate; and (g) the proposed Alteration is a new building, structure, dock, anchorage facility, parking area or roadway, other than those contemplated by the Redevelopment Work. Notwithstanding anything to the contrary contained in this Lease: (1) Material Modifications under subsections (a) and (f)

above shall be subject to the County's review and approval in the sole and absolute discretion of the Chief Real Estate Officer, and otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease, and (2) all other Material Modifications to the Redevelopment Work or Alterations, as applicable, shall, in all instances in this Lease, be subject to the County's review and approval of the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed, and shall otherwise in accordance with the procedures and timeframes for such approval as may be specified in this Lease.

1.1.116 "MEMORANDUM" shall have the meaning set forth in Section 17.15.

1.1.117 "MINIMUM STANDARDS" shall mean the requirements set forth on **Exhibit G** attached hereto, as modified by County or the CREO Office from time to time in a manner consistent with commercially reasonable standards applicable to other comparable hotel projects in the County.

1.1.118 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.1(a).

1.1.119 "MS4" shall have the meaning set forth in Subsection 10.2.2.1(a)(4).

1.1.120 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.121 "NPDES" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.1.122 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.8.7.1.

1.1.123 "OFFERED PROPERTY" shall have the meaning set forth in Section 11.13.

1.1.124 "OPERATING COVENANT EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.125 "OPERATING YEAR" shall mean each twelve (12) month period beginning on the Select Service Hotel Operation Date.

1.1.126 "OPTION" shall have the meaning set forth in the Recitals to this Lease.

1.1.127 "OPTION AGREEMENT" shall have the meaning set forth in the Recitals to this Lease.

1.1.128 "ORIGINAL EFFECTIVE DATE" shall have the meaning set forth in the Recitals to this Lease.

1.1.129 "ORIGINAL HARBOR LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.130 "OWNERSHIP INTERESTS" shall have the meaning set forth in Subsection 13.1.1.1(1).

1.1.131 "PA/DSS" shall have the meaning set forth in Section 11.7.

1.1.132 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.133 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.5.4.1(b).

1.1.134 "PCI/DSS" shall have the meaning set forth in Section 11.7.

1.1.135 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.1.

1.1.136 "PERCENTAGE SHARE" shall have the meaning set forth in Subsection 4.3.1.1(h), 4.3.4.1(a) and 4.3.4.1(b).

1.1.137"PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.5.4.1(a).

1.1.138"PERMITTED EVENTS" shall have the meaning set forth in Section 11.9.

1.1.139 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.140 "POST TERM PERSONAL PROPERTY REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.1.

1.1.141 "PRELIMINARY PLANS" shall have the meaning set forth in Subsection 5.4.2.1.

1.1.142 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.1.

1.1.143 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.144 "PRIOR HARBOR LEASE" shall have the meaning set forth in the Recitals to this Lease.

1.1.145 "PROPERTY MANAGER" shall have the meaning set forth in Section 11.2.

1.1.146 "PROPOSED TRANSFER" shall have the meaning set forth in Subsection 12.2.4.1.

1.1.147 “PURCHASE MONEY NOTE” shall have the meaning set forth in Subsection 4.3.2.1(c).

1.1.148“RECEIVING WATERS” shall have the meaning set forth in Subsection 10.2.2.1(a)(4).

1.1.149 “RECORDS” shall have the meaning set forth in Subsection 15.1.

1.150.1 “RECOVERY PLAN” means, with respect to the Select Service Hotel Property, a detailed narrative explanation clearly stating the scope and extent of any and all resource loading, activity re-sequencing and other acceleration activities required for all affected elements of the Redevelopment Work for the Select Service Hotel Property in order to enable Contractor to: (a) achieve Interim Milestones as proposed in the Recovery Plan and approved by the CREO for the Select Service Hotel Property by the applicable Interim Milestone Date; and/or (b) achieve the CO Date for Select Service Hotel, on or before the Required Construction Completion Date. The Recovery Plan shall be submitted consistent with the terms of Subsection 7.3.1.

1.1.151 “RECOVERY PLAN NOTICE” shall have the meaning set forth in Subsection 5.7.3.1 of this Lease.

1.1.152 “REDEVELOPMENT WORK” shall have the meaning set forth in Section 5.1.

1.153.1 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” means March 6, 2028.

1.154.1 “REQUIRED CONSTRUCTION COMPLETION DATE” means August 4, 2032.

1.155.1 “REQUIRED COST AMOUNT” means Eighteen Million Dollars ($18,000,000.00).

1.1.156 “REQUIRED COST ADJUSTMENT DATE” shall have the meaning set forth in Section 5.2.

1.1.157 “RIGHT OF FIRST OFFER” shall have the meaning set forth in Section 11.13.

1.1.158 “SECURITY DEPOSIT” shall have the meaning set forth in Section 7.1.

1.1.159 “SELECT SERVICE HOTEL” means the select service hotel to be constructed on the Select Service Hotel Property, and comprised of approximately 169 rooms and related amenities. It shall include the completed hotel and any replacement, modification, or enhancement of the hotel or its amenities, provided the hotel continues to operate as a select-service hotel consistent with the intent of this Lease.

1.1.160"SELECT SERVICE HOTEL PROPERTY" shall have the meaning set forth in the Recitals to this Lease.

1.1.161 "SOFT COSTS" means architectural, engineering and other predevelopment consulting and professional fees, a developer fee of not to exceed five percent (5%) of Hard Costs, permits and fees, testing and inspection costs, financing costs, interest reserves or interest accrual required by or in connection with Lessee's initial construction financing, legal, accounting and insurance (including title insurance) relating to the Redevelopment Work, but in no event may such amounts be duplicative.

1.1.162 "STATE" shall mean the State of California.

1.1.163 "STORMWATER PERMITS" shall have the meaning set forth in Subsection 10.2.2.1(b)(2).

1.1.164 "SUBLEASE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.165 "SUBLESSEE" shall have the meaning set forth in Subsection 12.1.1.1.

1.1.166 "SUBSTANTIAL COMPLETION" means the completion of the Redevelopment Work or other work of Improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.167 "TERM" shall have the meaning set forth in Section 2.1.

1.1.168 "TIDELANDS GRANT" shall have the meaning set forth in Subsection 1.2.2.1.

1.1.169 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 17.3.

1.1.170 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.1.

1.1.171 "UNAUTHORIZED BOAT BROKERAGE" shall have the meaning set forth in Subsection 3.2.2.1(g).

1.1.172 "UNINSURED LOSS" shall have the meaning set forth in Section 10.4.

1.1.173 "UNREASONABLE COUNTY ACTION" shall have the meaning set forth in Subsection 5.7.2.1(a).

1.1.174 "UTILITY EASEMENT" shall have the meaning set forth in Subsection 1.2.4.1.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, as successor-in-interest to DPHP, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Select Service Hotel Property for the Term and upon the terms and conditions and subject to the requirements set forth herein.

2.1.1 As-Is. Except as provided in Subsection 1.2.3.1, Lessee accepts the Select Service Hotel Property in its present condition notwithstanding the fact that there may be certain defects in the Select Service Hotel Property, whether or not known to either Party as of the Effective Date. Lessee represents that, pursuant to the Option Agreement, its Affiliate DPHP was afforded a reasonable opportunity to conduct a thorough due diligence investigation of the Select Service Hotel Property prior to DPHP's exercise of the Option and that, prior to the Original Effective Date, DPHP performed all investigations of the Select Service Hotel Property that it deemed necessary or appropriate in order to evaluate the condition of the Select Service Hotel Property and the viability of the Select Service Hotel Property for Lessee's intended purposes. Lessee hereby accepts the Select Service Hotel Property on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Select Service Hotel Property, including without limitation: (a) the quality, nature, adequacy and physical condition and aspects of the Select Service Hotel Property, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (b) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (c) the existence, quality, nature, adequacy and physical condition of utilities serving the Select Service Hotel Property, (d) the development potential of the Select Service Hotel Property, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Select Service Hotel Property for any particular purpose, (e) the zoning, entitlements or other legal status of the Select Service Hotel Property, and any public or private restrictions affecting use or occupancy of the Select Service Hotel Property, (f) the compliance of the Select Service Hotel Property with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the applicable Governmental Authorities ("Applicable Laws"), including, without limitation, the Coastal Act and relevant provisions of the Americans with Disabilities Act, (g) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Select Service Hotel Property, the adjoining or neighboring properties, or ground or other subsurface waters, (h) the quality of any labor and materials used in any Improvements, (i) the condition of title to the Select Service Hotel Property, and (j) the economics of the operation of the Select Service Hotel Property.

2.2.1 Tidelands Grant. This Lease and the rights and privileges granted Lessee in and to the Select Service Hotel Property are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Tidelands Grant by the State of California to the County of Orange (Chapter 321, Statutes of 1961, State of California), as amended from time to time ("**Tidelands Grant**"). Nothing contained in this Lease or in any document related hereto shall be construed to imply (a) the conveyance to Lessee of rights in the

Select Service Hotel Property which exceed those owned by the County, or (b) any representation or warranty, either express or implied, relating to the nature or condition of the Select Service Hotel Property, or County's interest therein.

2.3.1 Title. Subject to the limitations set forth in this Section 1.2, County represents that County owns fee title to the Select Service Hotel Property and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the Select Service Hotel Property, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Select Service Hotel Property pursuant to the terms and conditions of this Lease.

2.4.1 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to: (a) all encumbrances, reservations, licenses, easements and rights of way existing as of the Effective Date and disclosed to Lessee, whether in the County Documents, referenced in this Lease or otherwise, in, to, over or affecting the Select Service Hotel Property for any purpose whatsoever; (b) any other encumbrances, reservations, licenses, leases, easements and rights of way consented to by Lessee in writing; (c) all matters of record (including, without limitation, the Tidelands Grant); and (d) the right of County and/or City to install, construct, maintain, service and operate such existing or new sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements (each, a "**Utility Easement**") as may be reasonably required across, upon or under the Select Service Hotel Property, together with the right of County and/or City to convey such easements and transfer such rights to others; provided, however, that no new Utility Easement shall be located within the Project without the prior written consent of Lessee, which consent shall not be unreasonably withheld, unless the same is necessary for County to comply with its obligations under this Lease, in which case Lessee's consent shall not be required (and in such case, no such Utility Easement shall be located within the footprint of any then-existing building located on the Select Service Hotel Property). Furthermore, for the avoidance of doubt, County hereby reserves for itself, its invitees, licensees, tenants and the general public, and Lessee shall not prevent, obstruct or materially interfere in any way with, the free flow and passage of: (i) vehicles upon and across all streets and roadways as the same may exist from time to time at the Select Service Hotel Property, (ii) pedestrians upon and across all sidewalks, walkways, pathways and other access ways as the same may exist from time to time at the Select Service Hotel Property, and (iii) vessels within the waterways of the Select Service Hotel Property, excluding temporary obstructions or interference that are necessary for construction, operational, or development activities being conducted by Lessee pursuant to, and in accordance with, the terms and conditions of this Lease; provided that any such temporary obstructions or interference shall not pose a health, safety, or security threat to the public, nor shall the same be permitted to remain in place longer than the permitted duration of the underlying construction, operational, or development activity to which it relates as required under this Lease.

2.5.1 Excluded Improvements. Notwithstanding anything to the contrary set forth in this Lease, the "Select Service Hotel Property" shall not include the MS4 (including, without limitation, any sewer or storm drain) or other improvements, whether existing as of the Effective Date or installed thereafter, which have been dedicated to (and such dedication has been accepted by) the City or County ("**Excluded Improvements**"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall

not create any obligation or liability on the part of County with respect to such Excluded Improvements, if any.

2.6.1 Quarterly Reporting. Lessee will submit to the County a quarterly written report continuing through the term of the Lease, as more fully outlined below ("**Quarterly Report**"). Each Quarterly Report shall cover operations and redevelopment activities for the Select Service Hotel Property for the applicable quarter and shall be prepared in a clear and reasonably detailed format.

Each Quarterly Report shall include, at a minimum, updates regarding: (a) leasing and licensing activity, including material changes in occupancy; (b) revenues and expenditures in a reasonable summary form, including identification of material changes, as necessary; (c) progress of development and capital improvement activities, including schedule status, entitlements, substantial compliance, permitting, construction, and approvals; and (d) any other additional information reasonable requested by the Chief Real Estate Officer relating to the operation or redevelopment of the Select Service Hotel Property.

The Quarterly Report will be submitted to the Chief Real Estate Officer prior to the end of the months of April, July, October and January, delivered via email in a single consolidated document, and maybe combined with Quarterly Reporting for the Hotel Component and/or other Components of the Harbor Property

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease shall be sixty-six (66) years ("**Term**") (subject to adjustment of the Term consistent with Section 8.3 hereof) and shall commence on the Effective Date. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on **[66 YEARS** from Effective Date of Hotel Component Lease**]**. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. For the avoidance of doubt, and by way of example, Lease Year 1 as used in this Lease shall mean and refer to the calendar year in which the Effective Date occurs, with the following calendar year being Lease Year 2 and so on.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing, or hereafter constructed by Lessee, upon the Select Service Hotel Property, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

3.1.1 County's Election to Receive Improvements. All Improvements located on, in, or under the Select Service Hotel Property (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Select Service Hotel Property as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee upon the expiration of the Term or earlier termination of this Lease. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the

Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, (b) permit a Sublessee to exercise a right under its Sublease to remove any so-called Sublessee "trade-dress" items installed in or on the interior of space subleased to such Sublessee, provided that Lessee shall be responsible for repairing (or causing its Sublessee to repair) any damage to the Improvements incurred in connection with the removal of such items; or (c) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Select Service Hotel Property, any signage identifying Lessee (as opposed to other signage used in the operation of the Select Service Hotel Property and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Select Service Hotel Property for the Permitted Uses.

3.2.1 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Personal Property Removal Period described below), Lessee shall remove, at its sole cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Select Service Hotel Property or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property prior to the expiration of the Term, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Select Service Hotel Property or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof. County shall be under no obligation to Lessee to effectuate any such sale of furniture, equipment and other personal property, or, in the case of a sale, to obtain any required level of compensation therefor. Notwithstanding the foregoing, (i) Lessee shall have the right, exercisable by delivering written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the removal of the personal property and surrender the Select Service Hotel Property to County pursuant to Lessee's obligations under this Subsection 2.3.2.1 to a date not more than one hundred twenty (120) days after the expiration of the Term (the "**Post Term Personal Property Removal Period**"); and (ii) all of Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Select Service Hotel Property) shall be applicable during the Post Term Personal Property Removal Period, including without limitation, Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Personal Property Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term multiplied by the number of months in the Post Term Personal Property Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Personal Property Removal Period shall be paid by Lessee, in one lump sum prior to the commencement of the Post Term Personal Property Removal Period.

3. USE OF THE HOTEL PROPERTY.

3.1 Specific Primary Use. Subject to Subsection 3.2.2(h) below:

1.1.1 The Select Service Hotel Property and the Improvements thereon shall be used by Lessee solely for the operation and management of hotels, hospitality and related amenities including the following uses and services: (a) hotel, restaurant and limited retail; (b) filming or other television or motion picture activities; (c) catering, banquet and event activities and meeting rooms; (d) spa and recreational activities normally found in first class hotels; (e) ancillary bar, lounge and rooftop venues normally found in first class hotels; (f) cleaning and laundry service, gift shop, resort retail sales, magazine stand, barber or beauty services, travel services, airline ticket services and, subject to the limitations in Subsection 3.2.2.1(h) below, automobile rental; (g) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (h) boater services facilities and operations, including support buildings for marina users and guest services associated with harbor operations; (i) rental and provision of non-motorized recreational equipment, including paddleboards, surfboards, kayaks, bicycles, and similar recreational amenities; (j) such other related and incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's reasonable discretion; and (k) such other unrelated and non-incidental uses as are specifically approved in writing by the Chief Real Estate Officer from time to time, in such Chief Real Estate Officer's sole and absolute discretion.

1.2.1 All of the aforementioned uses, as they relate specifically to the Select Service Hotel Property, shall be referred to herein as the "**Permitted Uses**" of the Select Service Hotel Property. Except as specifically provided herein, the Select Service Hotel Property shall not, without the prior written consent of the Chief Real Estate Officer in the Chief Real Estate Officer's sole and absolute discretion, be used for any purpose other than the Permitted Uses. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

2.1.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Select Service Hotel Property, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Select Service Hotel Property, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Select Service Hotel Property be permitted to be operated or maintained in a manner that renders the Select Service Hotel Property or any part thereof a fire hazard.

2.2.1 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Select Service Hotel Property and Improvements as set forth in this Lease, the following uses of the Select Service Hotel Property are expressly prohibited:

(a) The Select Service Hotel Property shall not be used or developed in any way which violates any Applicable Law, the CDP, the LCP or the Tidelands Grant.

(b) The Select Service Hotel Property shall not be used or developed in any way in a manner inconsistent with the Permitted Uses.

(c) No condition shall be permitted to exist upon the Select Service Hotel Property which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Select Service Hotel Property which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Select Service Hotel Property.

(d) Without the prior written reasonable approval of Chief Real Estate Officer, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "**antennae**") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Select Service Hotel Property, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain Chief Real Estate Officer's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further that the prior approval by the Chief Real Estate Officer shall not be required for (i) any satellite dish or communication antennae installed as an incident to the use of subleased space for purposes other than the operation of a satellite or communications business, and that is not greater than eighteen inches (18") in diameter and is screened from general view and (ii) the erection of cellular towers by Lessee or its designees provided it is approved by the City and is screened from general view or incorporated into an architectural element of the Improvements.

(e) No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Select Service Hotel Property, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as may be necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

(f) No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Select Service Hotel Property, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Select Service Hotel Property, including, without limitation, into subsurface waters, provided, however, (i) Hazardous Substances may be stored or used on the Select Service Hotel Property, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws, and (ii) Lessee shall have no responsibility for Hazardous Substances released on or under the Select Service Hotel Property as a result of defects or deficiencies in the Excluded Improvements or the existing breakwater adjacent to the Select Service Hotel Property identified on **Exhibit H** attached hereto (the "**Breakwater**"), or drainage from the existing drainage channel which empties into the harbor that does not originate from the Select Service Hotel Property (except to the extent caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees), or boat products (including paint

and its components such as lead, copper, and zinc) emanating from boats in the harbor. This Subsection 3.2.2.1(f) shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Select Service Hotel Property or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Select Service Hotel Property, and (II) with respect to Hazardous Substances that did not originate at or from the Select Service Hotel Property, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees (collectively, the "**Lessee Parties**").

(g) No portion of the Select Service Hotel Property shall be used for the sale or lease, or for the display, storage or exhibition for sale or lease, of new or used boats or watercraft ("**Unauthorized Boat Brokerage**"), provided, however, that special events located on all or part of the Select Service Hotel Property which involve the sale, lease, display, storage or exhibition of new or used boats or watercraft, shall not be deemed an Unauthorized Boat Brokerage.

(h) In addition to the foregoing restrictions, and without limiting the same, notwithstanding anything in this Lease to the contrary, Lessee shall not lease or permit the use of any portion of the Select Service Hotel Property for the following: (i) any dumping, disposing, incineration or reduction of garbage (exclusive of appropriately screened dumpsters located in the rear of any building); (ii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (iii) any mortuary; (iv) any establishment selling or exhibiting pornographic materials (except for so-called "adult" material customarily offered on an incidental basis only in first-class hotels, bookstores and/or video stores normally found in first class shopping centers); (v) any massage parlor (which shall not include therapeutic massage normally found in first class shopping centers, such as Massage Envy), topless club or "strip joint"; (vi) any heavy manufacturing, refining, smelting, agricultural or mining operation; (vii) any automobile repair business; (viii) any automobile rental business or automobile dealership which maintains its automobile inventory on-site; (ix) any use which is a public or private nuisance, or (x) any uses prohibited under County ordinances.

3.3 Active Public Use.

3.1.1 The Parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Dana Point Harbor by and for the benefit of the public, without discrimination as to race, gender, religion, or sexual orientation, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will (a) operate the Select Service Hotel Property and Improvements located thereon fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, "**Operating Covenant Exceptions**")) to accomplish these objectives and consistent with the operation of other comparable facilities or businesses within the County, (b) not to abandon or

vacate the Select Service Hotel Property at any time, and (c) use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days and Hours of Operation. All Improvements on the Select Service Hotel Property shall be open every day of the year in a manner consistent with the following:

4.1.1 Guest Rooms, Front Desk, and Security: These operations shall be maintained 24 hours per day, 7 days per week, without exception.

4.2.1 Amenities and Commercial Spaces: Restaurants, bars, pools, spas, retail shops, and other amenity spaces may operate during hours typical for first-class Southern California hotels, marinas, and associated commercial amenities.

4.3.1 Temporary Closures: Lessee may temporarily close any portion of the Property for health or human safety reasons, or while such portions are undergoing construction, Renovation, Alterations, or Redevelopment Work, without violating this section.

4.4.1 Holiday Closures: Non-essential amenities and commercial spaces may follow holiday closures customary to Dana Point Harbor operations. Essential operations, including guest rooms, front desk, and security, must remain open during such holidays.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs, flags and banners which are placed on, or are visible from, the exterior of any Improvements shall be consistent with the Permitted Uses, and shall comply with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations), and Local Coastal Program Section 8.5.3, including requirements for size, placement, style, illumination, materials, and protection of scenic views and shall only be of such size, design, wording and color as shall have been specifically submitted to and approved in writing in advance by the City through the applicable entitlements for the applicable Improvement Project. Because the currently approved Dana Point Harbor Sign Program applies only to the Commercial Core Component, any signage for the Select Service Hotel Property or other areas not yet covered by an adopted Sign Program shall require prior written approval from the CREO Office, which approval shall be limited to confirmation that the proposed Sign Program complies with the Dana Point Harbor Revitalization District Regulations, Part II, Chapter 15 (Sign Standards and Regulations), the Local Coastal Program (Section 8.5.3), and City approvals. Any sign, banner, flag, or similar item that is inconsistent with the Permitted Uses, the applicable Sign Program, LCP sign requirements, or CREO Office approved design may be removed by the CREO Office at Lessee's sole cost if not removed within thirty (30) days following delivery of written notice to Lessee.

3.6 Compliance with Agreements and Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses, permits or approvals related to or affecting the use, operation, maintenance, repair or improvement of the Select Service Hotel Property and/or Improvements. Without limitation of the foregoing, Lessee shall comply with (a) all conditions and requirements of the CDP, LCP and Tidelands Grant, (b) all conditions

and requirements set forth in any development agreement(s) entered into by and between Lessee and the City and/or other public agencies with respect to the Redevelopment Work, and (c) all public access requirements of the LCP. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Select Service Hotel Property and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other retail, commercial, hospitality, restaurant, marina and public park facilities in Orange County, and delivered in writing to Lessee, provided such rules and regulations do not materially and adversely impact Lessee's operations or materially increase Lessee's expenses.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The Parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County, except as set forth in Subsection 10.7 below. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Select Service Hotel Property and Improvements, including without limitation the parking areas included within the Select Service Hotel Property.

1.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid prior to delinquency, directly to the applicable utility providers, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Select Service Hotel Property.

1.2.1 Taxes and Assessments. Lessee shall pay before delinquency all lawful taxes, assessments, fees, and charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Select Service Hotel Property for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Select Service Hotel Property. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option, Lessee's exercise thereof, or the execution of this Lease. Lessee shall have the right to contest the amount of any assessment imposed against the Select Service Hotel Property or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee; and provided further, Lessee shall pay under protest such assessment pending the outcome of such proceedings so long as neither the tax parcel nor the Select Service Hotel Property are in danger of being forfeited. County shall not be required to join in any proceedings to contest any assessment unless the provisions of any law, rule or regulation require such proceedings to be brought by or in the name of the County, in which event the County shall join in such proceedings or permit the same to be brought in its name. Lessee will defend,

indemnify and save harmless County from any Claims related to such proceedings in accordance with Section 8.1 below. **In accordance with Section 107.6 of the California Revenue and Taxation Code, Lessee is specifically informed, and hereby acknowledges and agrees, that the Select Service Hotel Property and any fixtures, equipment, or other improvements installed or constructed thereon shall be subject to possessory interest taxes and assessments, and that such taxes and assessments shall be paid by Lessee prior to delinquency. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax**.

1.3.1 No Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by Applicable Law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

4.2 Rental Payments; Payment; Adjustments. Throughout the Term, Lessee shall pay to County (a) the Annual Minimum Rent described in Subsection 4.2.1.1 below, and (b) the Percentage Rent described in Subsection 4.2.2.1 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

2.1.1 Annual Minimum Rent and Monthly Minimum Rent.

(a) Initial Annual Minimum Rent; Payment. During the Term, Lessee shall pay to County, for the Select Service Hotel Property, the minimum rent set forth on **Exhibit F** attached hereto (subject to adjustment pursuant to Subsection 4.2.1.1(b) below) (the "**Annual Minimum Rent**"). Provided that Tenant faithfully performs all of the terms and conditions of this Lease and there is no Event of Default, the Annual Minimum Rent for the Select Service Hotel Property will be abated during the period (the "**Abatement Period**") beginning on the commencement of demolition of the existing Marina Inn for the Redevelopment Work for the Select Service Hotel Property and ending on the CO Date for the Select Service Hotel, and such date shall be referred to in this Lease as the "**Hotel Deemed Completion Date**". For purposes hereof, the date upon which the commencement of the Redevelopment Work has occurred will be the first date that visible construction activity for demolition of the existing Marina Inn (as opposed to the delivery of goods and materials or erection of fencing) has occurred ("**Commencement of Construction**"). Lessee shall provide written notice to County of the Commencement of Construction and the CO Date promptly upon the occurrence thereof. Annual Minimum Rent for each Lease Year shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent for such Lease Year (the "**Monthly Minimum Rent**"); provided, however, if any period during which the Annual Minimum Rent is calculated is less than a full calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

(b) Adjustments to Annual Minimum Rent. The Annual Minimum Rent for the Select Service Hotel Property shall be adjusted as set forth on **Exhibit F** attached hereto.

2.2.1 Percentage Rent. Beginning in the fifth (5th) Operating Year, Lessee shall pay to County, an amount ("**Percentage Rent**") for any given month equal to (i) the aggregate of all amounts set forth below in Subsection 4.2.2.1(a), to the extent Gross Receipts are generated from the Select Service Hotel Property, less (ii) (A) the Annual Minimum Rent payable by Lessee for the Select Service Hotel Property during such month, and (B) all amounts required to be paid by Lessee to reimburse to any tenant at the Select Service Hotel Property whose tenancy predates the Effective Date a security deposit, to the extent the required amounts are not transferred to Lessee by County as of the Effective Date.

(a) Categories of Percentage Rent. Gross Receipts from each transaction, sale or activity of Lessee (or from any Sublessee pursuant to Subsection 4.2.2.1(c)) on, from or within the Select Service Hotel Property, or as a result of operations from the Select Service Hotel Property (e.g., internet sales), shall be reported under one or more of the following percentage categories, as applicable:

(1) (x) TWO AND FOUR-TENTHS PERCENT (2.4%) of Gross Receipts from the Select Service Hotel room revenue, commencing on the FOURTH (4th) anniversary of the Select Service Hotel Operation Date and continuing through the eighteenth (18th) anniversary of the Effective Date, and (y) THREE AND TWO-TENTHS PERCENT (3.2%) of Gross Receipts from the Select Service Hotel room revenue thereafter;

(2) TWO PERCENT (2%) of Gross Receipts from other hotel operations, including, but not limited to hotel parking, banquet events, restaurants, lounges, bars, rooftop venues, spa services, resort fees and other hotel services and activities commencing on the Effective Date;

(b) Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be included in the calculation of Gross Receipts.

(c) Sublessees in Business. Subject to Subsection 1.1.84(b)(13) above, if a Sublessee directly pays any common area maintenance payments, common area operating expense or real property tax reimbursements in lieu of reimbursement of such expenses under its lease for the space it occupies, then such costs and expenses shall be added to and included in the Gross Receipts under the applicable provision in Subsection 4.2.2.1(a) above.

(d) No Expansion of Permitted Uses. Lessee acknowledges that (i) Article 3 of this Lease provides for the Permitted Uses of the Select Service Hotel Property and that the Percentage Rent categories listed in Subsection 4.2.2.1(a) above may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses, and (ii) the Percentage Rent categories set forth in Subsection 4.2.2.1(a) above are

intended merely as a guideline in determining the appropriate categories for charging Percentage Rent.

(e) New Categories of Percentage Rent.

(1) If, with the prior written approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently a Permitted Use and as to which there is no specific Percentage Rent category set forth in Subsection 4.2.2.1(a) above applicable to such additional or related use, then concurrent with the approval by County or Chief Real Estate Officer of such specific additional use, Chief Real Estate Officer and Lessee shall negotiate in good faith to establish the specific Percentage Rent to be applied to such use.

(2) If, without the prior written approval of Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease, then Lessee shall pay to County SEVENTY-FIVE PERCENT (75%) of Gross Receipts generated by such non-permitted use as Percentage Rent therefor.

2.3.1 Payment and Late Fees.

(a) Monthly Minimum Rent Payment. Monthly Minimum Rent shall be paid by Lessee to County in advance on or before the first (1st) day of each calendar month during the Term. Concurrently with each payment of Monthly Minimum Rent, Lessee shall deliver to County a statement setting forth the amount of Monthly Minimum Rent being paid hereunder as more particularly described on **Exhibit F** attached hereto.

(b) Percentage Rent; Reporting and Payment. On the last business day of each month during the Term, Lessee shall, with respect to the Select Service Hotel Property, (i) deliver to the County a separate report (in a form acceptable to County, and signed by Lessee) summarizing (A) the total Gross Receipts generated from operations on the Select Service Hotel Property during the preceding calendar month (including Gross Receipts generated by Sublessees, if reported under its Sublease, and Gross Receipts generated in connection with any Lessee Business Operation), including such backup as County may reasonably require from time to time, and shall include a breakdown of Gross Receipts by sub-component as described in Subsection 4.2.3(a) above, and (B) the amount of Percentage Rent resulting therefrom (including by sub-component, as applicable), and (ii) concurrently with its delivery of such report to the County, pay to County a sum equal to the total of the percentages listed in Subsection 4.2.2.1 above generated from operations on the Select Service Hotel Property for such previous month, less the installment of Monthly Minimum Rent applicable to the Select Service Hotel Property and paid to County for such previous month. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.3.1(c) below. Lessee agrees to and shall comply with, and shall cause all Sublessees (other than those described in Subsection 4.2.2.1(c)) to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 15 of this Lease.

(c) Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Annual Minimum Rent otherwise due under this Subsection 4.2.3.1 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve any audits of Percentage Rent.

(d) Delivery of Payments; No Statements. All payments under this Lease shall be made via wire transfer to the following:

Bank Name:	Wells Fargo Bank
Account Name:	OCCR Dana Point Harbor
Routing / ABA:	121000248
Account #:	4121802219
Lease Name:	Dana Point Harbor

The designated place of payment and filing may be changed at any time by the Chief Real Estate Officer upon ten (10) days' written notice to Lessee. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

(e) Late Fees; Interest. In the event any payment under this Lease is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") equal to five percent (5%) of the delinquent amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable hereunder; provided, however, with regard to the first such failure in any twelve (12) month period, such late charge shall be waived to the extent Lessee cures such failure within five (5) business days following Lessee's receipt of written notice from County that the same was not received when due. Any unpaid rent due, together with any Late Fees thereon, shall bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure

rights under Article 13 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder's acquisition of leasehold title to the Select Service Hotel Property shall be limited to a maximum of three (3) years.

4.3 Payment Upon Changes of Ownership & Financing Events. Except as otherwise provided in this Subsection 4.3, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer), or (b) a Financing Event, Lessee shall pay to County (i) an administrative charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**"), plus (ii) in the event the proposed Change of Ownership or Financing Event is consummated, a Percentage Share, subject to the remaining provisions of this Section 4.3. Notwithstanding anything herein to the contrary, Excluded Transfers shall not be deemed to create an obligation to pay County a Percentage Share and no Percentage Share shall be payable in connection with (A) the initial construction financing obtained in connection with the Redevelopment Work, or (B) the initial capitalization of Lessee with the closing of the initial hotel construction financing for purposes of performing the Redevelopment Work (Initial capitalization means the one-time equity contributions and direct funding made by Lessee or its Affiliates solely in connection with, and on or before the closing of, the initial Hotel Construction Financing for purposes of completing the Redevelopment Work, and shall not include any related-party (but not member) loans or refinancings occurring after the closing of the Hotel Construction Financing), or (C) in the event that all or any portion of the proceeds of a Financing Event are reinvested in the Select Service Hotel Property and Improvements, in which case Lessee shall provide all documentation of the use of such proceeds to the County for review and audit, if deemed necessary in the reasonable discretion of the County and such reinvestment shall be limited to Improvements previously approved by the County (which approval shall not be unreasonably withheld, conditioned, or delayed), or (D) in the event that the Loan Amount is equal to or less than the amount of (i) existing loans being paid off in connection with such Financing Event, *plus* (ii) reasonable and customary costs, fees and expenses of an Institutional Lender incurred by Lessee attributable solely to such Financing Event, excluding Lessee's internal and administrative costs and fees related to the Financing Event, which shall be documented and provided to the County in advance of the Financing Event as a condition to such Financing Event being considered an Excluded Transfer. In the event only a portion of the proceeds from a Financing Event are reinvested pursuant to part (C) of the preceding sentence, only such portion of the proceeds shall be exempt from Percentage Share. For any portion of Financing Event proceeds that Lessee asserts are reinvested in the Hotel Property and Improvements, Lessee shall: (a) reinvest such proceeds within twelve (12) months after the closing of the Financing Event; (b) provide the County, within sixty (60) days of each expenditure, with documentation reasonably acceptable to the County verifying such reinvestment, including invoices, contracts, and proof of payment; and (c) identify the total reinvested amount so the exempt portion may be calculated. Only amounts actually reinvested in County-approved Improvements shall be excluded from the Percentage Share. The provisions of this Section 4.3 shall apply to all transfers of Beneficial Interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of this Section 4.3, and the principles set forth herein, shall apply to any transfer or series of transfers (except those excluded pursuant to this Lease), whether or not

structured for the purpose of avoiding the obligation to pay a Percentage Share set forth in this Section 4.3 and which, when viewed together, would otherwise constitute a Change of Ownership.

3.1.1 Definitions. For purposes of this Lease:

(a) "**Aggregate Transfer**" shall mean the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute Beneficial Interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than Excluded Transfers) occurring since the later of (i) the Effective Date, or (ii) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

(b) "**Beneficial Interest**" shall mean the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the Beneficial Interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

(c) "**Change of Ownership**" shall mean (i) any transfer by Lessee of a thirty-two percent (32%) or greater direct ownership interest in the Lessee's leasehold estate under this Lease, (ii) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a thirty-two percent (32%) or greater direct ownership interest in such Major Sublease, (iii) any transaction or series of related transactions not described in Subsections 4.3.1.1(c)(i) or (ii) which constitute an Aggregate Transfer of thirty-two percent (32%) or more of the Beneficial Interests in Lessee or a Major Sublessee, and/or (iv) a Change of Control of Lessee or a Major Sublessee.

(d) "**Change of Control**" shall mean any transaction whereby person(s) or entity(ies) in the aggregate acquire(s): (i) a Beneficial Interest in Lessee or a Major Sublessee possessing the voting power (other than voting rights accruing only in the event of a default, breach or event of noncompliance) holding the majority of the voting control of Lessee (whether by merger, consolidation, reorganization, combination, sale or transfer

of the Lessee's equity interests (such as membership, stock or partnership interests), voting agreement, proxy, power of attorney or otherwise); or (ii) all or substantially all of the Lessee's assets determined on a consolidated basis.

(e) "**Excluded Transfers**" shall mean Changes of Ownership resulting from the following:

(1) those transactions listed in Section 4.3 (A), (B), (C) and (D);

(2) a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or to a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure), including transfers to such transferring partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 4.3.1.1(e)(4) below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

(3) a transfer to a spouse (or to a domestic partner if domestic partners are afforded property rights under then-existing Applicable Laws) in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(4) a transfer of ownership interests in Lessee or in constituent entities of Lessee (A) to a member of the "**immediate family**" of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (B) to a trust for the benefit of a member of the immediate family of the transferor, or (C) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.3.1.1(e)(4) is the result of gift, devise, intestate succession or operation of law, but expressly excluding any such transfers that are the result of a sale of such ownership interest.

(5) a transfer of a Beneficial Interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

(6) a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a

Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership;

(7) any transfer to the County resulting from a Condemnation by County;

(8) any assignment of the Lease by Lessee to a parent, or wholly-owned subsidiary or Affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest or Change of Control of Lessee;

(9) the first Financing Event that occurs to refinance the initial construction loan;

(10) the entering into the Full Service Hotel Lease by County and the lessee thereunder, who is an Affiliate of DPHP; or

(11) the entering into this Lease by County and Lessee.

(f) "**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (without deduction for costs or any other amounts), but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair market value of the interests transferred; provided, if Lessee and County are unable to agree upon such fair market value, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1.

(g) "**Loan Amount**" shall mean the gross principal amount of any Financing Event after the Effective Date.

(h) "**Percentage Share**" shall mean the applicable amount determined pursuant to Subsection 4.3.4.1 of this Lease.

3.2.1 Determining Value of Changes of Ownership and Financing Events Under Certain Scenarios.

(a) Changes of Ownership Involving Multiple Assets. For purposes of determining the Gross Transfer Proceeds from a transaction or event that involves both a Change of Ownership and also the transfer of other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee (as applicable), the proceeds of such transaction or event shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests, on the other hand, in proportion to the ratio of the fair market value of the Beneficial Interest in the Lease being transferred relative to the value of the total consideration payable for all the assets being transferred. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1.

(b) Financing Events Involving Multiple Assets. For purposes of determining the Percentage Share from a financing transaction that involves both a Financing Event under this Lease and a financing in which other assets or interests unrelated to this Lease, a Major Sublease or Beneficial Interests in Lessee or a Major Sublessee secure the financing, the principal amount of such financing transaction shall be apportioned to this Lease, a Major Sublease and/or Beneficial Interests in Lessee or a Major Sublessee (as applicable), on the one hand, and to the other unrelated assets or interests that also secure the financing, on the other hand, in proportion to the ratio of (i) the fair market value of the Beneficial Interest in the Lease, to (ii) the aggregate fair market value of the assets securing such financing, including the Beneficial Interest in the Lease. The fair market value of such Beneficial Interest in the Lease will be the value attributable to such fair market value by the lender involved in such Financing Event, or, failing any such lender valuation, then in accordance with the procedure set forth in Subsection 4.3.3.1.

(c) Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration in the manner prescribed in Subsection 4.3.3.1.

3.3.1 Determination of Fair Market Value.

(a) Agreement on Fair Market Rental Value; Amendment. In the event the County and Lessee are required to determine the fair market value hereunder (including that of any Component) and the County and Lessee are unable to agree upon the fair market value within thirty (30) days from the end of the applicable response period, if any, or from the date that such fair market value determination is required to be made hereunder if no response period is specified (the "**Outside Agreement Date**") using their best good-faith efforts, then fair market rental value shall be determined in accordance with Subsection 4.3.3.1(b) below. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

(b) Disagreement on Fair Market Rental Value; Arbitration. If County and Lessee fail to reach agreement on or prior to the Outside Agreement Date, then, unless the Parties agree otherwise in writing, the determination of fair market value shall be arbitrated as follows:

(1) Within ten (10) days after the Outside Agreement Date, each Party, at its own cost and by giving notice to the other Party, shall appoint an independent California MAI licensed real estate appraiser and a member of the American Institute of Real Estate Appraisers or the Society of Real Estate

Appraisers, who has no financial interest in County or Lessee, who has no ongoing relationship with County or Lessee and who has at least ten (10) years' experience in appraising fair market values of comparable facilities or businesses within the County and, to the extent available, within the Dana Point and neighboring beach-city sub-market, to appraise and determine the fair market value. If, in the time provided, only one (1) Party shall give notice of appointment of such an appraiser, the single appraiser appointed shall determine the fair market value.

(2) If each Party appoints an appraiser within the allotted timeframe, the two (2) appraisers shall independently, and without consultation, prepare a written determination of the fair market value within thirty (30) days after their appointment taking into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3.1(a) above. Each appraiser shall seal its respective determination after completion. After both determinations are completed, the resulting estimates of fair market value shall be opened simultaneously and compared. If, in the time provided, only one (1) appraiser shall submit a written determination of fair market value, the fair market value shall be the fair market value determined by said single appraiser.

(3) If the values of the two appraisers appointed by the Parties differ, and the Parties do not otherwise then agree as to the determination of fair market value within ten (10) days following the opening of the appraisals, then the two (2) appraisers shall designate a single appraiser, who shall be qualified under the same criteria as set forth hereinabove for qualification of the initial two (2) appraisers, except that the third appraiser shall not have been previously engaged by County or Lessee for any purpose. If the two (2) appraisers have not agreed on the appraiser after ten (10) days, either County or Lessee, by giving ten (10) days' written notice to the other Party, may apply to the then Presiding Judge of the Superior Court of Orange County, acting in his or her private and nonjudicial capacity, for the selection of a single appraiser who meets the qualifications set forth in this subsection above. The third appraiser shall make an appraisal of the fair market value, taking into account into consideration the terms and provisions applicable to the calculation of the fair market value set forth in Subsection 4.3.3.1(a) above. Within thirty (30) days after selection and without consultation with the first two (2) appraisers, the third party appraiser shall select the fair market value of one of the initial two (2) appraisers that the third appraiser determines is closest, on a dollar basis, to the fair market value determined by the third appraiser. Each Party may submit written material to the third appraiser, with a copy to the other Party, on the issue of fair market value. Such third appraiser shall provide written notice to County and Lessee of its determination of fair market value, and such determination shall be binding upon County and Lessee.

(4) Each Party shall pay the fees and expenses of its own appraiser, and fifty percent (50%) of the fee of the third appraiser, if applicable.

(5) The appraisers shall have no power to modify the provisions of the Lease, and their sole function shall be to determine the fair market rental value in accordance with this subsection.

3.4.1 Determining Percentage Share.

(a) Upon a Change of Ownership. In the event of a Change of Ownership, the "**Percentage Share**" shall be one percent (1%) of the Gross Transfer Proceeds from such Change of Ownership.

(b) Upon a Financing Event. With respect to a Financing Event, the "**Percentage Share**" shall be an amount equal to one percent (1%) of the Loan Amount of such Financing Event.

(c) Limitations; No Duplication. Notwithstanding any contrary provision of this Subsection 4.3.4.1, in the calculation of Gross Transfer Proceeds and Loan Amount derived from a Financing Event taking place concurrently with a Change of Ownership, the Percentage Share shall be based on the greater of the Gross Transfer Proceeds and the Loan Amount.

(d) Calculating Percentage Share. Before any Change of Ownership or Financing Event for which Percentage Share may be due, Lessee shall provide County with its detailed calculation of the Percentage Share. No Change of Ownership or Financing Event shall occur until agreement is reached on the calculation of Percentage Share; provided, however, that a Change of Ownership or Financing Event shall be permitted to occur without such agreement as long as County and Lessee make mutually acceptable arrangements for the preservation of any additional Percentage Share (plus interest at the Interest Rate) that might be due to County over and above that reflected in the Lessee's calculation should any such dispute be resolved in favor of County. Percentage Share shall be due and payable concurrently with the Change of Ownership or Financing Event giving rise to the obligation to pay Percentage Share (or, with respect to any disputed amount, upon resolution of the dispute) and, in the situation of a Change of Ownership, shall be the joint and several obligation of the transferee and transferor.

3.5.1 Determining Gross Transfer Proceeds.

(a) Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.3.1.1(c)(ii), Subsections 4.3.4.1(a) and 4.3.4.1(b) shall apply (as applicable), except that any rents or other amounts received by Lessee from the Major Sublessee, a percentage of which is passed through to County under any provision of this Lease (other than payment of Percentage Share), shall be disregarded in the computation of Gross Transfer Proceeds.

(b) Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in Subsections 4.3.4.1(a) through 4.3.4.1(c) above (e.g., a transfer of a Beneficial Interest in Lessee or a Major Sublessee), Subsections 4.3.4.1(a) through 4.3.4.1(c) shall apply to such Change of Ownership (as applicable).

3.6.1 Payment of Administrative Charge and Percentage Share.

(a) Deposit Towards Administrative Charge. A deposit of Ten Thousand Dollars ($10,000) toward the Administrative Charge shall be due and payable by Lessee to County upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Percentage Share shall be due and payable in accordance with Subsection 4.3.6.1(d) below. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under this Section 4.3. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay to County the balance of the Administrative Charge otherwise allowable under Section 4.3 within thirty (30) days after receipt of the notice from County setting forth the amount of the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice.

(b) Calculation of Payment. At the time of Lessee's request for County approval of the proposed transaction (or in the case of a transaction, if any, as to which a Percentage Share is payable but County's approval is not required, then at the time of Lessee's notice to County of the transaction, but in no event later than the consummation of the transaction), Lessee shall present (or cause to be presented) to County its calculation of the Percentage Share (if any) anticipated to be derived therefrom ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Percentage Share. Within sixty (60) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Percentage Share set forth therein. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the amount of the Percentage Share in respect thereof, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that, at the closing of the transaction (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Percentage Share, and (ii) Lessee shall deposit the disputed portion of the Percentage Share into an interest bearing escrow account for the mutual benefit of Lessee and County (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed to the Party entitled thereto following the final resolution of the dispute by a court of competent jurisdiction, or earlier settlement of the dispute by the Parties.

(c) Party Responsible for Payment. With respect to a Change of Ownership giving rise to the Administrative Charge and Percentage Share, the obligation to pay the Administrative Charge and Percentage Share shall be the joint and several obligation of the transferee and transferor.

(d) Timing for Payment. The Percentage Share and the balance of the Administrative Charge not already deposited with the County in accordance with Subsection 4.3.1.1(e)(10) above, if any, shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such amounts, regardless of whether or not money is transferred by the parties in connection with such consummation.

(e) Remedies Upon Failure to Make Timely Payment. Any Percentage Share, or part thereof, not paid when due shall be subject to a late fee of five percent (5%) of the amount due, together with interest on such Percentage Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a good faith dispute as to the correct amount of the Percentage Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Percentage Share and, at the closing of the transaction, deposits the disputed portion thereof in an interest bearing escrow account with an escrow holder reasonably acceptable to both Parties and in an escrow opened for the mutual benefit of Lessee and County (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Percentage Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Percentage Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.3.1.1(c)(ii) above, the Percentage Share shall be payable to County as and when the Lessee's proceeds from the Gross Transfer Proceeds (or the value thereof) are received by Lessee. In the event that the Administrative Charge or Percentage Share is not paid when due with respect to the Beneficial Interest in this Lease, then such failure shall constitute an Event of Default under this Lease and the County shall have the remedies set forth in Subsection 14 hereof in addition to the remedies provided in this Subsection 4.3.6.1(e).

4.4 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County, Lessee shall provide County with an updated schedule listing the names and mailing addresses of (a) all shareholders, partners, members and other holders of equity or Beneficial Interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (b) all shareholders, partners, members and other holders of equity or Beneficial Interests in any of the constituent shareholders, partners, members or other holders of equity or Beneficial Interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a ten percent (10%) or greater Beneficial Interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with

the names and mailing addresses of each beneficiary of said trust with greater than a ten percent (10%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review all such information so obtained. Lessee agrees to use its commercially reasonable and diligent efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of ten percent (10%) or greater Beneficial Interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Following the Effective Date, Lessee shall perform certain redevelopment and renovation work with respect to the Select Service Hotel Component (collectively, the "**Redevelopment Work**") as set forth for the Select Service Hotel Component in the County-approved Conceptual Plans, Budget, Construction Schedule, Marketing Plan, Financial Plan and Management Plan attached to this Lease as **Exhibit B** (collectively, the "**Approved Proposal Submittals**"). For the avoidance of doubt, the Redevelopment Work shall mean that redevelopment and renovation work set forth in the Approved Proposal Submittals applicable to the Select Service Hotel Component only, and not any work applicable to any other portion of the Harbor Property which is not the Select Service Hotel Property. Lessee shall perform the Redevelopment Work for the Select Service Hotel Component in accordance with (a) the Approved Proposal Submittals, as same may be revised from time to time in accordance with this Lease, (b) the Final Plans and Specifications, as same may be revised from time to time in accordance with this Lease, (c) all governmental permits and conditions for approval thereof including, without limitation, the LCP and CDP, (d) Lessee's obligations under this Lease, (e) all Applicable Laws, and (f) consistent with the Permitted Uses set forth in Article 3 above.

5.2 Cost of Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). With respect to the Select Service Hotel Component, Lessee shall expend on the Redevelopment Work for the Select Service Hotel Component not less than the Required Cost Amount; provided, however, only Applicable Redevelopment Costs will apply towards the Required Cost Amount. Lessee acknowledges and agrees that (a) the Required Cost Amount for the Select Service Hotel Component is not the maximum amount that Lessee is required to expend for Applicable Redevelopment Costs on the Select Service Hotel Component, and (b) Lessee shall be required to perform the Redevelopment Work for the Select Service Hotel Component in accordance with the requirements and standards set forth in this Article 5 even if the Applicable Redevelopment Costs necessary to do so exceed the applicable Required Cost Amount. Applicable Redevelopment Costs shall not include any soft costs, including without limitation: (i) architectural, design and engineering fees; (ii) governmental permit fees; (iii) project oversight and management fees; (iv) costs for furniture, fixtures and equipment; (v) accounting, legal and insurance costs incurred in connection with the Redevelopment Work; or (v) construction loan fees, costs or interest. The Applicable Redevelopment Costs shall also exclude the Option Price and Extension Fee (as such terms are defined in the Option Agreement), syndication fees and costs, and any imputed cost or value of the existing Improvements as of the Original Effective Date. The Required Cost Amount for the

Select Service Hotel Component will be increased as of the date that construction of the Redevelopment Work for the Select Service Hotel Component commences (each, a "**Required Cost Adjustment Date**") by the same percentage increase in the Consumer Price Index during the period from the Original Effective Date through and until the month during which a Required Cost Adjustment Date occurs.

5.3 Schedule of Redevelopment Work.

3.1.1 Subject to Sections 5.3.2.1 and 5.7 below, Lessee shall, with respect to the Select Service Hotel Component, (a) commence the Redevelopment Work no later than the Required Construction Commencement Date for the Select Service Hotel Component, (b) achieve each Interim Milestone by the date (the "**Interim Milestone Date**") set forth for the same in the Construction Schedule for the Select Service Hotel Component, and (c) achieve the CO Date for the Select Service Hotel no later than the Required Construction Completion Date for the Select Service Hotel. Following Commencement of Construction of the Redevelopment Work for the Select Service Hotel Component, Lessee shall diligently continue performance of such Redevelopment Work through completion thereof in accordance with the Construction Schedule, as same may be amended from time to time with the approval of Chief Real Estate Officer pursuant to Subsection 5.3.2.1 below.

3.2.1 A schedule for the commencement, performance and completion of the Redevelopment Work for the Select Service Hotel Component (each, a "**Construction Schedule**") is included in the Approved Proposal Submittals. The Construction Schedule includes, with respect to the Select Service Hotel Component: (a) the Required Construction Commencement Date for the Select Service Hotel Component, (b) the anticipated CO Date for the Select Service Hotel, (c) the Required Construction Completion Date and (d) all interim milestones between the Required Construction Commencement Date and Required Construction Completion Date (collectively, "**Interim Milestones**" and each, an "**Interim Milestone**") that Lessee and County reasonably agree are relevant to tracking the likelihood that the Redevelopment Work for the Select Service Hotel Component will be completed by the anticipated CO Date for the Select Service Hotel. Lessee shall not make any Material Modifications to the Construction Schedule without the prior written approval of Chief Real Estate Officer obtained in accordance with the procedure set forth below in this Subsection 5.3.2.1. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested Material Modifications to the Construction Schedule within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.3.2.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PROPOSED CHANGE(S) TO THE CONSTRUCTION SCHEDULE. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR

APPROVAL OF SUCH CHANGE(S) TO THE CONSTRUCTION SCHEDULE."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to the Construction Schedule in writing within said additional twenty (20) day period shall be deemed approval of the same. Concurrently with any disapproval of such proposed change by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to the proposed change together with its proposed modification that will be necessary to obtain Chief Real Estate Officer's approval. Chief Real Estate Officer's approval of any changes to the Construction Schedule shall not relieve or otherwise affect Lessee's obligations under this Lease with respect to the commencement and completion of the Redevelopment Work on or before the respective required dates for such commencement and completion set forth in Subsection 5.3.1.1 above.

3.3.1 Lessee acknowledges that the principal inducement to County to enter into this Lease is the timely commencement, performance and completion by Lessee of the Redevelopment Work. If Lessee fails to comply with its obligations under this Article 5 to commence and complete the Redevelopment Work for the Select Service Hotel Component by the Required Construction Commencement Date and Required Construction Completion Date, respectively (as such dates may be extended pursuant to the provisions of this Article 5 or Section 5.7 below), then such failure shall be deemed an Event of Default giving rise to County's remedies under Section 14.3 below.

3.4.1 Lessee acknowledges that certain private enterprises operating on property leased from County adjacent to the Select Service Hotel Property may require access to their properties via the Select Service Hotel Property at all times during the course of the Redevelopment Work. Lessee shall schedule the Redevelopment Work in such a way as to minimize interruption with such private business enterprises.

5.4 Plans and Specifications.

4.1.1 Schematics and Narrative. Prior to the Effective Date, , as required by the Hotel Lease, DPHP submitted to the Chief Real Estate Officer schematic plans together with a narrative description and construction cost estimate summary which clearly delineating the nature, size, configuration and layout of the Improvements to be constructed by Lessee as part of the Select Service Hotel Component (collectively, "**Lessee's Deliverables**"). Any subsequent Material Modifications to Lessee's Deliverables previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.1.1.

4.2.1 Preliminary Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Lessee's Deliverables pursuant to Subsection 5.4.1.1 and in accordance with the deliverables schedule set forth in the Construction Schedule for the Select Service Hotel Component, , Lessee shall, with respect to the Select Service Hotel Component, submit to Chief Real Estate Officer six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Redevelopment Work applicable to the Select Service Hotel Property (collectively, the "**Preliminary Plans**"). The Preliminary Plans for the

Select Service Hotel Property shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the Lessee's Deliverables for the Select Service Hotel Property previously approved by Chief Real Estate Officer and be consistent, in all material respects, with the Lessee's Deliverables, the Approved Proposal Submittals previously approved by Chief Real Estate Officer for the Select Service Hotel Property, or otherwise include a detailed explanation of the reasons for all material deviations from the Approved Proposal Submittals. Lessee shall identify on all documents submitted with the Preliminary Plans to the CREO Office, all Material Modifications and other difference in the scope, size, configuration, arrangement or motif of the designed Improvements from those described in the previously approved Lessee's Deliverables. The Preliminary Plans shall be of a detail and scope that is typically associated with design development drawings. Chief Real Estate Officer shall have thirty (30) days from the receipt within which to approve or reasonably disapprove the Preliminary Plans submitted for the Select Service Hotel Component, provided that it shall be reasonable for the Chief Real Estate Officer to disapprove said preliminary plans on the grounds that, among other things, they include Material Modifications to the applicable Lessee's Deliverables, Construction Schedule or Construction Budget previously approved by Chief Real Estate Officer in accordance with this Section 5.4, or otherwise do not reflect a natural evolution from the previously approved Lessee's Deliverables. Chief Real Estate Officer shall have thirty (30) days following receipt of Preliminary Plans for the Select Service Hotel Component or any subsequent change to the Preliminary Plans for the Select Service Hotel Component, within which to approve or disapprove such Preliminary Plans or Material Modification in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.2.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S PRELIMINARY PLANS FOR THE HOTEL COMPONENT OR ANY MATERIAL MODIFICATIONS TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH PRELIMINARY PLANS FOR THE HOTEL COMPONENT ANY SUBSEQUENT CHANGE TO THE PRELIMINARY PLANS FOR THE HOTEL COMPONENT."

Failure of Chief Real Estate Officer to approve or disapprove such submitted Preliminary Plans for the Select Service Hotel Component or any such submitted change to the Preliminary Plans for the Select Service Hotel Component in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed. Any subsequent Material Modifications to the Preliminary Plans previously approved by Chief Real Estate Officer shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.2.1.

4.3.1 Final Plans and Specifications. As soon as reasonably practicable after Chief Real Estate Officer's approval of the Preliminary Plans for the Select Service Hotel Component, Lessee shall submit for approval by Chief Real Estate Officer six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Redevelopment Work for the Select Service Hotel Component, together with one (1) set of appropriate structural computations, identical to those requested or required by the Chief Real Estate Officer incident to the issuance of building permits under the relevant provisions of the Orange County Building Code (collectively, "**Lessee's Final Submittals**"). Lessee shall file duplicate copies of Lessee's Final Submittals with the CREO Office, together with the necessary and appropriate applications for building permits. Lessee shall clearly identify in the Lessee's Final Submittals all differences in the scope, size, configuration, arrangement or motif of the Redevelopment Work from those described in Lessee's Preliminary Plans previously approved for the Select Service Hotel Component. Chief Real Estate Officer shall have thirty (30) days after receipt of Lessee's Final Submittals for the Select Service Hotel Component within which to approve or disapprove such submission, and Chief Real Estate Officer may disapprove such submission only on the grounds that (a) they do not reflect a natural evolution from or that they materially differ from Lessee's Preliminary Plans previously approved for the Select Service Hotel Component, or (b) any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Chief Real Estate Officer as a part of the previously approved Lessee's Preliminary Plans do not meet the requirements for the Improvements set forth in this Article 5. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Lessee shall thereafter deliver a transmittal letter to the CREO Office containing the following text prominently displayed in bold-faced type on the first page:

> "PURSUANT TO SUBSECTION 5.4.3.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S FINAL SUBMITTALS. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF LESSEE'S FINAL SUBMITTALS."

Failure of Chief Real Estate Officer to approve or disapprove such requested change to Lessee's Final Submittals in writing within said additional twenty (20) day period shall be deemed approval of the same. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed.

Concurrently with any disapproval by Chief Real Estate Officer of Lessee's Final Submittals or any subsequent Material Modification thereto, County shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Chief Real Estate Officer's reasons for objecting Lessee's Final Submittals or Material Modifications thereto. Chief Real Estate Officer's approval shall not be required of any non-Material Modification. Any subsequent Material Modifications to any previously approved Lessee's Final Submittals (the "**Final Plans and Specifications**") shall require the prior written approval of Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.4.3.1.

5.5 Conditions Precedent to the Commencement of Construction. Lessee shall not commence any Redevelopment Work or Alterations (including, without limitation, grading or other construction-related activities) (each, an "**Improvement Project**") until each and all of the following conditions have been satisfied:

5.1.1 Permits and Other Approvals. Lessee shall have (a) provided the CREO Office with reasonably satisfactory evidence that Lessee has met all requirements of applicable Governmental Authorities for the commencement of the applicable Improvement Project, and (b) obtained, and furnished the CREO Office with copies of, all permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the commencement of such Improvement Project. With respect to the Redevelopment Work, commencing on the Effective Date and continuing on or before the fifteenth (15th) day of each calendar month thereafter until the commencement of such work, Lessee shall provide County with a written status report documenting Lessee's efforts to obtain all required permits, licenses, clearances and other approvals from the applicable Governmental Authorities for the Redevelopment Work. Subject to the terms and conditions set forth in Subsection 5.6 below, County shall timely cooperate with Lessee in connection with Lessee's efforts to obtain governmental approvals required in connection with this Lease and the Redevelopment Work.

5.2.1 Selection of Improvement Project Professionals. Chief Real Estate Officer shall have provided Lessee with written approval of (a) Lessee's choice of general contractor(s), architect(s) of record, and all licensed engineers of record (including civil and structural) for the Improvement Project, and (b) the terms and conditions of the form contracts to be entered into by and between Lessee and such contractors, architects and engineers with respect to the Improvement Project.

5.3.1 Approval of Improvement Project Contracts. Chief Real Estate Officer shall have provided Lessee with written approval of all contracts to be entered into between Lessee and all general contractor(s), architect(s), licensed engineer(s) of record (including civil and structural) approved pursuant to Subsection 5.5.2.1 above.

5.4.1 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have purchased and furnished County with copies of the following corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the Commencement of Construction of the applicable Improvement Project, which bonds (or other security) must be in form and content reasonably satisfactory to County or provide evidence of construction financing and cash deposits in an amount equal to not less than one hundred percent (100%) of the amount of all Hard Costs for the applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above:

(a) For each applicable Improvement Project, a corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State, with a coverage limit of not less than one hundred percent (100%) of the amount of all Hard Costs for the current applicable Improvement Project, set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above. The Performance Bond and its issuer shall be

subject to the prior approval of County, which approval may not be unreasonably withheld. The Performance Bond shall name Lessee as principal, said issuer as surety, County as obligee and any Encumbrance Holder as additional obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvement Project.

(b) For each applicable Improvement Project, a corporate surety payment bond, issued by a surety company licensed to transact business as such in the State, with Lessee as principal, said company as surety, County as obligee and any Encumbrance Holder as additional obligee, with a coverage limit of not less than one hundred percent (100%) of the total construction cost anticipated to be incurred in connection the Improvement Project, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the construction of the Improvement Project or for labor used thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond and its issuer shall be subject to the prior approval of County, which approval may not be unreasonably withheld.

In the event that construction is performed by a licensed general contractor on behalf of Lessee in accordance with this Lease, and provided that such contractor provides County with a bond or bonds compliant with this Subsection and are in all material respects reasonably satisfactory to County and otherwise compliant with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required above.

5.5.1 Alternative Security. If Lessee elects not to provide the Payment Bonds and/or the Performance Bonds as set forth above, then Lessee shall provide County any of the following alternative security for each applicable Improvement Project: (a) a completion guaranty, in form and substance reasonably acceptable to Chief Real Estate Officer, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Chief Real Estate Officer, to comply with the terms of such guaranty in view of the potential financial responsibility involved, or (b) a letter of credit on such terms and issued by such bank as Chief Real Estate Officer may approve in Chief Real Estate Officer's sole discretion, in an amount equal to one hundred percent (100%) of the anticipated construction costs for the Improvement Project, and allowing County to draw thereon to complete construction of the Improvement Project if (i) same is not completed by Lessee prior to the required completion date set forth in the applicable construction contract, or (ii) an Event of Default has occurred under this Lease and remains uncured following the expiration of any applicable cure periods under this Lease; or any combination of the above and the bonds described in Subsection 5.5.2.1 above. In addition, Chief Real Estate Officer shall have the authority to accept in lieu of the Payment Bonds, so- called "Subguard" insurance in such amount, on such terms and issued by such carrier as Chief Real Estate Officer may require in Chief Real Estate Officer's sole discretion. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co- beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.5.5.1 shall be delivery by Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County and opining that the applicable Improvement Project does not constitute a

public work of improvement requiring the delivery of the bonds described in Subsection 5.5.2.1 above.

5.6.1 Evidence of Financing. Lessee shall have provided County with evidence that it has access to sufficient financial resources, whether in the form of debt or equity, to complete construction of the Improvement Project within the applicable time periods approved for such construction work and such evidence shall be subject to the approval of Chief Real Estate Officer in Chief Real Estate Officer's reasonable discretion. Without limiting the generality of the foregoing, Lessee shall deliver to the CREO Office, for Chief Real Estate Officer's review and approval, copies of all notes, guaranties, construction loan and/or permanent loan commitments, as applicable, evidence of equity commitments, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Select Service Hotel Property. With regard to the Redevelopment Work, Lessee acknowledges and agrees that, prior to commencing with the Redevelopment Work, it shall be required to satisfy this condition with respect to the Select Service Hotel Component. Lessee shall keep County apprised of the status of its discussions and negotiations with the potential sources of Lessee's funding for the Improvement Project, including the identity of the sources (for both construction and permanent financing) that Lessee is considering for the Select Service Hotel Component from time to time.

5.7.1 Environmental Requirements. Lessee acknowledges that the Select Service Hotel project is governed by an approved Environmental Impact Report ("**EIR**") and a certified Coastal Development Permit ("**CDP**"). Prior to Commencement of Construction, Lessee shall provide evidence that all Redevelopment Work for the Select Service Hotel is consistent with the scope, assumptions, and mitigation measures set forth in the applicable EIR and CDP approvals.

If Lessee proposes any development, redevelopment, or renovation plans that would materially change the scope of the approved Redevelopment Work as analyzed in the applicable EIR or CDP, Lessee shall, at its sole cost and expense, submit to the CREO Office an environmental analysis sufficient to determine whether additional environmental review under CEQA is required, including any supplemental or subsequent environmental review, and shall not proceed with such changes unless and until required environmental approvals are obtained.

5.6 County Cooperation. County, in its proprietary capacity, shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work and Alterations, as applicable. Such cooperative efforts may include the County's joinder in any application for such approval, consent, permit or variance, where joinder therein by the County is required or helpful; provided, however, that such cooperation by County shall be at Lessee's sole cost and expense, and Lessee shall reimburse County for the Actual Cost incurred by the County in connection with such joinder or cooperative efforts within two (2) business days after Lessee's receipt of written demand from County. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code, (b) such approvals in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals

required by law for the Redevelopment Work and Alterations on the Select Service Hotel Property, or the operation and use of such Improvements, (c) the County's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease, and (d) the County's duty to cooperate shall be limited to those items or matters that the County has otherwise approved or consented to in accordance with the terms of the Lease, to the extent the County's approval or consent is required.

5.7 Delays in Commencement and Completion of Redevelopment Work.

7.1.1 Force Majeure. Following Commencement of Construction of the Redevelopment Work for the Select Service Hotel Property, Lessee shall thereafter diligently pursue the completion of the Redevelopment Work for the Select Service Hotel Property by the Required Construction Completion Date, subject to Force Majeure as set forth below. If Lessee is delayed in commencing construction, achieving an Interim Milestone for the Select Service Hotel Property by the applicable Interim Milestone Date, or completing the Redevelopment Work for the Select Service Hotel Property, and in each case such delay is due to Force Majeure, then the Required Construction Commencement Date, Interim Milestone Date and/or the CO Date for the Select Service Hotel shall be extended by the period of the delay caused by such Force Majeure, but only to the extent that a Force Majeure event actually causes a delay in the commencement and/or completion of construction (as applicable). Notwithstanding the foregoing, any extension of time in the Construction Schedule as a result of a Force Majeure event shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Lessee notifies Chief Real Estate Officer in writing of the commencement of such delay within ten (10) days after Lessee's discovery of the Force Majeure event. Lessee and Chief Real Estate Officer shall discuss and attempt to agree on the length of time of any entitled delay due to a Force Majeure event. If they are unable to agree within thirty (30) days after County's receipt of written notice from Lessee of the occurrence of a Force Majeure event, then the length of permitted change to the Construction Schedule shall be determined by arbitration pursuant to Section 5.16 below.

7.2.1 Unreasonable County Action.

(a) In the case of the Redevelopment Work, the definition of Force Majeure shall also include delays in the commencement and completion of the Redevelopment Work due to Unreasonable County Action. For the purposes of this Lease, "**Unreasonable County Action**" means any of the following that occurs after the Effective Date: (i) the County's failure to provide required joinder, if any, as fee title owner of the Select Service Hotel Property, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Redevelopment Work for the Select Service Hotel Component after same have been approved by the CREO Office; or (ii) County's failure, within a reasonable time following receipt of written notice from Lessee requesting same, to take such actions, in its proprietary capacity and at no cost or expense to County, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process for the Redevelopment Work; or (iii) the taking by the County of actions in its proprietary capacity, without Lessee's consent, which are in conflict with County's obligations under this Lease and actually delay the receipt of any

permits or approvals required for the Redevelopment Work; or (iv) the County's failure to comply with the time periods imposed upon the County under Section 5.4 above. Nothing contained in Section 5.6 above, this Section 5.7 or any other provisions of this Lease shall be construed as obligating the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. County's failure to expedite County's customary regulatory permit or approval process shall not be deemed an Unreasonable County Action. Notwithstanding anything to the contrary in this Section, Unreasonable County Action will only entitle Lessee to an extension of time, if (A) within five (5) days following Lessee's discovery of the alleged Unreasonable County Action, Lessee notifies the CREO Office in writing of the specific conduct comprising the alleged Unreasonable County Action, and the next opportunity, if any, for County to rectify such alleged conduct, and (B) County fails to cure the alleged Unreasonable County Action by the cure date set forth in such notice. If Lessee fails to deliver such notice to the CREO Office, then notwithstanding any contrary provision of this Section 5.7, Lessee shall not be entitled to any extension for any delay caused by an alleged Unreasonable County Action that occurred prior to the date of Lessee's notice described in this Subsection (a).

(b) Within ten (10) business days following the CREO Office's receipt of a notice alleging Unreasonable County Action, Chief Real Estate Officer shall meet with Lessee or its authorized representative in order to determine whether any Unreasonable County Action has occurred and, if so, how such Unreasonable County Action can be rectified and the duration of the delay caused by such Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred and that County can and will take rectifying action, then Lessee shall be entitled to an extension of the applicable Construction Schedule dates actually impacted by such Unreasonable County Action, subject to the length of such extension not exceeding the actual amount of delay directly caused by the Unreasonable County Action. If Chief Real Estate Officer determines that Unreasonable County Action has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Chief Real Estate Officer shall establish the length of the delay likely to be caused by the Unreasonable County Action and the applicable Construction Schedule dates will be extended accordingly.

(c) If, within ten (10) business days following the CREO Office's receipt of Lessee's notice alleging Unreasonable County Action, Chief Real Estate Officer and Lessee have not agreed in writing as to whether delay due to Unreasonable County Action has occurred or the length of such delay, then the matter shall be determined by arbitration pursuant to Section 5.16 below.

7.3.1 Recovery Plans. If progress of the Redevelopment Work for the Select Service Hotel Component falls materially behind schedule and the Chief Real Estate Officer reasonably determines that Lessee is in jeopardy of not achieving the CO Date for the Select Service Hotel on or before the Required Construction Completion Date, then County may issue a written notice (each a "**Recovery Plan Notice**") to Lessee identifying areas of concern and requiring that Lessee provide a Recovery Plan detailing the measures to be implemented by Lessee in order to recover any lost time in the Construction Schedule. Lessee shall, within fifteen (15) days after receipt of a Recovery Plan Notice, provide a Recovery Plan to County. Within thirty

(30) days after County's receipt of a Recovery Plan from Lessee, County shall instruct Lessee in writing whether or not to proceed with the Recovery Plan as submitted, or in accordance with reasonable revisions thereto required by County (a "**Construction Change Directive**"). Upon Lessee's receipt of the Construction Change Directive, Lessee shall instruct its contractors to implement the Recovery Plan as soon as reasonably possible and any additional costs associated with implementation of the Recovery Plan shall be borne by Lessee. Lessee's failure (a) to provide a Recovery Plan within the time requirements provided for in this Subsection 7.3.1, or (b) to implement immediately a Recovery Plan upon receipt of a Construction Change Directive to do so, shall each be a material breach of this Agreement.

5.8 Manner of Construction.

8.1.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein including, without limitation, the Redevelopment Work and Alterations, shall be accomplished by Lessee with due diligence, in a first-class workmanlike matter, with good and sufficient materials and in compliance with all Applicable Laws and Lessee's obligations under this Lease. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience to the general public (including without limitation owners and tenants of neighboring properties and slips) caused by such work and shall make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County, its employees, contractors and agents harmless from and against all Claims arising out of or in connection with the performance of such work, except to the extent that such Claims are caused by the willful misconduct or active or sole gross negligence of County, its employees, contractors or agents. Lessee shall, during the course of such work, (a) utilize such measures customarily used in connection with commercial construction projects to control dust, noise and other undesirable consequences of construction work, and (b) use commercially reasonable efforts to minimize the materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

8.2.1 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Select Service Hotel Property to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Select Service Hotel Property and other persons.

8.3.1 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

8.4.1 Compliance with Insurance, Construction Documents and Laws; Issuance of Permits. With respect to any and all construction work on the Select Service Hotel Property, including without limitation the Redevelopment Work and Alterations, Lessee shall (a) not commence such work until after satisfaction of the conditions set forth in Section 5.5 and providing

County with evidence of its compliance with the insurance requirements for such work set forth in Article 9 below, (b) complete such work in substantial compliance with applicable construction documents submitted to and approved by County in accordance with the review and approval procedures set forth in Sections 5.3 and 5.4, and (c) cause such work to be performed in compliance with all required permits and Applicable Laws then in effect, including, without limitation, the LCP and CDP. Lessee shall have the sole responsibility, at its sole cost and expense, for obtaining all necessary permits for such work and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

8.5.1 Notice to Chief Real Estate Officer; Damage to County Improvements. Lessee further agrees to keep the CREO Office apprised of the progress of the Redevelopment Work and any Alterations so that Chief Real Estate Officer may timely inspect the Select Service Hotel Property to assure proper safeguarding of any County-owned improvements existing on or around the Select Service Hotel Property, including but not limited to seawalls and neighboring properties. If any County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Select Service Hotel Property to make such repairs at Lessee's sole cost and expense, in which event Lessee shall reimburse County for all Actual Costs incurred by County in making such repairs within two (2) business days after Lessee's receipt of written demand from County.

8.6.1 Rights of Access. Representatives of the County shall, following reasonable advance written notice to Lessee, have the right to access the Select Service Hotel Property and the Improvements thereon, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of construction work being performed. Lessee shall have the right to have a representative present to accompany the representatives of County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage to person or property, County shall have the right to enter upon the Select Service Hotel Property immediately and without notice to or accompaniment by Lessee. ~~-~~In addition, ~~to the extent~~provided that neither Lessee ~~or~~nor any Lessee Parties ~~are not~~is using meeting or banquet rooms ~~or spaces~~ at the Select Service Hotel Property for Lessee's or Lessee Parties activities~~, and such meeting rooms~~ or ~~spaces are not reserved for use by any third party~~business operations, the County may request to use such ~~meeting~~ rooms~~ or spaces~~ for County sponsored meetings consistent with any other applicable policies and procedures for ~~the~~ Lessee's facility~~.~~ for meeting and banquet rooms. Such requests shall be made in writing no more than six (6) times per calendar year and shall be made no more than thirty (30) calendar days in advance, unless Lessee permits an earlier reservation in its reasonable discretion, but in no event shall such usage be on weekends, state/federal holidays, nor in June, July, August, or December. Lessee shall not unreasonably withhold or delay approval of County's request for use of rooms nor shall such use by County interrupt Lessee's use of the Select Service Hotel Property. County's access to and use ~~shall~~of meeting and banquet rooms be at no cost to County ~~or Lessee~~for room usage, and County is responsible for other costs consistent with applicable policies for use of meeting or banquet rooms by others, unless otherwise negotiated between County and Lessee. If a paying third-party requests use of the room, after County's

reservation, the Lessee shall notify the County and County shall move its use to an alternate time or location upon agreement of Lessee. Notwithstanding the above, the Lessee reserves the right to cancel, in its reasonable discretion, any County meeting or banquet room use if the Lessee determines that there is a negative impact to its business or Lessee Parties by such use. To the extent that an Encumbrance Holder objects to this provision and provides such objection in writing, County's right to use meeting and banquet rooms under this provision shall be cancelled.

8.7.1 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work or any Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Orange a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, (a) two (2) sets of records drawings and specifications of the Improvements (or such portions thereof as affected by the work and for which as-build plans are customarily prepared), prepared accordance with industry standards and delivered in AutoCad, Revit, or other mutually accepted CAD format and/or BIM format, together with PDF copies for general reference (the "**As-Built Plans**"); (b) a digital storage device or secure electronic transfer, containing the As-Built Plans in a format compatible with County's then current computer aided design and mapping systems, including CAD files and any available native files, with copies of all CAD Files converted to Acrobat Reader (*.pdf format)) ("**CAD Files**"), and (c) a final statement of construction costs for the construction of such Improvements, reasonably detailed by trade and major cost category, all of which may be accomplished by digital delivery.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Redevelopment Work or Alterations shall provide, in form and content satisfactory to County, that (a) all plans and drawings prepared by such architects, design professionals or contractors relating to the Select Service Hotel Property will be deemed "work for hire" and owned by Lessee, (b) such plans and drawings are assigned by Lessee to County as security for Lessee's performance hereunder, and (c) upon the termination of this Lease for any reason, ownership of such plans and drawings will be deemed vested in County.

5.10 Alterations; Prior Approval Required. Lessee shall not make any Alterations that constitute a Material Modification without the prior written approval of Chief Real Estate Officer, the standard for which approval shall be as set forth in Subsection 1.1.115 above. Notwithstanding anything in this Article 5 to the contrary, all Alterations shall be made and performed by Lessee subject to the terms and conditions of Sections 5.4 through 5.6, inclusive, as well as Sections 5.8 through 5.14, inclusive. For the avoidance of doubt, prior to, and as a condition precedent to any rights under this Lease to commence construction of any Alterations, Lessee shall submit to the CREO Office, for Chief Real Estate Officer's approval, the plans, specifications, budget, schedule and other materials listed above in Section 5.4 pertaining to such Alterations.

5.11 Permitted Alterations. For the avoidance of doubt, no Alteration which is: (a) required by a Governmental Authority in connection with obtaining such Governmental Authority's approval of the applicable Alteration or (b) required to be performed by Lessee in order to comply with Applicable Laws, shall require the prior approval of County unless the same would otherwise constitute a Material Modification as set forth in Subsection 1.1.115 above. Prior to commencing any Alteration involving an expenditure in excess of Two Hundred Fifty Thousand Dollars ($250,000) or where the aggregate cost of Alterations performed within any twelve (12)

month period exceeds $250,000, Lessee shall (i) provide County with written notice of such anticipated Alteration(s) (including a description of the work to be done, the dollar amount of the Alterations already performed by Lessee during the immediately preceding twelve (12) month period, the estimated budget for the proposed Alterations, and copies of the permits obtained for such work), and (ii) upon completion of such work, furnish to County a copy of As-Built Plans and CAD Files reflecting the work performed.

5.12 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Select Service Hotel Property or any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Select Service Hotel Property or County.

5.13 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Select Service Hotel Property any notices which County may deem necessary for the protection of County, the Select Service Hotel Property and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days' prior written notice of the commencement of any work to be done on the Select Service Hotel Property in order to enable County timely to post such notices.

5.14 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Select Service Hotel Property and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Select Service Hotel Property and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any Claims on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it. In the event any lien is recorded on the Select Service Hotel Property, Lessee shall, within twenty (20) days after receipt of notice thereof, furnish a bond which, in accordance with the provisions of Applicable Law, results in the removal of such lien from the Select Service Hotel Property.

5.15 Capital Reserve Fund for Select Service Hotel Component.

15.1.1 Commencing on the Hotel Deemed Completion Date and continuing thereafter through the balance of the Term, Lessee shall establish and maintain a capital replacement reserve fund with a reputable financial institution reasonably acceptable to the Chief Real Estate Officer (the "**Hotel Capital Reserve Fund**") and shall deposit into said fund a minimum of the following amounts: (i) for Operating Year 1, one percent (1%) of Gross Receipts derived from the Select Service Hotel Property for said year; (ii) for Operating Year 2, two percent

(2%) of the of Gross Receipts derived from the Select Service Hotel Property for said year; (iii) for Operating Years 3 through 5, three percent (3%) of Gross Receipts derived from the Select Service Hotel Property for each said year; (iv) for Operating Years 6 through 10, four percent (4%) of Gross Receipts derived from the Select Service Hotel Property for each such year; and (v) beginning in Operating Year 11 and continuing for each subsequent Operating Year through the balance of the Term, five percent (5%) of Gross Receipts derived from the Select Service Hotel Property for each such year. All interest and earnings on funds deposited into the Hotel Capital Reserve Fund shall be kept in said fund but shall not be credited against the minimum deposits required hereunder. For purposes hereof, "**Operating Year**" shall mean each year following the Hotel Deemed Completion Date.

15.2.1 Within thirty (30) days after the close of each Operating Year during the Term, Lessee shall submit to Lessor (a) evidence certified by Lessee's Chief Financial Officer or an independent account, that Lessee has deposited the required minimum amount in the Hotel Capital Reserve Fund for the previous Operating Year (based upon Lessee's accounting for Gross Receipts that is due at that time), (b) an itemization of all withdrawals from and expenditures of funds deposited into the Hotel Capital Reserve Fund in the preceding Operating Year and the purpose thereof, and (c) the balance remaining in the Hotel Capital Reserve Fund at the time the annual report is prepared. County shall have the right to review, verify, and request clarification of the annual report, and Lessee shall provide supporting documentation upon reasonable request.

15.3.1 The Hotel Capital Reserve Fund shall not be pledged or encumbered, except to (i) a permitted Encumbrance Holder, (ii) a Property Manager (as defined below), or (iii) or to an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J** (each, a "**Hotel Franchisor**"), and all funds shall be used only for capital expenditures for additions, replacements, renovations, or significant upgrades of or to the Improvements on the Select Service Hotel Property, including fixtures and equipment, that have a useful life of not less than five (5) years which benefit the Select Service Hotel Property and maintain the Select Service Hotel in first-class condition consistent with the operation, maintenance, and appearance of professionally managed, institutional-grade hotels in Southern California, and in conformance with the Minimum Standards set forth in this Lease. All expenditure shall be approved in advance by the Chief Real Estate Officer, which approval(s) shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee acknowledges that its responsibility to maintain, repair, and replace the Select Service Hotel and related Improvements as required hereunder shall not be limited or restricted based on the amount of funds held from time to time in the Hotel Capital Reserve Fund.

15.4.1 Upon the expiration or earlier termination of this Lease, all funds in the Hotel Capital Reserve Fund shall first be allocated to any repairs, maintenance, replacements, and renewals necessary to place the Select Service Hotel in the physical condition required by this Lease, as reasonably determined by County, and any excess shall be the sole property of Lessee. County may direct the use of such funds to complete these obligations, including engaging contractors if Lessee fails to perform. Any excess remaining after such use shall be the sole property of Lessee.

15.5.1 Notwithstanding anything to the contrary in this Subsection 5.15, in the event a permitted Encumbrance Holder, Property Manager or Hotel Franchisor requires that Lessee

maintain a capital reserve fund for the Select Service Hotel at the Select Service Hotel Property (a "**Replacement Reserve Fund**"), such Replacement Reserve Fund, to the extent that it is equal to or greater than the Replacement Reserve Fund, shall satisfy the requirement of Lessee to open and maintain the Hotel Capital Reserve Fund hereunder and the Hotel Capital Reserve Fund shall not be required while a Replacement Reserve Fund exists. In the event that a Replacement Reserve Fund is in place after the opening of the Hotel Capital Reserve Fund, Lessee shall be entitled to disburse any and all funds held in the Hotel Capital Reserve Fund to the Replacement Reserve Fund and close the Hotel Capital Reserve Fund thereafter. Any Replacement Reserve Fund shall be subject to the same annual reporting, audit, and fund-use requirements set forth herein for the Hotel Capital Reserve Fund.

5.16 Expedited Arbitration. Given the importance of completing the Redevelopment Work in accordance with the Construction Schedule, the Parties acknowledge and agree that it will be in both Parties' best interests to submit to expedited binding arbitration in accordance with the procedures set forth in this Section 5.16, all disputes between the Parties concerning the reasonableness of the Chief Real Estate Officer's withholding of approvals required pursuant to this Article 5 with respect to the Redevelopment Work. Therefore, if Lessee delivers written notice to County disputing the reasons for any denial or withholding of such approvals, then either Party shall have the right to submit such dispute to expedited, binding arbitration before an arbitrator selected by the Parties in accordance with the American Arbitration Association's (the "**AAA**") Dispute Resolution Board Guideline Specification, Section 1.02 (D) (the "**DRB Specification**"), dated December 1, 2000. As soon as reasonably possible following the Effective Date, the Parties shall initiate the procedure to nominate an arbitrator in accordance with the DRB Specification and with no direct or indirect affiliation with either Party, with the intention that such arbitrator shall, to the extent reasonably possible, be the arbitrator appointed to decide on all disputes between the Parties to be decided by arbitration pursuant to this Section 5.16. When evaluating claims regarding the reasonableness of the County's withholding any approval, the arbitrator shall be instructed to give primary consideration to the Parties' intent as reflected by the provisions set forth in this Lease and may consult with, or seek information from, either or both Parties, or any other persons with special knowledge or expertise relating to the dispute in question including, without limitation, any architect or contractor engaged to perform work at the Select Service Hotel Property. The arbitrator shall be instructed to adjudicate solely on the reasonableness of the County's denial of approval, and to deliver written notice of his/her findings to both Parties as soon as reasonably possible. The arbitrator's determination as to the reasonableness of a denial of approval shall be final and binding on the Parties. Each Party shall be responsible for one-half (1/2) of (a) the Arbitrator's fees and costs, and (b) costs associated with renting a venue for the arbitration. If two or more disputes exist at the same time that are the subject of arbitration in accordance with this Section 5.16, then the Parties shall use their commercially reasonable best efforts to cause all such disputes to be arbitrated in one arbitration proceeding, rather than successive proceedings or concurrent but separate proceedings.

6. CONDEMNATION.

6.1 Definitions.

1.1.1 Condemnation. "**Condemnation**" means (a) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise,

and (b) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

1.2.1 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Select Service Hotel Property; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

1.3.1 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

1.4.1 Condemnor. "**Condemnor**" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Select Service Hotel Property, any Improvements on the Select Service Hotel Property or any interest in this Lease by Condemnation, the rights and obligations of the Parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Select Service Hotel Property is totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Select Service Hotel Property or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Select Service Hotel Property is rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Select Service Hotel Property shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the Select Service Hotel Property could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5 below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Select Service Hotel Property as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the

Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Select Service Hotel Property is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Select Service Hotel Property not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Select Service Hotel Property not so taken to the fair market value of the entire Select Service Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Select Service Hotel Property which remains after the Partial Taking bears to the fair market value of the entire Select Service Hotel Property immediately prior to the Partial Taking. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waivers. Each Party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either Party to petition the Orange County Superior Court to terminate this Lease in the event of a Partial Taking of the Select Service Hotel Property.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

7.1.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Select Service Hotel Property and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, the Chief Real Estate Officer and Lessee shall promptly meet and negotiate in good faith to resolve any dispute. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (a) the then value of County's interest in the

Select Service Hotel Property (including its interest hereunder), and (b) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments. In case of a Condemnation described in this Subsection 6.7.1.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

7.2.1 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Subsection 6.7.1.1 above.

7.3.1 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of: (i) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Select Service Hotel Property (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term, plus (ii) the present value of the portion of the Select Service Hotel Property (with the Improvements thereon) subject to the taking from and after the expiration of the Term, or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Select Service Hotel Property (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term; and then,

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Select Service Hotel Property plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then,

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Select Service Hotel Property, determined as of the date of such taking, less payments made under paragraph "Second" above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4; and then,

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total Condemnation or a Partial Taking that results in the termination of the Lease, and such total

Condemnation or Partial Taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment to Lessee of all sums held by County or third parties in the Security Deposit.

7.4.1 Disputes. Any dispute under this Article 6 concerning the fair market value of the Select Service Hotel Property or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the Parties, shall be resolved by arbitration in the manner prescribed in Subsection 4.3.3.1. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to One Hundred Thousand Dollars ($100,000.00) until such time as the Redevelopment Work for the Select Service Hotel Property has been completed and the CO Date for the Select Service Hotel has occurred (the "**Final CO Date**"). Following the Final CO Date, such sum shall be reduced to Forty Thousand Dollars ($40,000.00). As long as no Event of Default by Lessee then exists under the Lease, such sum shall be reduced to Zero Dollars ($0.00) upon the date which is ten (10) years following the Final CO Date. The Security Deposit shall secure Lessee's performance of all the terms, covenants, and conditions of this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, (b) any other Events of Default of Lessee under this Lease, and (c) any other amounts or damages to which County is entitled under this Lease. The Security Deposit shall be applied at the discretion of County, and may be commingled by County with County's other funds. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer, in County's sole discretion. To the extent the Security Deposit is cash, a letter of credit or other non-interest bearing form, no interest shall accrue or be paid thereon. However, if the Security Deposit is in a form of a certificate of deposit, savings deposit, or is otherwise interest bearing, then as long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease. Regardless of the form of the Security Deposit, all or any portion of the principal sum thereof shall be available

unconditionally to Chief Real Estate Officer for correcting any default or breach of this Lease by Lessee and Lessee's successors or assigns, or for payment of expenses incurred by County as a result of an Event of Default hereunder by Lessee or Lessee's successors or assigns, as set forth herein.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 14.1.2.1, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

7.4 Waivers. Lessee hereby waives the provisions of California Civil Code Section 1950.7, and all other provisions of Applicable Law, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

8. INDEMNITY; RELEASE; LEASE CHALLENGE.

8.1 Indemnification. Except to the extent caused by the willful misconduct or active or sole gross negligence of any County Indemnified Party, from and after the Original Effective Date, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County, the Board, and their respective, officers, elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, tenants, licensees, invitees, successors and assigns (collectively, "**County Indemnified Parties**" and each individually, "**County Indemnified Party**") and the Select Service Hotel Property, from any and all claims, costs, losses, demands, damages, expenses (including, without limitation, expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County) or liability (collectively, "**Claims**"), to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Select Service Hotel Property or the Improvements by Lessee or its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, including any occurrence in or on the Select Service Hotel Property or

Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any Applicable Law, (d) the performance of the Redevelopment Work, the Renovation Work or any Alterations by Lessee or Lessee's agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, or (e) challenges to the term of this Lease brought by any party, including any agency with oversight of public tidelands ("**Lease Challenge**"). The obligation of Lessee to so relieve, defend, indemnify, protect, and save harmless the County Indemnified Parties shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. If any County Indemnified Party or the Select Service Hotel Property is named as co-defendant in a lawsuit that is the subject of this Article 8, Lessee shall immediately notify County of such fact in writing and shall represent such County Indemnified Party or Select Service Hotel Property in such legal action unless County undertakes to represent such County Indemnified Party or Select Service Hotel Property as co-defendant in such legal action, in which event, Lessee shall pay to County its litigation costs, expenses, and attorneys' fees. If, in connection with any such lawsuit, judgment is entered against any County Indemnified Party or the Select Service Hotel Property and Lessee by a court of competent jurisdiction because of the concurrent liability of such County Indemnified Party and Lessee, County and Lessee agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.2 Release. Lessee hereby releases and waives all Claims and recourse against the County Indemnified Parties, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease, except Claims arising from the willful misconduct or active or sole gross negligence of County Indemnified Parties. For the avoidance of doubt, and without limiting the foregoing, Lessee hereby waives, withdraws, releases, and relinquishes any and all Claims (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County and the County Indemnified Parties which Lessee now has or may have or asserts in the future which are based upon any (a) defects in the physical condition of the Select Service Hotel Property and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument, except as set forth in Section 10.12, or (b) injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Lessee, of Lessee's employees, invitees, customers, or of any other person in or about the Select Service Hotel Property or the Improvements caused by or resulting from any peril which may affect the Select Service Hotel Property or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Select Service Hotel Property or the Improvements, whether such damage or injury results from conditions arising upon the Select Service Hotel Property or from other sources. Without limiting the generality of the waivers set forth in this subsection, and notwithstanding anything in this Lease to the contrary, at no time shall County be responsible or liable to Lessee for any lost profits, lost economic opportunities or any form of consequential, punitive or exemplary damages as the result of any actual or alleged breach by County of its obligations under this Lease. It is the intention of the Parties that the foregoing release shall be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. Lessee realizes and acknowledges that factual matters now unknown

to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Lessee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Lessee nevertheless hereby intends to release, discharge and acquit County, the County Indemnified Parties and the Select Service Hotel Property from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Lessee hereby expressly waives any and all rights and benefits conferred upon it by 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.

By initialing this subsection below, Lessee acknowledges that it has read, is familiar with, and waives all benefit of the provisions of California Civil Code Section 1542 set forth above to the extent described in this subsection, and agrees to all of the provisions of Section 8.2 above.

_____
Lessee's Initials

8.3 Lease Challenge. Notwithstanding anything to the contrary in this Lease, including without limitation Sections 8.1 and 8.2 hereof, in the event of a Lease Challenge (whether or not such Lease Challenge prevails), the terms and conditions of this Section 8.3 shall prevail. If any Claim is asserted by any third party challenging the validity, enforceability or effectiveness of the approval of this Lease or the authority to enter into this Lease for the Term set forth herein, County shall reasonably cooperate with Lessee, at Lessee's sole cost and expense, in defending, resolving or mooting such challenge, and, notwithstanding anything to the contrary in this Lease, before County may seek indemnification from Lessee arising from such challenge pursuant to the terms and conditions of this Lease, Lessee shall have the right, exercisable by written notice to County, to cause the Term of this Lease to be reduced, reformed, reverted or otherwise modified to the longest term then permitted by Applicable Law, including the Tidelands Grant. Upon Lessee's exercise of such right, County and Lessee shall promptly execute and record, if applicable, an amendment, memorandum, stipulation, corrective instrument, or other document reasonably necessary to evidence such reduced, reformed, reverted or modified terms to comply with Applicable Law, including the Tidelands Grant, or re-execute and record, if applicable, a lease to replace this Lease, in the same form of this Lease except for those terms necessary to comply with Applicable Law, including the Tidelands Grant. No such reformation, reversion, modification, termination or reinstatement shall constitute a default by Lessee, shall give rise to any termination right in favor of County, or shall otherwise affect the validity or enforceability of this Lease except solely with respect to the length of the Term as so reduced, reformed, reverted or modified or the reinstatement of the Prior Harbor Lease, as applicable. County shall not settle, compromise, confess judgment, or agree to any relief in connection with any such challenge without Lessee's prior written consent, which consent may be withheld in Lessee's reasonable discretion if such

settlement, compromise, judgment, or relief would affect the Term, Lessee's leasehold estate, Lessee's use rights, Lessee's financing, or Lessee's rights or obligations under this Lease

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease, Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State by the Insurance Commissioner and having a "general policyholders rating" of at least A- and VIII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency. Notwithstanding anything to the contrary in this Lease, in the event DPHP or any Affiliate of DPHP provides and maintains the insurance required pursuant to this Article 9 for the entire Harbor Property, Lessee shall be deemed to be in full compliance with the requirements of this Article 9.

1.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent). Coverage shall include products completed operations, personal and advertising injury, contractual liability, abuse/misconduct, and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	$20,000,000
Products/Completed Operations Aggregate:	$2,000,000
Personal and Advertising Injury:	$1,000,000
Contractual Liability:	$1,000,000
Abuse/Misconduct:	$1,000,000
Each Occurrence:	$1,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least Two Million Dollars ($2,000,000) per occurrence, Two Million Dollars ($2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1.1 (c) excess liability policies must "follow form" and afford no less coverage than the primary coverage.

1.2.1 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than Two Million Dollars ($2,000,000) combined single limit , for each accident and providing coverage for all "owned", "scheduled", "hired", "non-owned" vehicles, or coverage for "any auto." Coverage may be satisfied through a combination of primary coverage and excess liability. During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

1.3.1 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State and for which Lessee

is responsible (if applicable), and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

1.4.1 Commercial Property insurance covering damage to the Select Service Hotel Property, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or its equivalent, excluding earthquake, and including Ordinance or Law Coverage, written for $5,000,000, provided that upon the commencement of construction of the Select Service Hotel, such limit shall be the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Select Service Hotel Property and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Select Service Hotel Property or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this Subsection 9.1.4.1 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5.1 below is carried.

1.5.1 For construction projects on the Select Service Hotel Property, including the Redevelopment Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to reasonably determine the coverage and coverage limit required on a project-by-project basis):

(a) Builder's Risk Course of Construction. Such insurance shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30) or equivalent. This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, mechanical / cold testing, preservation of property, excavation costs, landscaping, shrubs and plants, wind/hail, water damage, flood, earth movement and full collapse coverage during construction (without restricting collapse coverage to specified perils). This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

(b) General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (i) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (ii) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

(c) Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Redevelopment Work or Alterations. Such insurance shall include coverage for all "owned," "scheduled", "hired", and "non-owned" automobiles, or coverage for "any auto."

(d) Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, consultants, etc.). If coverage is written on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5.1(d) shall be (i) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Chief Real Estate Officer for the prime architect in connection with any subsequent Alterations), and (ii) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Chief Real Estate Officer shall have the discretion to reduce the coverage limits under this clause (ii) if appropriate in the judgment of Chief Real Estate Officer based on the nature and scope of the services being provided.

(e) Contractors Pollution Liability. Such insurance shall be required if construction requires remediation of pollutants. Such insurance shall also cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of pollutants in compliance with governmental mandate or order. If the pollutants will be removed from the construction site, pollution liability shall also include Non-Owned Disposal Sites (NODS). Pollution Liability coverage is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for the Redevelopment Work or Alterations. If coverage is written on a claims made form, it shall also provide an extended three-year reporting period commencing upon termination or cancellation of the construction project.

1.6.1 If the use of the Select Service Hotel Property or Improvements involves any manufacture, distribution, selling, or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

1.7.1 Contractor's Pollution Liability by Lessee no less than $5,000,000 per occurrence or claims made or as reasonably required by the County for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual or alleged discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants resulting from any services or

work performed by, or behalf of, Contractor, including the transportation of hazardous waste, hazardous materials, or contaminants, and Non-Owned Disposal Sites (NODS). If coverage is written on a claims made form, it shall also provide an extended two-three year reporting period commencing upon termination or cancellation of the construction project.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4.1 and 9.1.5.1(a) shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 13.8, upon the occurrence of any loss, in the event the proceeds of property and builder's risk insurance are more than $500,000, the insurance proceeds above such amount shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that the first $500,000 of such insurance proceeds, or if the insurance proceeds received with respect to a loss are less than $500,000 (in each case as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 13.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee. Notwithstanding anything to the contrary contained in this Lease, the settlement, collection and application of casualty insurance proceeds shall be governed by the terms of the loan documents entered into between Lessee and Lessee's Encumbrance Holder.

9.3 General Insurance Requirements. A duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, has been filed with the CREO Office and evidence of the insurance coverage required under Subsection 9.1.5.1 shall be required to be delivered by Lessee prior to the commencement of any Redevelopment Work or Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $50,000 or such other commercially reasonable amount as approved by the Chief Real Estate Officer; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to the CREO Office or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with the CREO Office. Subject to the limitations set forth above in this Article 9, any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(1) that County and its respective Board and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(2) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(3) ill insurance policies, shall waive all right of subrogation against County and its respective Board and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(4) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(5) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(6) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(7) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(8) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(9) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable

Rate, to County within five (5) business days after Lessee's receipt of written demand therefor. In the event the coverage required hereunder becomes obsolete or unavailable from domestic insurance companies meeting the requirements of this Lease (excluding customized policies such as those from Lloyds of London), the parties shall reasonably cooperate to modify the coverage on commercially reasonable terms.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1.1, 9.1.2.1 and 9.1.3.1 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date, consistent with the amounts of such liability insurance then being required by County for other comparable facilities or businesses within the County, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Select Service Hotel Property and such other developments. In no event shall the amounts of liability insurance be decreased as a result of such adjustment. Following such adjustment, the Parties shall execute an amendment to this Lease setting forth the adjusted insurance provisions.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Select Service Hotel Property which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within seventy-two (72) hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Continuously throughout the Term, Lessee shall maintain the Select Service Hotel Property, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Improvements), in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws and in conformance with the Minimum Standards at Lessee's sole cost and expense; provided, however, prior to the earlier of the CO Date or the Required Construction Completion Date for the Select Service Hotel Property, Lessee shall not be obligated to perform any capital improvements for the Select Service Hotel Property that would otherwise be required in order to comply with the Minimum Standards if (A) such capital improvements would need to be removed, replaced or substantially altered in connection with the Redevelopment Work, or (B) would be materially more expensive to construct or install as an isolated improvement relative to the cost to construct or install such improvement as a part of the Redevelopment Work, as reasonably approved by County. Upon completion of the Redevelopment Work, the Select Service Hotel Property shall be maintained at a level commensurate with the operation and maintenance of institutional grade hotels in the Southern California area and, at a minimum, in conformance with the Minimum Standards. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Select Service Hotel Property and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Select Service Hotel Property in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or

Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Select Service Hotel Property under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Chief Real Estate Officer to Lessee incident to the provisions of this Article 10. For the avoidance of doubt, and by way of example, Lessee's responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace each of the following (the location of each of which is identified on Exhibit H attached hereto unless otherwise specified elsewhere in this Lease): (a) seawall (provided, however, that Lessee's replacement obligation for the seawall shall be limited to replacing specific segments or portions thereof located on the Select Service Hotel Property only on as-needed basis, subject to and in compliance with all Applicable Laws, because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall unless the entire seawall is damaged or destroyed, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property, Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates), or (ii) third parties that are not agents, employees, tenants of Lessee or its Affiliates, or contractors working at the direction of the Lessee or its Affiliates); (b) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Select Service Hotel Property; (c) shelters, restrooms and park-scape within the parks located within the Select Service Hotel Property designated on Exhibit A-1; ; and (d) all trees and parking lots within the Select Service Hotel Property boundaries.

Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Select Service Hotel Property and the building footprints on the Select Service Hotel Property at a level commensurate with the standards set forth above with respect to the Select Service Hotel Property. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Select Service Hotel Property free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Select Service Hotel Property at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Select Service Hotel Property. The exclusion of the Excluded Improvements from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Improvements caused by Lessee, its agents, employees, Sublessees or contractors, or by Improvements installed or constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Specific Maintenance Obligations. Without limiting the generality of Lessee's maintenance obligations in Section 10.1 above, the following provisions shall also apply during the Term:

2.1.1 Intentionally Deleted.

2.2.1 Environmental Policies; Water Quality and MS4 Program.

(a) Protection of Environment. Without limiting Lessee's obligations elsewhere in this Lease, during the Term, Lessee shall take all reasonable measures available to:

(1) Avoid contributing any pollutants to the atmosphere or any littering of land or water caused by or originating in, on, or about Lessee's facilities.

(2) Maintain a reasonable noise level on the Select Service Hotel Property so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

(3) Ensure that lighting fixtures on the Select Service Hotel Property do not emit light in a manner that could negatively affect neighboring homeowners, or the safe operation of cars, boats, or airplanes in the area.

(4) Prevent all pollutants from Lessee's operations on the Select Service Hotel Property from being discharged, including petroleum products of any nature, in accordance with any applicable permits, provided that (i) Lessee is in compliance with all applicable laws and permit conditions, (ii) any such permitted discharge does not result in a violation of Applicable Law or applicable permit conditions, and (iii) any required Landlord consent has been obtained. Lessee and all of Lessee's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants emanating from the Select Service Hotel Property do not enter the Municipal Separate Storm Sewer System (including but not limited to curbs and gutters and drainage channel) (collectively, "**MS4**"), or directly impact "**Receiving Waters**", which include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean.

(5) The County may enter the Select Service Hotel Property and/or review Lessee records at reasonable times and upon reasonable notice (except in emergency circumstances) to assure that activities conducted on the Select Service Hotel Property comply with the requirements of this Subsection.

(b) Water Quality and MS4. During the Term, Lessee shall comply with any water quality management requirements applicable to the Select Service Hotel Property that are adopted or implemented pursuant to National Pollutant Discharge Elimination System ("**NPDES**") permits by the County, the Orange County Flood Control District and cities within the County, as co-permittees (hereinafter collectively referred to as "**County Parties**") as such requirements relate to the permits addressed in this subsection. Such requirements are imposed to comply with permitting or similar obligations imposed on the County Parties, and may be amended or modified from time to time, provided that they applied on a non-discriminatory basis. Such requirements shall include, without limitation, the following:

(1) The Parties acknowledge that the Premises are located within the jurisdiction of the County of Orange and may also be subject to the jurisdiction of the City or other applicable municipal agencies. The Parties further acknowledge

that water quality and MS4 requirements applicable to the Select Service Hotel Property may be enforced by the County, the City, or other applicable regulatory agencies having jurisdiction over the Select Service Hotel Property, consistent with their respective authorities under applicable law. Enforcement of such requirements shall be administered by the applicable regulatory authority having jurisdiction over the subject matter.

(2) Lessee and all of Lessee's Sublessees, agents, employees and contractors shall use commercially reasonable and diligent efforts to conduct operations under this Lease so as to ensure that pollutants generated from the Select Service Hotel Property do not enter the MS4, and do not directly impact Receiving Waters.

(3) The San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County Parties. The NPDES permits regulate the discharge of pollutants from areas within the County, including the Select Service Hotel Property leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the MS4 or Receiving Waters. For the avoidance of doubt, the County Parties shall retain the right to enter upon the Select Service Hotel Property to perform such actions as are necessary or to the extent reasonably necessary for the County Parties to comply with the terms, conditions and requirements of the NPDES, Stormwater Permits, and similar water quality rules and regulations promulgated from time to time by federal, state and/or local regulatory agencies.

(4) To ensure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction. The DAMP and LIP establish Best Management Practices ("**BMPs**") that must be implemented by parties using properties within the County. As used herein, a BMP is defined as a technique, measure, or structural control that is used under given conditions to manage the quantity of stormwater and improve its quality in a cost-effective manner. These BMPs are found within the County's LIP and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as ("**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

(5) BMP Fact Sheets that apply to uses authorized under this Lease include, but are not limited to, the BMP Fact Sheets that are attached hereto as **Exhibit I.** These BMP Fact Sheets may be modified during the Term of the Lease, and Lessee shall be solely responsible for monitoring, obtaining, and complying with any such modified BMP Fact Sheets, as updated from time to time by applicable regulatory authorities, regardless of whether notice is provided by Landlord. Lessee, its agents, contractors, representatives and employees and all

persons authorized by Lessee to conduct activities on the Select Service Hotel Property, shall, throughout the Term of the Lease, comply with the BMP Fact Sheets, as amended, with all applicable Stormwater Permits requirements. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

(6) Lessee may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the CREO Office for review and approval prior to implementation.

(7) Chief Real Estate Officer or designated representative may enter the Select Service Hotel Property and/or review Lessee's records at any reasonable time during normal business hours to ensure that activities conducted on the Select Service Hotel Property comply with the requirements of this section. Lessee may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

(8) While Lessee is permitted to use the existing sanitary sewer and MS4 infrastructure on or serving the Select Service Hotel Property for discharges permitted under Applicable Law, County reserves the right to require Lessee to participate in a water quality management plan to minimize impacts on harbor and ocean waters on a non-discriminatory basis similar to other retail, commercial, hospitality, restaurant, marina and public park facilities in the County if required in order to comply with permitting or similar obligations imposed on the County Parties.

(9) Notwithstanding anything to the contrary contained herein, Lessee shall not be responsible for remediating, managing or reducing contamination emanating from the existing drainage channel which discharges into the harbor, except to the extent that such contamination is caused by or results from the acts or omissions of Lessee or any Lessee's Parties' in connection with their use or occupancy of the Select Service Hotel Property. Lessee shall not be responsible for pollutants entering into the drainage channel from boat-related products (including paint and its components such as lead, copper, and zinc) originating from vessels in the harbor; provided, however, that Lessee shall remain responsible to the extent any such pollutants are caused or materially contributed to by Lessee or Lessee Parties. The Parties acknowledge that the Harbor was listed as impaired for copper, zinc, and bacteria in the water column in 2010, with a Total Maximum Daily Load requirement targeted for completion (and in place) in 2019. The cost of compliance for any existing or future compliance with the foregoing Total Maximum Daily Load requirement shall not be borne by the Lessee, however this clause shall not limit Lessee's other obligations under this Subsection 10.2.2.1.

10.3 Maintenance Deficiencies.

3.1.1 Notice; Time to Cure. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.2.2.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Subsection 10.3.1.1), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 14 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

3.2.1 Determination of Deficiency Period. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.3 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to the CREO Office within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with the CREO Office, then Chief Real Estate Officer shall exercise Chief Real Estate Officer's reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date the CREO Office receives written notice of such contest and continuing until Chief Real Estate Officer notifies Lessee in writing that Chief Real Estate Officer accepts or denies Lessee's contest. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.3 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.3 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.4 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Select Service Hotel Property or any Improvements located thereon (other than the Excluded Improvements, except to the extent damage thereto is caused by the Lessee, its agents, employees, Sublessees or contractors, or to Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.4, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Select Service Hotel Property where all or substantially all of the Improvements on the Select Service Hotel Property (other than the Excluded Improvements) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "**Uninsured Loss**"), and where all of the following occur:

4.1.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.4.1.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

4.2.1 No more than sixty (60) days following the giving of the notice required by Subsection 10.4.1.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Select Service Hotel Property; secure the Select Service Hotel Property against trespassers; and, at County's election, remove all remaining Improvements on the Select Service Hotel Property.

4.3.1 No more than sixty (60) days following the giving of the notice required under Subsection 10.4.1.1, Lessee delivers to County a quitclaim deed to the Select Service Hotel Property in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Select Service Hotel Property and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

4.4.1 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.4.1.1 County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.5 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Select Service Hotel Property where the damage or destruction results from a cause required to be insured against by this Lease.

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Chief Real Estate Officer may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as reasonably established by Chief Real Estate Officer, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 14.5.

10.7 County Obligation to Make Repairs; Breakwater and Bridge Structure. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Select Service Hotel Property; provided, however, that Chief Real Estate Officer shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the Breakwater and the structural aspects of the bridge depicted on **Exhibit H** attached hereto (the "**Bridge Structure**") (both of which structures the Parties acknowledge and agree are not part of the Select Service Hotel Property) if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, or otherwise. Chief Real Estate Officer shall undertake such maintenance, repair and replacement, if any, with due diligence consistent with the funding provided. In the event the Breakwater or the Bridge Structure is in imminent danger of collapse or has collapsed, Chief Real Estate Officer shall promptly request funding from the Board for repair or replacement as may be necessary to avoid or repair such collapse. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Breakwater or the Bridge Structure. Furthermore, nothing herein shall relieve Lessee from liability for any damage to either the Breakwater or the Bridge Structure caused by Lessee, its agents, employees, Sublessees or contractors, or by the construction of the Improvements by or on behalf of Lessee.

10.8 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Select Service Hotel Property. Any entry by County onto the Select Service Hotel Property pursuant to this Section 10.8, and any entry onto the Select Service Hotel Property to perform work on the Breakwater pursuant to Section 10.7 above, shall be made in accordance with the following requirements: (a) prior to entry onto the Select Service Hotel Property, County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Select Service Hotel Property, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee and any then-current Encumbrance Holder as an additional insured; (b) County's contractors shall comply with industry standard safety requirements; and (c) County shall repair, or cause its contractors to repair, any damage to the Select Service Hotel Property caused by the activities of County and/or it contractors on the Select Service Hotel Property pursuant to this Section 10.8 or Section 10.7. If repair of the Breakwater requires access to the Select Service Hotel Property, County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.9 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Select Service Hotel Property or the Improvements from any cause whatsoever.

10.10 Waivers. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of any statutes (including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code) or court decisions which provide a party to a Lease with a right to abatement of rent or termination of this Lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

10.11 Accessibility Disclosure. In compliance with its disclosure obligations under Section 1938 of the California Civil Code, County hereby notifies Lessee that, as of the Effective Date, the Select Service Hotel Property has not been inspected by a Certified Access Specialist (as referred to in Section 1938 of the California Civil Code). As such, County hereby advises Lessee as follows:

> "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

If Lessee elects to have a Certified Access Specialist ("**CASp**") inspect the Select Service Hotel Property, then Lessee shall: (a) provide County with prior written notice of such election and mutually agree with County on the arrangements for the time and manner of the CASp inspection, (b) promptly give County a copy of the resulting report (the "**CASp Report**") upon receipt, (c) be responsible, at its sole cost and expense, for the cost of the CASp Report and for completing any repairs or modifications that are necessary to correct violations of construction-related accessibility standards noted in the CASp Report and any additional work necessitated thereby (all of which Lessee shall complete as expeditiously as possible following the issuance of the CASp Report and in compliance with this Lease (including without limitation Section 5), and (d) not disclose and cause its partners, members, officers, directors, managers, shareholders, employees, agents, brokers and attorneys to not disclose the CASp Report to any person other than County (and except as necessary for Lessee to complete the repairs and corrections of violations noted in the CASp Report) without first obtaining the prior written consent of County (which consent shall not be unreasonably withheld) or if disclosure is required by law. Lessee's obligation to indemnify County and the County Indemnified Parties under Section 8.1 above shall apply equally to Claims arising out of any CASp investigation initiated by Lessee, including as a result of any violations discovered thereby.

10.12 Dana Point Harbor Water Quality. Notwithstanding anything to the contrary set forth in this Lease, Lessee shall not be responsible during the Term for the cost of undertaking any improvements required to: (a) improve the circulation of water in the Dana Point Harbor, (b) to improve the water quality in the Dana Point Harbor, or (c) to engage in other activities designed to improve the environmental condition of Dana Point Harbor over the condition as it exists on the Original Effective Date, and/or as might be required as a part of the Redevelopment Work. The foregoing shall not negate or limit Lessee's responsibilities under Subsections 3.2.2.1(f) or 10.2.2.1.

11. OPERATIONAL OBLIGATIONS OF LESSEE.

11.1 Standards of Operation. Continuously throughout the Term, Lessee shall operate the Select Service Hotel Property in a manner reasonably comparable to other comparable facilities or businesses within the County, and in accordance with the Minimum Standards. The Minimum Standards shall not be modified without the prior written consent of the Chief Real Estate Officer, which consent may be granted or withheld in the Chief Real Estate Officer's sole discretion.

11.2 Property Manager. Continuously throughout the Term, Lessee shall employ a competent manager for the Select Service Hotel Property ("**Property Manager**"), who shall be responsible for the day to day full-time management, operation, maintenance, cleanliness, and general order of the Select Service Hotel Property. The Property Manager shall have the requisite skill, experience and expertise for the type of operation being conducted on the Select Service Hotel Property and (i) the Property Manager and Hotel Franchisor shall each be an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, (ii) the executive management of each of the Property Manager and Hotel Franchisor responsible for the management of the Select Service Hotel shall have a minimum of ten (10) years' experience in the successful franchising of hotels of comparable quality to the Select Service Hotel to be operated and maintained on the Select Service Hotel Property, and (iii) each of the Property Manager and Hotel Franchisor shall have or will be in a position to participate in a nationwide reservation system. County hereby approves the Property Managers and Hotel Franchisors identified on **Exhibit J** without the need for further County consent; provided, however, prior to engaging such pre-approved Property Manager or Hotel Franchisor, Lessee shall nevertheless be required to provide County with the information that would have been required of Lessee if the County's approval of such Property Manager or Hotel Franchisor were required. Any Property Manager or Hotel Franchisor that is not a pre-approved Property Manager per **Exhibit J** or that is not an Affiliate of Lessee shall be subject to Chief Real Estate Officer's prior written approval, which approval shall not be unreasonably withheld. Concurrently with submitting its request for approval of a Property Manager or Hotel Franchisor, Lessee shall submit to Chief Real Estate Officer all information needed to demonstrate compliance with the criteria set forth herein and thereafter, upon Chief Real Estate Officer's request, Lessee shall cooperate with County and provide such additional information as Chief Real Estate Officer may reasonably request relating to such criteria or other factors bearing upon Chief Real Estate Officer's approval of the Property Manager. If Chief Real Estate Officer disapproves a proposed Property Manager or Hotel Franchisor, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Each approved Property Manager and Hotel Franchisor shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Select Service Hotel Property, including the authority to enforce compliance

by Lessee's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall provide County with the name and contact information for the Property Manager (and Hotel Franchisor) for the Select Service Hotel Property, and shall continuously throughout the Term update such information as changes occur. Lessee expressly agrees that any notice herein required to be served upon Lessee may, at the option of County or Chief Real Estate Officer, be personally served upon the Property Manager and that such service shall have the same force and effect as service upon Lessee. If during the Term in the reasonable judgment of Chief Real Estate Officer the then current Property Manager or Hotel Franchisor is performing in an unsatisfactory manner, then the Chief Real Estate Officer shall advise Lessee of the particular deficiencies in such operations and Lessee shall use commercially reasonable and diligent efforts to cause such Property Manager or Hotel Franchisor, as applicable, to correct such behavior or shall replace such Property Manager or Hotel Franchisor with a new management firm or Hotel Franchisor which complies with the requirements above. If during the Term the then current Property Manager or Hotel Franchisor terminates its contract, then Lessee shall have the right to replace such Property Manager or Hotel Franchisor with another Property Manager or Hotel Franchisor which complies with the requirements above. Notwithstanding anything in this Lease to the contrary, and for the avoidance of doubt, Lessee shall be solely responsible to County for the continued operation of the Select Service Hotel Property in accordance with the terms and conditions of this Lease, and Lessee's employment of a Property Manager or a Hotel Franchisor to assist Lessee with the same shall not relieve Lessee of liability for any breach of such obligations.

11.3 Right to Work and Minimum Wage Laws.

3.1.1 In accordance with the United States Immigration Reform and Control Act of 1986, Lessee shall require its employees that directly or indirectly service the Select Service Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Lessee shall also require and verify that its contractors or any other persons servicing the Select Service Hotel Property, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

3.2.1 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and California Labor Code Section 1178.5, Lessee shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Select Service Hotel Property, in any manner whatsoever. Lessee shall require and verify that all its contractors or other persons servicing the Select Service Hotel Property on behalf of the Lessee also pay their employees no less than the greater of the Federal or California Minimum Wage.

3.3.1 Lessee shall comply and verify that its contractors comply with all other Federal and State laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Select Service Hotel Property or terms and conditions of this Lease.

3.4.1 Notwithstanding the minimum wage requirements provided for in this Section 11.3, Lessee, where applicable, shall comply or cause its contractors or subcontractors to

comply with the prevailing wage and related requirements, as provided for in Subsection 11.4 below.

11.4 Labor Code Compliance. Lessee acknowledges and agrees that all construction performed by or on behalf of Lessee per the terms of this Lease shall be governed by, and performed in accordance with, all Applicable Laws, including without limitation, and to the extent applicable, the California Labor Code and the provisions thereunder concerning the payment of prevailing wage.

11.5 Public Contract Code Compliance. To the extent required by Applicable Law, Lessee shall comply, and shall cause its Sublessees, contractors and subcontractors to comply, with all County ordinances and public contracting laws regarding public works contracts, including, but not limited to, the bidding requirements under the California Public Contracts Code.

11.6 Pricing. Lessee shall at all times maintain a complete list or schedule of the prices charged by Lessee for all goods or services, or combinations thereof, supplied to the public on or from the Select Service Hotel Property, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. The foregoing shall not be deemed a requirement for Lessee to maintain such lists or schedules of the prices charged by Sublessees. Said prices will be "market rate" pricing as reasonably determined by Lessee; provided, however, that in all events such prices shall be consistent with the limitations on pricing as mandated by the Tidelands Grant

11.7 Payment Card Compliance. Should Lessee conduct credit/debit card transactions in conjunction with Lessee's business with the County, on behalf of the County, or as part of the business that Lessee conducts on the Select Service Hotel Property, Lessee covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant with such standards, or any successor standards, during the entire duration of its conduct of such activities, provided such standards remain applicable. Notwithstanding the foregoing, with respect to the Select Service Hotel Property, Lessee shall be permitted to comply with the payment card standards imposed by a Hotel Franchisor, Property Manager or operator under a management agreement or a franchise agreement under the "flag" of a national or regional hotel chain, provided such standards are reasonably similar to the PCI/DSS and PA/DSS standards. Lessee agrees to immediately notify County in the event Lessee should ever become aware that it is non-compliant of this Subsection 11.7 at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days after Lessee's actual knowledge of the commencement of any such interruption. Upon demand by County, Lessee shall provide to County written certification of Lessee's PCI/DSS and/or PA/DSS compliance, or, if applicable, proof that any other standard implemented by Lessee as contemplated above complies with the PCI/DSS and/or PA/DSS standards and that Lessee complies with the same.

11.8 Administration of County Space. For the avoidance of doubt, County does not grant or delegate to Lessee any of County's governmental powers (statutory, implied, administrative, or otherwise) with respect to the Select Service Hotel Property.

11.9 Holiday and Event Coordination. Lessee agrees that County shall have the right from time to time to host or co-host certain community events or displays on or about the Select Service Hotel Property that typically coincide with various holidays on up to five (5) occasions per year, including without limitation those listed on **Exhibit K** attached hereto (the "**Permitted Events**"). County shall coordinate the location, dates, duration and scope of the Permitted Events with Lessee prior to the occurrence of the same in each instance. County shall provide Lessee with a proposed calendar of such proposed events no later than September 30 of each calendar year proposing the Permitted Events for the following calendar year. The Permitted Events shall be conducted within those portions of the Select Service Hotel Property reasonably approved by Lessee. Lessee and County agree to reasonably cooperate with each other in connection with the Permitted Events, including the planning and execution of the Permitted Events, provided that all costs and expenses associated with the Permitted Events shall be borne by County or other sponsoring party (including, but not limited to, the City), including but not limited to, advertising, promotions, marketing, signage and wayfinding, additional lighting requirements, valet services, extraordinary parking management services, catering, staging, entertainment, decorations, materials and supplies, staffing, security, utilities, clean-up, etc. For the avoidance of doubt, Lessee shall not conduct, nor permit any of its Sublessees to conduct, any events or other activities within the waterways of Dana Point Harbor without first obtaining all applicable permits for the same.

12. ASSIGNMENT AND SUBLEASE.

12.1 Subleases.

1.1.1 Definition. The term "**Sublease**" shall mean any lease, license, permit, concession, or other interest in the Select Service Hotel Property or the Improvements, or a right to use the Select Service Hotel Property or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Select Service Hotel Property is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**". **FOR THE AVOIDANCE OF DOUBT, WITH RESPECT TO THE SELECT SERVICE HOTEL PROPERTY, NO PROPERTY MANAGER OR HOTEL FRANCHISOR SHALL CONSTITUTE A "SUBLESSEE" OR A "MAJOR SUBLESSEE" HEREUNDER AND NO HOTEL FRANCHISE OR HOTEL OR PROPERTY MANAGEMENT AGREEMENT, ROOM RESERVATION OR EVENT AREA RESERVATION SHALL CONSTITUTE A "SUBLEASE" OR A "MAJOR SUBLEASE" HEREUNDER, BUT THE SAME SHALL BE SUBJECT TO THE COUNTY'S PRIOR WRITTEN APPROVAL AS AND TO THE EXTENT SET FORTH IN SECTION 11.2 ABOVE.**

1.2.1 Approval Required. At least thirty (30) days prior to the proposed effective date of (a) any Sublease that is not a Major Sublease or Approved Retail Sublease, or (b) any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Chief Real Estate Officer for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Chief Real

Estate Officer shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Chief Real Estate Officer. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Select Service Hotel Property subject to the Sublease. If Chief Real Estate Officer disapproves a Sublease, Chief Real Estate Officer shall notify Lessee in writing of the reason or reasons for such disapproval.

1.3.1 No Approval Required. Notwithstanding any contrary provision of this Article 12, but subject to Section 3.1 of this Lease, Lessee shall not be required to obtain County's approval of (a) any Sublease or license of retail space in the ordinary course, as long as such Sublease or license agreement pertains to no more than 10,000 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease), there are no substantive revisions to any of the required lease provisions described on **Exhibit M** attached hereto, and the term of such Sublease or license does not exceed one hundred twenty (120) months, inclusive of any option or renewal periods (each, an "**Approved Retail Sublease**").

1.4.1 Non-Disturbance Agreements. With respect to (i) a property management agreement, hotel management agreement or hotel franchise agreement; or (ii) any Sublease approved by County that (a) is with a Sublessee that is a national or regional retailer or restaurant chain, and (b) pertains to more than 7,500 rentable square feet of interior space in the Improvements (which threshold shall apply to the cumulative square footage leased by a particular Sublessee if such Sublessee has more than one Sublease); County agrees, upon written request from Lessee, to execute and deliver a non-disturbance and attornment agreement using County's standard form.

1.5.1 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable entity of other comparable facilities or businesses. With respect to the Select Service Hotel Component, County agrees that each of the national or regional hotel chains and management companies listed on **Exhibit J** shall be deemed to be reputable. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Select Service Hotel Property, not less than forty- five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 12.2.

12.2 Approval of Assignments and Major Subleases. Except as specifically provided in this Article 12, Lessee shall not, without the prior written consent of County (which consent shall be based upon factors including, without limitation, those described in **Exhibit C** hereto ("**Assignment Standards**"), which shall be applied in a commercially reasonable manner), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege herein, or enter into a Major Sublease affecting the Select Service Hotel Property, or license the use of all or substantially all of the Select Service Hotel Property. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the

constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County's consent as if it constituted an assignment of Lessee's interest in this Lease. For the avoidance of doubt, any actual assignment of Lessee's interest in this Lease shall require County's consent even if it is an Excluded Transfer. In addition, for purposes of this provision, the following (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning at least one-third of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

2.1.1 County's Use of Discretion and Limitation on Permissible Assignees. Prior to the CO Date for the Select Service Hotel, County shall have the right to withhold its consent to any assignment or Major Sublease for the Select Service Hotel Property in County's sole and absolute discretion. After the CO Date for the Select Service Hotel, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease for the Select Service Hotel Property. If County withholds its consent to an assignment or Major Sublease after the CO Date for the Select Service Hotel, County shall notify Lessee in writing of the reason or reasons for such disapproval.

2.2.1 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest herein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any other process of law including, without limitation, bankruptcy proceedings.

2.3.1 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

(a) Prior to entering into any agreement requiring the approval of County pursuant to Sections 12.1 or 12.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Sublease, and any other documents which set forth any proposed agreement regarding the Select Service Hotel Property and the information set forth in Subsection 12.2.3.1(e). County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request.

(b) In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

(c) Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 12 and shall provide such response in no more than thirty (30) days.

(d) Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without any duplication with any Administrative Charge payable under Subsection 4.3).

(e) Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(1) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(2) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(3) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Select Service Hotel Property (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only Beneficial Interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Select Service Hotel Property) and for any contemplated improvement

thereof, demonstrating such proposed assignee's financial capability to so operate the Select Service Hotel Property and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (a) equity capital; (b) sources and uses of funds; (c) terms of financing; (d) debt service coverage and ratio; and (e) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Select Service Hotel Property. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(4) Business Plan. County shall be provided with the proposed assignee's business plan for the Select Service Hotel Property (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Select Service Hotel Property), including pro forma financial projections for the Select Service Hotel Property for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(5) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(6) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(7) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Select Service Hotel Property.

(8) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Select Service Hotel Property and any proposed alterations or improvements to the Select Service Hotel Property. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of

the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Select Service Hotel Property, contracts in excess of $25,000 affecting the Select Service Hotel Property, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Select Service Hotel Property. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

(f) Non-disturbance. Upon the written request of Lessee, County shall agree to execute a subordination, non-disturbance and attornment agreement and a ground lessor's estoppel certificate in favor of any Major Sublessee, or any national or regional hotel chains or management companies listed on **Exhibit J** attached hereto, using County's standard form for the same.

(g) Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

2.4.1 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Select Service Hotel Property or proposes to transfer a Controlling Interest in Lessee, in each case excluding any Excluded Transfer (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean fifty percent (50%) or more of the direct or indirect Beneficial Interest in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 12.2.4.1. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Select Service Hotel Property and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Select Service Hotel Property or Lessee's books and records pursuant to this Subsection 12.2.4.1 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum

Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (a) three percent (3%) of the Lessee Sale Price, plus (b) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (i) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (ii) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (i) or (ii), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (A) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (B) the transfer is consummated not later than twelve (12) months after the later of (i) or (ii) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60) days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Select Service Hotel Property subject to the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Select Service Hotel Property, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Select Service Hotel Property retained by Lessee and Annual Minimum Rent shall be reduced as of the date of the acquisition to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Select Service Hotel Property remaining with Lessee to the fair market value of the entire Select Service Hotel Property immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the acquisition. Upon the next Adjustment Date, as described in Exhibit F, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent paid by Lessee to County prior to the date of such acquisition shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Select Service Hotel Property which remains after such acquisition bears to the fair market value of the entire Select Service Hotel Property immediately prior to such acquisition. If the Parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.3.2.1. Any determinations of fair market value made pursuant to this Section 12.2.4.1 in connection with any arbitration proceeding shall be predicated upon the Income Approach. In the event that County elects to recapture all or any portion of the Select Service Hotel Property as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this Subsection 12.2.4.1 shall not apply to (I) Financing Events, or (II) those events identified in Subsection 4.3.1.1(e)(3) of this Lease.

2.5.1 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Percentage Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price, plus (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for

any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the Parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

12.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for in this Lease, each and all of the provisions, agreements, terms, covenants, and conditions of this Lease contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of Lessee's heirs, executors, administrators, successors and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Furthermore, any transferor of any interest in this Lease or the Select Service Hotel Property or Improvements shall remain primarily liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease. County may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

13. ENCUMBRANCES.

13.1 Financing Events.

1.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Section 4.3:

(1) "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance; for purposes of Subsection 13.1.2 below and Subsections 4.2.4 through 4.3.1.1(e) above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease. Notwithstanding the foregoing, the initial construction financing obtained in connection with the Redevelopment Work, and other exclusions set forth in Section 4.3, above, shall not be deemed a "**Financing Event**".

(2) "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (i) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants), or (ii) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. Notwithstanding the foregoing, that certain Declaration, dated January 27, 2026, between Dana Point Harbor Partners, LLC, and Dana Point Harbor Partners Drystack, LLC, recorded in the Official Records, Orange County as document 2026000019896, and any amendment, extension or modification thereto or assignment thereof shall not be deemed an "Encumbrance" hereunder.

(3) "**Encumbrance Holder**" shall also be deemed to include any and all Affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such Affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease.

(4) "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

1.2.1 County Approval Required. Lessee may, with the prior written consent of Chief Real Estate Officer (except as set forth in Subsection 13.1.3.1 below), which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Chief Real Estate Officer, consummate one or more Financing Event(s). Lessee shall submit to the Chief Real Estate Officer a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event (collectively, the "**Financing Documents**"). The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Chief Real Estate Officer. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Chief Real Estate Officer shall have twenty (20) days to grant or withhold approval of the preliminary loan package and its preliminary approval or disapproval of the Financing Event, subject to confirmation that the substantially complete loan documents conform to the preliminary loan package. Chief Real Estate Officer shall have ten (10) days after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event. If not approved by Chief Real Estate Officer in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Chief Real Estate Officer and, if so requested in writing by Lessee, Chief Real Estate Officer shall within ten (10) days of such request deliver to Lessee a written description of Chief Real Estate Officer's objections to said proposed Financing Event. Lessee

shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof. The same rights and obligations set forth above in this Subsection 1.2.1 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

1.3.1 No County Approval Required. Notwithstanding anything to the contrary contained in Subsection 1.2.1 above, so long as Olson Real Estate Group. Inc. or R.D. Olson Investments II, LLC is the manager or managing member of Lessee, then Lessee may consummate one or more Financing Event(s) without the prior written consent of Chief Real Estate Officer, subject to the following terms and conditions:

(a) As soon as reasonably practicable following Lessee's receipt of the Financing Documents (which may include draft documents), but in all cases no later than ten (10) Business Days prior to executing the same, Lessee shall submit the Financing Documents for each applicable Financing Event to the Chief Real Estate Officer for the Chief Real Estate Officer's review for the purpose of confirming the same comport with the requirements set forth in this Subsection 13.1.3.1. One (1) copy of any and all security devices or instruments as finally executed or recorded by the Parties in connection with any such approved Encumbrance shall be filed with the Chief Real Estate Officer not later than fifteen (15) days after the effective date thereof.

(b) The Encumbrance Holder shall be an Institutional Lender.

(c) The Encumbrance shall cover no interest in any real property other than Lessee's interest in the Select Service Hotel Property and Improvements or some portion thereof, and the leasehold estate of Lessee under this Lease. The Encumbrance shall be fully subordinate to Lessor's fee title in and to the Select Service Hotel Property and all of Lessor's rights set forth in this Lease and shall state on its face that it does not encumber in any way Lessor's fee interest in the Select Service Hotel Property or Lessor's rights set forth in this Lease.

(d) Prior to the completion of the Redevelopment Work, Encumbrances may be made only for the purposes of financing necessary and appropriate to pay Improvement Costs.

(e) Prior to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Select Service Hotel Property shall not exceed seventy-five percent (75%) of the budgeted Improvement Costs for the Select Service Hotel Property, as the Budget for said Improvement Costs may be revised from time to time in accordance with this Lease.

(f) Subsequent to completion of the Redevelopment Work, the total amount of all loans secured by Encumbrances recorded against the Select Service Hotel Property shall not exceed seventy-five percent (75%) of the fair market value of Lessee's leasehold

interest in the Select Service Hotel Property, as determined by either (i) the appraisal selected by the Institutional Lender to conduct the appraisal in connection with the Financing Event (provided such appraisal is actually relied upon by the applicable Encumbrance Holder in connection with Lessee's loan approval) or (ii) a licensed California appraiser retained at Lessee's sole cost and expense who is a member of the Appraisal Institute and who has a minimum of ten (10) years' experience appraising properties comparable to the Select Service Hotel Property and Improvements to be developed on the Select Service Hotel Property, with the Chief Real Estate Officer or his or her designee having the right of reasonable approval or disapproval of the appraisal in connection with this subsection (ii) alternative; provided, however, that Lessee shall not be deemed to be in default of this Subsection 13.1.3.1(f) if a loan or loans secured by Encumbrances recorded prior to completion of the Redevelopment Work in compliance with Subsection 13.1.3.1(e), including any amendment(s) or extension(s) of such loan(s) that do(es) not increase the total outstanding principal balance of such loan(s) and whether or not such amendment(s) or extension(s) occur(s) prior or subsequent to completion of the Redevelopment Work, exceed(s) seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Select Service Hotel Property. In addition, it is understood and agreed that the loan-to-value ratio constraint in this Subsection 13.1.3.1(f) shall be made only at the time Lessor is determining whether to approve or disapprove the proposed Encumbrance and thereafter this Subsection 13.1.3.1(f) shall not limit, restrict, invalidate, or result in the disapproval of any such Encumbrance or any amendment or extension of any such Encumbrance that does not increase the total outstanding principal balance of the loan secured by such Encumbrance if the fair market value of Lessee's leasehold interest in the Select Service Hotel Property that was relied upon by Lessor in approving the Encumbrance declines.

(g) All rights acquired by an Encumbrance Holder under an Encumbrance shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease, and to all rights of County hereunder, none of which covenants, conditions, and restrictions is or shall be waived by County by reason of the giving of such Encumbrance. Notwithstanding the foreclosure of any such Encumbrance, Lessee shall remain liable for the payment of the accrued but unpaid rent reserved in this Lease while Lessee remains in possession of the Select Service Hotel Property and Improvements.

(h) Promptly upon the recording of an Encumbrance, Lessee shall, at its own expense, cause to be recorded in the Official Records of Orange County a written request executed and acknowledged by County for a copy of all notices of default and all notices of sale under the Encumbrance as provided by Applicable Law to be provided to the Chief Real Estate Officer. Inclusion of a request for notice having the effect described above in the body of the recorded Encumbrance shall constitute compliance with this provision.

(i) County shall not be required to amend this Lease, nor undertake any additional obligations, nor be obligated to forego any rights under this Lease, in connection with any such Financing Event.

(j) The Encumbrance Holder shall acknowledge in the Encumbrance that any amounts in the Hotel Capital Reserve Fund and the Replacement Reserve Fund, as

applicable, shall be administered in accordance with, and shall be subject to, the terms and conditions of this Lease.

13.2 Consent Requirements In The Event of a Foreclosure Transfer.

2.1.1 Definitions. For the purposes of this Lease:

(a) "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof.

(b) "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer.

(c) "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

2.2.1 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer and, notwithstanding anything to the contrary in this Lease, no Percentage Share shall be payable in connection therewith.

2.3.1 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (a) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under Subsection 3.1.1 below, and (b) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults. For clarification purposes, the right to a single transfer under this Subsection 13.2.3 shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Subsection.

2.4.1 Bankruptcies. In the event that County becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), and County or any trustee of County rejects or seeks authority to reject the Lease under 11 U.S.C. Section 365 (or any other or successor provision permitting any similar relief), County understands that Encumbrance Holder and Lessee have agreed that: (i) Lessee shall elect, without further act, unless Encumbrance Holder consents in writing to any other election, to remain in possession for the balance of the term of the Lease and any renewal or extension thereof, pursuant to 11 U.S.C. Section 365(h) (and any other successor provision permitting a similar election); (ii) any purported election by the Lessee to treat the Lease as terminated shall be void and of no effect, unless Encumbrance Holder consents in writing thereto; and (iii) the lien of the Security Instrument shall not be impaired by

such rejection. In the event that the Lessee becomes the subject of a case under the U.S. Bankruptcy Code (or any other law providing similar relief), County shall give prompt notice to Encumbrance Holder of any notice it receives of a request by the Lessee or any trustee of the Lessee for authority to reject the Lease.

13.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

3.1.1 Any Encumbrance Holder which is an Institutional Lender, shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with Subsection 2.3.1 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (a) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (b) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

3.2.1 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Subsection 3.1.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults).

3.3.1 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Select Service Hotel Property, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Administrative Charge nor Percentage Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Subsection 3.7.1 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Subsection 3.3.1 shall also inure to the benefit of the Lessee.

3.4.1 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

3.5.1 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 2.3.1, shall trigger (a) any obligation to pay an Administrative Charge nor Percentage Share, (b) any acceleration of

any financial obligation of Lessee under this Lease, (c) any recapture right on the part of County, or (d) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to Subsection 2.3.1, shall be deemed to be excluded from the definition of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Subsection 2.3.1), so that there may be more than one "single subsequent transfer" benefited by this Subsection.

3.6.1 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and Redevelopment Work described in Section 5.1 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Subsection 3.6.1 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

3.7.1 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (a) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (b) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 13 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

3.8.1 The occurrence of a default or event of default under an Encumbrance or related document or instrument evidencing or securing a loan shall not, in and of itself constitute a default or event of default under this Lease, provided, however, that the circumstances giving rise to such default or event of default under the Encumbrance or related document or instrument evidencing or securing the Loan may also constitute a default or event of default under this Lease. In such an event, except as expressly set forth herein, County shall not be prohibited from exercising its rights or remedies to address any such default or event of default pursuant to the terms and conditions of this Lease.

3.9.1 Upon delivery by Encumbrance Holder of a written notice to County that Encumbrance Holder has commenced a Foreclosure (as defined herein) (such written notice to include a written notice of event of default delivered previously or contemporaneously to Lessee), any and all entitlement, permitting, construction and related obligations of Lessee under the Lease, including, without limitation, the Required Cost Amounts obligations (the "**Construction Obligations**") shall be tolled. If Encumbrance Holder or an affiliate of Encumbrance Holder shall become Foreclosure Transferee upon completion of a Foreclosure, then such tolling of the Construction Obligations shall continue for five (5) years after the date of completion of such Foreclosure (the "**Tolling Period**") so long as such Encumbrance Holder as Foreclosure

Transferee is diligently pursuing a sale of the Leasehold interest of Lessee, including, without limitation, by engaging a nationally recognized broker or other broker with experience marketing and selling marinas and actively marketing the Select Service Hotel Property. The tolling of all Construction Obligations shall cease immediately upon either (i) a third party (unaffiliated with Encumbrance Holder) becoming a Foreclosure Transferee upon completion of a Foreclosure or (ii) Encumbrance Holder as Foreclosure Transferee completing a sale of the leasehold interest of Lessee to a third- party Foreclosure Transferee during the Tolling Period (each, a "**Tolling Termination**"). Upon a Tolling Termination, a third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a reasonable construction schedule for such remaining Construction Obligations (and not any dates or time periods set forth in the Lease) as determined by an independent construction inspector agreed to between County and Foreclosure Transferee (a "**Reset Construction Schedule**"). Upon the expiration of the Tolling Period, so long as no Tolling Termination has occurred and so long as Encumbrance Holder is the Foreclosure Transferee, such Foreclosure Transferee shall diligently pursue completion of the Construction Obligations and shall not be subject to any Reset Construction Schedule or any dates or time periods set forth in the Lease, provided, however, that if Encumbrance Holder as Foreclosure Transferee assigns the leasehold interest of Lessee to a third party after expiration of the Tolling Period, then such third party Foreclosure Transferee shall be obligated to diligently pursue completion of the Construction Obligations pursuant to a Reset Construction Schedule.

3.10.1 County acknowledges that, if Encumbrance Holder or any other party succeeds to the interest of Lessee under the Lease as a result of a Foreclosure Transfer, the Foreclosure Transferee shall be deemed to have agreed to perform all of such Lessee's obligations only for so long as such purchaser is the owner of the leasehold interest of Lessee. The Foreclosure Transferee shall, upon any assignment of the leasehold interest of Lessee, be relieved of all obligations under the Lease. The Foreclosure Transferee shall be entitled to exercise all rights of Lessee under the Lease. County's approval or consent shall not be required in connection with any assignment of the leasehold interest of Lessee to a Foreclosure Transferee or to the first third party (unaffiliated with Encumbrance Holder) Foreclosure Transferee, including, without limitation, with respect to any secured or unsecured lender providing financing for such acquisition or as to such financing (including any underlying financing documents).

3.11.1 So long as any Foreclosure Transferee is the owner of the leasehold interest of Lessee, County shall look solely to the interest of such Foreclosure Transferee in the Select Service Hotel Property and the improvements located thereon in the event of the breach or default by such Foreclosure Transferee under the terms of the Lease and County hereby agrees that any judgment or decree to enforce the obligations of such Foreclosure Transferee shall be enforceable only to the extent of the interest of such Foreclosure Transferee in the Select Service Hotel Property and such improvements.

13.4 No Subordination. County's rights in the Select Service Hotel Property and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Subsection 1.2.1, to the extent that such rights are not inconsistent with the terms of this Lease,

including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Select Service Hotel Property under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

13.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 13) without the prior written consent of each such Encumbrance Holder. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

13.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

6.1.1 Right to Cure. Each Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Select Service Hotel Property Manager, shall have the right, at any time during the term of its Encumbrance, Major Sublease, property management agreement, hotel management agreement or franchise agreement, as applicable, and in accordance with the provisions of this Article 13, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

6.2.1 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 14.5 or imposing the daily payment set forth in Section 10.3), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Encumbrance Holder and Major Sublessee which has notified Chief Real Estate Officer in writing of its interest in the Select Service Hotel Property or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder, Major Sublessee and each approved Hotel Franchisor and Property Manager, shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the cure rights set forth in this Section 13.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.3.

6.3.1 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder, Major Sublessee, and, for each approved Hotel Franchisor and Property Manager, in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder, Major Sublessee, and each approved Hotel Franchisor and Property Manager, may pay the same,

together with any Late Fee or interest payable thereon, to County or other payee within thirty-five (35) days after its receipt of the aforesaid notice of default (provided, however, County shall not be required to send such notice to the Hotel Franchisor and/or Property Manager). If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder, Major Sublessee or the approved Hotel Franchisor or Property Manager.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder, Major Sublessee, Property Manager, or Hotel Franchisor, as follows:

(1) Such party may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 14.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "**initial cure period**"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the curing party commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the initial cure period provided to the curing party shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the curing party that Lessee has failed or ceased to cure the default with due diligence. Notwithstanding anything in this Lease to the contrary, if any default by the Lessee is of such a nature that it reasonably cannot be cured by the curing party, or reasonably cannot be cured by the curing party without the curing party obtaining possession of the Select Service Hotel Property, County will not terminate the Lease as long as all rent payments are made and all other defaults which reasonably can be cured by the curing party without the curing party obtaining possession of the Select Service Hotel Property are so cured.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee or an approved Hotel Franchisor or Property Manager, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure

proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in Subsection 13.6.3.1(a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

13.7 New Lease.

7.1.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Subsection 13.7.1.1 within thirty (30) days after the occurrence of such termination, which notice shall state (a) that the Lease has terminated in accordance with this Subsection 13.7.1.1, and (b) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Subsection 13.7.1.1, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Select Service Hotel Property. From and after the effective date of the new lease, the Encumbrance Holder (or its Affiliate) shall have the same rights to a single transfer that are provided in Subsection 2.3.1 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 13. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 12 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

In connection with Encumbrance Holder's right to a new lease contained herein, Encumbrance Holder shall not be required to cure any existing non-monetary Event of Default that is personal to Lessee or otherwise not reasonably susceptible to cure by Encumbrance Holder. From and after any termination or rejection of the Lease after which Encumbrance Holder has a right to a New Lease, for so long as Encumbrance Holder has such right, County will not terminate any subleases or the rights of any sublessee except in the case of a default under any such sublease beyond any applicable notice and cure periods. During such period County shall receive all rent and other payments due from all sublessees as agent of the Encumbrance Holder, and shall deposit such amounts in a segregated account in trust for the Encumbrance Holder, and upon execution of a new lease, shall account to the sublessees thereunder for such amounts. The collection of such amounts by County under this Section shall not be deemed an acceptance by County for its own account of the attornment of any sublessee unless County shall have agreed in writing with such sublessee that its tenancy shall be continued in the event that a new lease is not entered into pursuant to this Section. In the event a new lease is so entered into, County shall not object to any requirement that all sublessees under such subleases shall attorn to the new tenant thereunder.

7.2.1 Priority of New Lease. The new lease made pursuant to Subsection 13.7.1.1 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Select Service Hotel Property first arising or attaching to the Select Service Hotel Property from and after the Effective Date, and any future fee mortgagee or other future holder of any lien on the fee interest in the Select Service Hotel Property is hereby given notice of the provisions hereof.

13.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (a) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Select Service Hotel Property (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (b) any funds required to be held in the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

13.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Select Service Hotel Property following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

13.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Select Service Hotel Property shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting

such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

13.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Select Service Hotel Property, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13.12 No Amendment. Without the written consent of each Encumbrance Holder, this Lease shall not be amended, modified, cancelled or terminated by joint action of County and Lessee, and any attempted amendment, modification, cancellation or termination shall be of no force and effect. County shall not recognize any cancellation, surrender or termination by Lessee alone without in each case the prior written consent of the Encumbrance Holder, and any attempted cancellation, surrender or termination shall be of no force and effect.

14. DEFAULT.

14.1 Events of Default. The following are deemed to be "**Events of Default**" and, each an "**Event of Default**" hereunder:

1.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Hotel Capital Reserve Fund, if applicable), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon at the Applicable Rate and the applicable Late Fee, within such ten (10) day period.

1.2.1 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

1.3.1 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other non-monetary promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty (30) days after written notice of Lessee's failure to perform from Chief Real Estate Officer; provided, however, that where Lessee's performance of such non-monetary covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty (30) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Subsection 14.1.3.1, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond the thirty (30) day period shall not be applicable to any failure of Lessee to comply with the Required Construction Commencement Date or Required Construction Completion Date set forth in Section 5.1 (as such dates may extended pursuant to Section 5.7).

1.4.1 Non-Use of Property. The abandonment (as defined in California Civil Code Section 1951.3), vacation, or discontinuance of use of the Select Service Hotel Property, or any substantial portion thereof, for a period of thirty (30) days after written notice by County, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, if an individual Sublessee of retail, office or restaurant space on the Select Service Hotel Property fails to remain open for business to the public, then such failure to remain open for business shall not constitute an Event of Default under this Subsection 14.1.4.1 if Lessee uses its reasonable and diligent efforts to recover possession of the applicable space from the Sublessee and re-subleases such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances. In addition, notwithstanding any contrary provision of this Subsection 14.1.4.1, an Event of Default shall not be triggered under this Subsection 14.1.4.1 due to the termination of operations by a Sublessee as long as Lessee diligently attempts to re-sublease and re-open such Sublessee's space as soon as reasonably possible after Lessee obtains possession of the Sublessee's space.

Any notice required to be given by County pursuant to Section 14.1 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

14.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

14.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 13.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

3.1.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination effective thirty (30) days thereafter. Upon the expiration of such thirty (30) day period absent cure by Lessee, this Lease and all of Lessee's rights in the Select Service Hotel Property and in all Improvements shall terminate. Promptly after such termination, Lessee shall surrender and vacate the Select Service Hotel Property and all Improvements in broom-clean condition, and County may re-enter and take possession of the Select Service Hotel Property and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 14.4.4.1. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Select Service Hotel Property as is reasonably necessary to permit Lessee to comply with its removal obligations.

3.2.1 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Select Service Hotel Property and allows Lessee

to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the Parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

3.3.1 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 14.3.2.1, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Select Service Hotel Property unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 14.2, hereof. County agrees to use reasonable efforts to mitigate damages.

14.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section 14.3, County shall be entitled to recover from Lessee as damages:

4.1.1 The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof; plus

4.2.1 The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

4.3.1 The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

4.4.1 Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Select Service Hotel Property, expenses of reletting, including necessary repair, renovation and alteration of the Select Service Hotel Property, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, expert witness costs, any unpaid Administrative Charges and any other reasonable costs; plus

4.5.1 Any other amount which County may by law hereafter be permitted to recover from Lessee to compensate County for the detriment caused by Lessee's default.

The term "rent" as used herein shall be deemed to be and to mean the Annual Minimum Rent, Percentage Rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease. All such sums, other than the Annual Minimum Rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Subsections 14.4.1.1 and 14.4.2.1 above, the "worth at the time of

award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Subsection 14.4.3.1 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of the Applicable Rate.

14.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder, or Major Sublessee, as provided in the last sentence of this Section 14.5), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (a) one hundred ten percent (110%) of the amount expended by County to cure such default, and (b) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders, or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

14.6 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease. County's pursuit of any of the remedies provided for in this Lease shall not preclude its pursuit of any of the other remedies or relief available to County at law, in equity or otherwise (whether or not stated in this Lease), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rental due to County hereunder or of any damages accruing to County by reason of the violation of any of the terms, provisions, and covenants herein contained (except as may otherwise be expressly provided herein).

14.7 No Waiver; Surrender. County's acceptance of rental following an Event of Default shall not be construed as County's waiver of such Event of Default. No waiver by County of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Select Service Hotel Property, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

14.8 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days' notice to any person having a recorded interest pertaining to County's interest in this Lease or the Select Service Hotel Property, provided County provides written notice to Lessee of the identity of such person and the address of such person prior to the delivery of the foregoing notice from Lessee specifying in detail County's failure to perform. Such

person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall be limited to the value of County's equity interest in the Select Service Hotel Property and its right to insurance proceeds in connection with the policies required under Article 9 hereof, and nothing else. Any and all claims or actions against County accruing hereunder shall be absolutely barred unless such action is commenced within twelve (12) months of the event or action giving rise to the default.

14.9 Waiver. Lessee hereby waives any and all rights of reinstatement, redemption or relief from forfeiture granted under any present and future laws (including without limitation under California Civil Code Section 3275 or California Code of Civil Procedure Sections 1174 and 1179) in the event County obtains the right to possession of the Select Service Hotel Property by reason of the violation by Lessee of any of the covenants and conditions of this Lease or otherwise.

15. ACCOUNTING.

15.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, and other sums due under this Lease, Lessee and all Sublessees in connection with any Lessee Business Operation shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Chief Real Estate Officer, true, accurate, and complete records (as defined herein below) and double-entry books of account for the current and five (5) prior Lease Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Select Service Hotel Property separate and apart from those in connection with Lessee's (or an applicable Sublessee's, as applicable) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize the accrual basis of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. If Lessee elects to use an alternative method, including a cash or modified accrual method, Lessee shall utilize the same method of accounting for both monthly Gross Receipts statements and the annual audited Supplemental Statement of Gross Receipts. For example, Lessee shall not utilize the cash basis for monthly Gross Receipts statements while also utilizing the accrual basis for the annual audited Supplemental Statement of Gross Receipts. For purposes hereof, "**records**" shall mean full and accurate books and accounts, records, cash receipts, and other pertinent data as necessary or appropriate for the purpose of this Lease as reasonably determined by the Auditor-Controller showing Lessee's financial operations pertaining to this Lease and the Select Service Hotel Property. Such books and records shall be organized in a manner that separately itemizes each of the separate components of Gross Receipts.

15.2 Cash Registers. To the extent retail sales are conducted on the Select Service Hotel Property in connection with any Lessee Business Operation, or other cash or credit sales of goods or services are conducted in connection with any Lessee Business Operation, all such sales shall be recorded by means of cash registers, point-of-sale computers, or other comparable devices as reasonably determined by the Auditor-Controller which automatically issue a customer's receipt

or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the CREO Office in advance of installation for Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 15.2 include Lessee's obligation to insure that Lessee's Sublessees in connection with any Lessee Business Operation (including licensees, permittees, concessionaires and any other occupants of any portion of the Select Service Hotel Property which constitute any Lessee Business Operation) keep records sufficient to permit County and County's auditors to determine the proper levels of Percentage Rent and other sums due under this Lease.

15.3 Statement; Payment. No later than the last business day of each calendar month, Lessee shall deliver to County a detailed statement showing (a) the Gross Receipts during the preceding calendar month, (b) Lessee's calculation of the amount payable to County under Section 4.2, and (c) Lessee's calculation of the deposits required to be made into each sub-fund for the Hotel Capital Reserve Fund or Replacement Reserve Fund, as applicable, and accompany such statement with remittance of the amount so shown to be due. For the avoidance of doubt, such statement shall include all gross revenues prior to the permitted deductions under Section 1.1.83.1(b) so that County can verify the calculation of Gross Receipts.

15.4 Availability of Records; County's Audit Right.

4.1.1 Retention of Records; Examination. Books of account and records for the then current and five (5) prior Lease Years as hereinabove required shall be kept or made available at the Select Service Hotel Property or at another location within the County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records for the previous five (5) year period, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Select Service Hotel Property and the compliance of Lessee with the terms of this Lease and other governmental requirements. Except in the event of a dispute between the parties and otherwise except as required by Applicable Law, including without limitation the California Public Records Act (Government Code Sections 6250 *et seq.*), Lessee's books and records shall remain confidential. No contingency based auditor shall be permitted to participate in such audit.

4.2.1 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Select Service Hotel Property at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

4.3.1 Survival. This Section 15.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

15.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's in connection with any Lessee Business Operation) original records and books of account at the Select Service Hotel Property or at a location within the County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Lessee in accordance with this Lease and the rent due as determined by said audit, then Lessee shall pay the County's Actual Cost of County's audit, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Subsection 4.2.3.1.

15.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major commercial real estate management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

15.7 Accounting Year. The term "**Accounting Year**" as used herein shall mean each calendar year during the Term.

15.8 Annual Financial Statements. Within ninety (90) days after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements, including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2.1(a) (including, without limitation, an income statement showing profits and losses, as well as a balance sheet) prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning such financial statements and Gross Receipts (or other fair representation as approved by Auditor-Controller). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Select Service Hotel Property, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Select Service Hotel Property.

15.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Select Service Hotel Property which constitute a Lessee Business Operation (and shall include language in all applicable Subleases requiring each applicable Sublessee) to comply with all terms of this Article 15 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to County of audited certified financial statements (including, without limitation, an income statement showing profits and losses, as well as a balance sheet, and a Statement of Gross Receipts audited by category of Percentage Rent set forth in Subsection 4.2.2.1(a))) and unqualified opinions (or other fair representation as approved by Auditor-Controller) as to Gross Receipts. County shall provide

written notice to Lessee of the failure of any Sublessee in connection with any Lessee Business Operation or other person or entity to comply with this Section after County's discovery of such failure, and provide Lessee with the right to cure any failure to so comply by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such Sublessee or other person or entity, and accepted by County, or as otherwise determined pursuant to Section 15.10. In such event County shall permit Lessee to subrogate to any right of County to enforce this provision against such Sublessee or other person or entity, to the extent Lessee does not have a direct right of enforcement against such Sublessee or other person or entity.

15.10 Inadequacy of Records. In the event that Lessee or any Major Sublessee (including applicable licensees or concessionaires) fails to keep the records required by this Article 15 such that a Certified Public Accountant or Auditor-Controller is unable to issue an unqualified opinion as to Gross Receipts (or other fair representation as approved by Auditor-Controller), such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Select Service Hotel Property, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in the County with comparable business operations, or any other method as reasonably determined by Chief Real Estate Officer and shall utilize such methodology as Chief Real Estate Officer deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of five percent (5%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

16. DEFINITION OF TERMS; INTERPRETATION.

16.1 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

16.2 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

16.3 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

16.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of

their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

16.5 "County" and "Lessee". In any provision relating to the conduct, acts or omissions of Lessee, the term "**Lessee**" shall include Lessee's agents, employees, contractors, invitees, successors or others using the Select Service Hotel Property with Lessee's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Select Service Hotel Property with County's expressed or implied permission.

16.6 Business Days. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

16.7 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

16.8 Time For Chief Real Estate Officer Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Chief Real Estate Officer is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Chief Real Estate Officer either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Chief Real Estate Officer (the "**Extended Time**") and approves such request in writing prior to such Extended Time. If Chief Real Estate Officer does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

16.9 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Chief Real Estate Officer determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or the Board, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

17. MISCELLANEOUS.

17.1 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein (all of which are incorporated herein by this reference), constitutes the entire agreement between County and Lessee relative to the leasing of the Select Service Hotel Property. County and Lessee hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

17.2 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Select Service Hotel Property throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

17.3 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

17.4 Holding Over.

4.1.1 No Renewal or Extension of Term. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided with respect to any Post Term Personal Property Removal Period.

4.2.1 Failure to Surrender; No Consent. Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Select Service Hotel Property to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 17.4 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Select Service Hotel Property upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Select Service Hotel Property will cause County to incur such lost profits.

17.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving Party, any waiver by either Party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either Party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that Party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re- enter the Select Service Hotel Property or of either Party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such

default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either Party shall be construed as being exhausted by the exercise thereof in one or more instances.

17.6 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Select Service Hotel Property in the case of an Event of Default, or in case of abandonment or vacation of the Select Service Hotel Property by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Select Service Hotel Property and remove any and all persons and property whatsoever situated upon the Select Service Hotel Property and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee. Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Select Service Hotel Property in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

17.7 Notice and Service of Process.

7.1.1 Notice Requirement. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 17.7.

7.2.1 Service of Process. If Lessee is not a resident of the State, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with the CREO Office a designation of a natural person residing in the County, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee. If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

7.3.1 Method of Delivery. Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with the CREO Office, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon

the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

7.4.1 Required Additional Recipients. Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

7.5.1 Addresses. As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY:	County Executive Office County Administration North 400 W. Civic Center Dr., 5th Floor Santa Ana, California 92701 Attn: Chief Real Estate Officer Fax: (714) 834-6166
With a Copy to:	Office of County Counsel County Administration North 400 W. Civic Center Dr., 2nd Floor Santa Ana, California 92701 Attn: Michael Haubert, Senior Deputy Fax: (714) 834-2359
and to:	Director OC Parks 13042 Old Myford Road Irvine, California 92602 Fax: (714) 834-2359
LESSEE:	[_____] c/o R.D. Olson Development 520 Newport Center Drive, Suite 600 Newport Beach, California 92660 Attn: Robert D. Olson Fax: (949) 271-1080
and to:	Bellwether Financial Group, Inc. 610 Newport Center Drive, Suite 490 Newport Beach, California 92660 Attn: Joe Ueberroth Fax: (949) 723-7786

and to: Burnham Ward Properties, LLC
860 Newport Center Drive, Suite 100
Newport Beach, California 92660
Attn: Scott Burnham and Bryon Ward
Fax: (949) 760-0430

Either Party shall have the right to change its notice address by written notice to the other Party of such change in accordance with the provisions of this Section 17.7.

17.8 Brokers. If Lessee has engaged a broker in this transaction pursuant to a separate agreement, Lessee shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Lessee hereby agrees to indemnify, defend and hold the County harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by County in connection with any Claim by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Lessee's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Lessee. No broker, finder or other agent of any Party hereto shall be a third-party beneficiary of this Lease.

17.9 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Lessee. County and Lessee mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Lessee or any other party.

17.10 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

17.11 Attorneys' Fees. In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

17.12 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County.

17.13 Estoppel Certificates. Each Party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other Party, an estoppel certificate stating: (a) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (b) that, to the best knowledge of such Party, the other Party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (c) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic

terms and conditions of this Lease. County shall provide its response to any request for an estoppel certificate using its standard form. Prospective purchasers, Major Sublessees, Property Managers, Hotel Franchisors and Encumbrance Holders may rely on such statements.

17.14 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

17.15 Memorandum of Lease. This Lease itself shall not be recorded, but the Parties hereto shall execute and acknowledge a memorandum of lease ("**Memorandum**"), in recordable form and otherwise satisfactory to the Parties hereto, for recording as soon as is practicable on or following the Effective Date. Lessee shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

17.16 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.17 Venue**.** The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in the County, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

17.18 Nondiscrimination. Lessee agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

17.19 Public Records. Lessee acknowledges that any written information submitted to and/or obtained by County from Lessee or any other person or entity having to do with or related to this Lease and/or the Select Service Hotel Property, either pursuant to this Lease or otherwise is a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq*.) as now in force or hereafter amended, or any Applicable Laws in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act. In the event that a public records act request is made for any financial statements and records (not including Gross Receipts Statements) and the County determines that the records must be turned over, the County will give Lessee fifteen (15) days' written notice prior to turning over such records so that Lessee can take any necessary action.

17.20 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.21 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

17.22 Obligations of DPHP and Lessee. Wherever in this Lease the phrase "during the Term", "continuously throughout the Term", "from the Original Effective Date" or phrases of similar import, such language shall mean and be the obligation of DPHP from the Original Effective Date until the Effective Date and mean and be the obligation of Lessee from and after the Effective Date.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

[HOTEL SPE], LLC, a California limited liability company

BURNHAM-WARD PROPERTIES, LLC, a California limited liability company, Manager

By:_____
Name:_____
Title:_____

BELLWETHER FINANCIAL GROUP, INC. a California corporation, Manager

By:_____
Name:_____
Title:_____

OLSON REAL ESTATE GROUP, INC., a California corporation (dba RD Olson Development), Manager

By:_____
Name:_____
Title:_____

COUNTY OF ORANGE,
a political subdivision of the State of California

By:_____
Chief Real Estate Officer

APPROVED AS TO FORM:

County Counsel

By: DocuSigned by: Michael Haubert 7B6E2C12981F4B9...

EXHIBIT A-1

DEPICTION OF HARBOR PROPERTY

EXHIBIT A-2

LEGAL DESCRIPTION OF SELECT SERVICE HOTEL PROPERTY

EXHIBIT A-3

DEPICTION OF SELECT SERVICE HOTEL PROPERTY

EXHIBIT B

APPROVED PROPOSAL SUBMITTALS

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 12.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Select Service Hotel Property, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Select Service Hotel Property, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (a) discriminatory employment practices which violate any federal, state or local law; or (b) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the transferee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease; provided however, that a transfer of

ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Select Service Hotel Property or any Improvements thereon.

7. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the CREO Office and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Dana Point Harbor.

EXHIBIT D

INTENTIONALLY OMITTED

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

RENT SCHEDULE

Period	Annual Minimum Rent
Operating Year 1	$45,500
Operating Year 2	$85,000
Operating Year 3	$145,000
Operating Year 4	$145,000
Operating Year 5	$145,000

Notwithstanding anything in the foregoing schedule to the contrary including, without limitation, the Operating Year schedule, above, and any adjustment provisions, Annual Minimum Rent for the Select Service Hotel Property shall be abated for the Abatement Period as set forth in Subsection 4.2.1.1(a).

Upon the expiration of the Abatement Period, Annual Minimum Rental for the Select Service Hotel Property shall be payable based on the foregoing schedule, which schedule only covers Operating Years 1 through 5, and adjustments to the same shall occur thereafter as set forth below. For purposes of this Lease, "**Operating Year**" shall mean each successive twelve (12) month period during the Term commencing on the date on which the Select Service Hotel opens (the "**Initial Opening Date**"), and each successive twelve (12) month period thereafter.

The Annual Minimum Rent for the Select Service Hotel Property shall increase at the commencement of the 6th Operating Year and every five (5) years thereafter upon the commencement of every fifth (5th) Operating Year (each, an "**Adjustment Date**") by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Select Service Hotel Property for the immediately prior Operating Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said Consumer Price Index for the month of December for the Operating Year that is five (5) years prior to the applicable Adjustment Date shall be considered the "**Base Period**." Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

EXHIBIT G

MINIMUM STANDARDS

1. Services. At all times Lessee shall provide diligent, first class, professional and competent hotel and real property management consistent with upscale, select-service hospitality standards for similarly situated coastal select-service hotels or comparable coastal hospitality standards for similarly situated resort hotels for the Select Service Hotel Property. Lessee shall employ a competent on-site operations manager who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order of the Select Service Hotel Property or separate Property Managers for the Select Service Hotel Property. Such person shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Select Service Hotel Property, including the authority to enforce compliance by Lessee's tenants, agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall notify County in writing of the name of the manager currently so employed, as well as successor managers.

2. Public Services. The ultimate purpose of this Lease is the provision of public access to publicly accessible areas of the Select Service Hotel Property for the benefit of the public, and all facilities and services shall be made available to the public without discrimination. Lessee shall operate the Select Service Hotel Property under sound business practices. Lessee shall provide adequate security measures to reasonably protect persons and property on the Select Service Hotel Property. Lessee hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the Select Service Hotel Property and the Harbor Patrol function is to provide emergency and marine oriented law enforcement and fire services to the boating public. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Select Service Hotel Property.

3. Parking Management Plan. Lessee shall operate the Select Service Hotel Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County in its reasonable discretion. The Parking Management Plan shall be updated annually by Lessee during the term of this Lease and shall be made available to County at any time upon written request from the County. The purpose of the plan is to provide the public an adequate number of parking spaces, efficient internal traffic circulation, and access to the Select Service Hotel Property. The Plan shall include, but not be limited to the following issues and considerations:

a) Required and optional use mix;

b) Employee parking;

c) Contingency for off-site parking during overflow conditions;

d) Controlled parking;

e) Valet parking program;

f) Site plan of parking areas;

g) Parking signage program; and

h) Rideshare, shuttle, and alternative mobility management strategies during peak demand periods and special events.

All parking shall comply with applicable parking standards as regulated by any governmental agency with jurisdiction. Lessee agrees to comply with any Harbor-wide parking program or shared parking arrangement as may be required by the County on terms and conditions reasonably satisfactory to Lessee.

6. Entry Gates. Any County authorized controlled parking area shall be attended by Lessee's employees or controlled by automated systems. Such automated systems shall be convenient and efficient with regard to public use, capable of processing each type of transaction made for the various activities within the Select Service Hotel Property, including cashless payment systems.

7. Leasing. The leasing program shall consider the following criteria, not listed in any order of priority, and including but not limited to:

a. Use consistent with the Tidelands Grant from the State of California;

b. Feasible use that will produce a market value rental return;

c. Optimum land utilization;

d. Appropriate required and optional use mix;

e. Compatibility with other uses on the Select Service Hotel Property and within Dana Point Harbor;

f. High degree of public service;

g. Parking constraints and traffic circulation;

h. Aesthetics associated with the character of Dana Point Harbor; and

i. Compliance with the terms and conditions of this Lease.

8. Protection of Environment. Lessee shall take reasonable steps to prevent:

a. Littering within the Select Service Hotel Property;

b. Excessive noise from emanating within the Select Service Hotel Property;

c. Excessive light and glare from light fixtures within the Select Service Hotel Property that could impact the safe operation of automobiles, watercraft and airplanes in the area.

d. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source, into the waters within or adjacent to the Select Service Hotel Property or other activities that are harmful to water quality.

9. Protection Measures. Reasonable steps to prevent littering, excessive noise, and discharge of pollutants into the waters within the Select Service Hotel Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Select Service Hotel Property against littering, production of excessive noise and discharge of pollutants into the waters within the Select Service Hotel Property shall be posted in conspicuous places within the Select Service Hotel Property. All such signs shall be approved by the County.

b. All leases and rental agreements with tenants (except for hotel room rentals and event space rentals) shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Select Service Hotel Property constitute a material breach of such leases and rental agreements.

10. Policy and Procedures to be established by Lessee.

a. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Select Service Hotel Property. Lessee further agrees to maintain a written policy and procedures manual (hereinafter referred to as "Policy and Procedures Manual") on the Select Service Hotel Property pertinent to the conduct of the required and optional services and uses provided for by this Lease. The Policy and Procedures Manual shall include, but not be limited to, maintenance standards, stormwater management and run-off management, storage and disposal of flammable liquids and hazardous materials, waste management and recycling programs, discharge of waste from boats, emergency preparedness and evacuation procedures (including fire, seismic, tsunami, and coastal hazard events), guest conduct and nuisance management policies, and sustainability and environmental compliance procedures applicable to the Select Service Hotel Property.

b. Upon written request Lessee shall furnish the County a copy of said Policy and Procedures Manual. Should County, upon review and conference with Lessee, decide any part of said Policy and Procedures Manual is not in accordance with any applicable governmental code, law, rule, and/or regulation, Lessee, upon written notice from County, shall modify said Policy and Procedures Manual to the satisfaction of the County. Primary consideration shall be the health, safety, and welfare of the public and protection of the environment.

EXHIBIT H

DEPICTION OF PROPERTY STRUCTURES

[Attached hereto]

EXHIBIT I

BEST MANAGEMENT PRACTICES FACT SHEETS

Best Management Practices can be found at: https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/best-management-0(which website may change from time to time)

Lessee shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Lessee's operations. Lessee is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

EXHIBIT J

PRE-APPROVED HOTEL BRANDS AND MANAGEMENT COMPANIES

As of the Effective Date and continuing for the Term of this Lease, the following hotel brands and management companies shall be deemed by the County to be experienced and qualified for purposes of Section 11.2: (i) any hotel management company which is an Affiliate of Lessee, and (ii) all of the following hotel brands and management companies:

Select Service Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Ace Hotels; (ii) Citizen M; (iii) Destination/Commune: Tommie; (iv) Hilton brands; Tru, Hilton Garden Inn, Homewood Suites, Hampton Inn & Suites, Home2Suites; (v) Hyatt brands; Hyatt Place, Hyatt House; (vi) IHG brands: Even, Staybridge Suites, Holiday Inn Express; (vii) Mama Shelter; (viii) Marriott-Starwood, Marriott International Inc. management and brands; Moxy, Element, Courtyard by Marriott, Marriott Residence Inn, SpringHill Suites, Fairfield Inn & Suites, Townplace Suites, AC, Aloft, Tribute Portfolio; (ix) Pacifica Hotels; (x) Wyndham brands; Wyndham, Wyndham Garden; (xiv) Yotel; (xv) Pyramid Hotel Group (franchise or independently branded); (xvi) Sage Hospitality Group (franchise or independently branded).

EXHIBIT K

PERMITTED EVENTS

1. Festival of Whales
2. Fourth of July Fireworks Extravaganza
3. Tall Ships Festival
4. Turkey Trot
5. Holiday Boat Parade

EXHIBIT L

INTENTIONALLY OMITTED

EXHIBIT M

REQUIRED LEASE PROVISIONS

The restriction of the Sublessee's use under Section 1.9 of the Approved Retail Sublease to a Permitted Use pursuant to Section 3.1.1 of this Lease. (1.9 [Use of Premises] of the Approved Retail Sublease)

That the Sublessee shall not do or permit anything to be done in, on, or about the Select Service Hotel Property or bring or keep anything therein which conflicts with this Lease or the restrictive use covenants in this Lease. (3.1(vii) [Permitted Use] of the Approved Retail Sublease).

That the Sublessee agrees that it will not cause Lessee to be in violation of the terms of this Lease and that the Sublease is and shall be subject and subordinate to this Lease, the terms, covenants and conditions thereof, and any amendments and/or modifications thereto. (3.6 [Declaration; Ground Lease] of the Approved Retail Sublease)

That the Sublessee acknowledges and agrees that County is an intended third party beneficiary of Sections 3.1 [Permitted Use], 3.5 [Hazardous Substances], 3.6 [Declaration; Ground Lease], 3.8 [Best Management Practices], 3.9 [Public Contract Code Compliance], 5.4 [Taxes], 8.2 [Non-disturbance and Attornment], 8.3 [Mortgagee Protections], 11.1 [Insurance Requirements; Commercial General Liability Insurance], 11.8 [Waiver of Subrogation], 18.1 [Waiver], 18.2 [Indemnification], 18.3 [Duty to Defend] (if included in such Sublease), 28.2 [Financials] and 30.4 Nonrecourse Lease] and is entitled to enforce such provisions against Sublessee, together with the operative provisions of Sections 3.5, 3.8, 3.9, 8.2 and 30.4 to the extent terms are in favor of County. (3.1, 3.5, 3.6, 3.8, 3.9, 5.4, 8.2, 8.3, 11.1, 11.8, 18.1, 18.2, 18.3, 28.2 and 30.4 of the Approved Retail Sublease)

That if Lessee's interest in the premises subleased pursuant to the Sublease is acquired by County, Sublessee shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Lessee and recognize such successor-in-interest as the Landlord under the Sublease. That if County notifies the Sublessee of a default under this Lease and demands that the Sublessee pay rent and all other sums due under the Sublease to County or successor-in-interest to Lessee, the Sublessee shall honor such demand without inquiry and pay its rent and all other sums due under the Sublease directly to County or successor-in-interest to Lessee pursuant to such notice and shall not thereby incur any obligation or liability to Lessee in connection with any such payments made. The foregoing provisions shall be self-operative, and no further instrument of attornment or non-disturbance shall be required; provided, however, in confirmation of any attornment, the Sublease shall require that Sublessee execute, acknowledge and deliver an instrument that County may reasonably request to evidence such attornment, provided that such attornment further confirms the non-disturbance protection set forth in the Approved Retail Sublease. (8.2 [Non-disturbance and Attornment] of the Approved Retail Sublease)

That Sublessee agrees to notify County by certified mail, return receipt requested, with postage prepaid, of any default on the part of Lessee under the Sublease; that County shall have the right, but not the obligation, to cure any default on the part of Lessee; that the Sublessee agrees that if

County shall succeed to the interest of Lessee under the Sublease, neither the County nor its successors or assigns shall be: liable for any prior act or omission of any prior landlord (including Lessee); subject to any claims, offsets, credits or defenses which Sublessee might have against any prior landlord (including Lessee) (except that County shall not be relieved from the obligation to cure any defaults which are non-monetary, continuing in nature and reasonably susceptible to being cured); bound by any assignment (except as otherwise expressly permitted under this Lease), surrender, release, waiver, amendment or modification of any provisions of the Sublease made without County's prior written consent; or obligated to make any payment to Sublessee or liable for refund of all or any part of any security deposit or other prepaid charge to Sublessee held by any prior landlord (including Lessee) for any purpose unless the County shall have come into exclusive possession of such deposit or charge. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) the Sublessee agrees that, notwithstanding any provisions of the Sublease, no cancellation or termination of the Sublease and no abatement or reduction of the rent payable thereunder shall be effective unless the County has received notice of the same and shall have failed within the period of time provided under the Sublease after receipt of such notice to commence to cure such default and thereafter diligently prosecute such cure to completion, and if the County needs to obtain possession of the Premises to cure such default, to allow the County to obtain possession of the Premises, provided the County commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

That for any Major Sublease, Section 10.1.3 [regarding permitted transfers for which Landlord's consent is not required] of the Approved Retail Sublease shall not be included in such Approved Retail Sublease without County's prior written consent. (10.1.3 [Assignment and Subletting Generally] of the Approved Retail Sublease)

The County shall be named as an additional insured on the commercial general and contractual liability insurance required to be carried by the Sublessee under the Sublease; all such insurance shall be primary and shall provide that any insurance of County shall be noncontributing; the insurance coverage required by Article 11 of the Sublease shall contain a clause pursuant to which the insurance carriers waive all rights of subrogation against County, with respect to losses payable under such policies to the extent such waiver of subrogation is commercially available or if such waiver is granted to Lessee under the Sublease. (Article 11 [Insurance] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) all such policies shall provide that they shall not be amended in any way that would materially adversely affect the interests of County, or cancelled, without at least thirty (30) days prior written notice to County, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the

Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (Article 11 [Insurance] of the Approved Retail Sublease)

That the Sublessee acknowledge that County shall not be liable for any loss, injury or damage to the Sublessee or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts, willful misconduct or sole or active gross negligence of the County. (18.1 [Waiver] of the Approved Retail Sublease)

That the Sublessee shall defend, indemnify and hold harmless County for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises (and use reasonable and diligent efforts to cause such indemnity to also cover common areas) (except to the extent caused by the intentional torts or willful misconduct of County), and (ii) claims arising from Sublessee's omissions or breach of the Sublease together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, reasonable attorneys' fees and expenses at trial and upon appeal. Indemnification obligations shall include the duty to defend. (18.2 [Indemnification] and 18.3 [Duty to Defend] of the Approved Retail Sublease)

That notwithstanding anything to the contrary contained in the Sublease, County shall not be liable in any way or to any extent to the Sublessee under the Sublease, including but not limited to in connection with any breach by Lessor thereunder. If required by a Sublessee that is not a Major Sublessee despite Lessee's reasonable and diligent efforts to avoid the same, the foregoing may carve out claims against County based on its sole or active gross negligence or willful misconduct. (30.4 [Nonrecourse Lease] of the Approved Retail Sublease)

Section 3.8 and Exhibit H of the Approved Retail Sublease regarding Best Management Practices shall not be altered, except to the extent altered by, or with the prior written consent of, County.

The form of SNDA attached as Exhibit I to the Approved Retail Sublease shall not be altered without County's prior written consent if included as an Exhibit.

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

RENT SCHEDULE

Period	Annual Minimum Rent (Only Limited Service Hotel Opens)	Annual Minimum Rent (Both Hotels Open)
Operating Year 1	$45,000	$90,000
Operating Year 2	$85,000	$170,000
Operating Year 3	$145,000	$290,000
Operating Year 4	$145,000	$290,000
Operating Year 5	$145,000	$290,000

Notwithstanding anything in the foregoing schedule to the contrary including, without limitation, the Operating Year schedule, above, and any adjustment provisions: (a) for so long as the existing Marina Inn shall remain in operation and until its demolition for the commencement of the Redevelopment Work on the Hotel Property, the Annual Minimum Rent for the Hotel Property shall be One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars ($166,666), which amount shall apply in lieu of, and shall not be subject to, the Operating Year schedule above or CPI based adjustments herein, and (b) thereafter, Annual Minimum Rent for the Hotel Property shall be abated for the Abatement Period as set forth in Subsection 4.2.1(a).

Upon the expiration of the Abatement Period, Annual Minimum Rental for the Hotel Property shall be payable based on the foregoing schedule, which schedule only covers Operating Years 1 through 5, and adjustments to the same shall occur thereafter as set forth below. For purposes of this Lease, "**Operating Year**" shall mean each successive twelve (12) month period during the Term commencing on the date on which the first of either the Select Service Hotel or the Full Service Hotel opens (the "**Initial Opening Date**"), and each successive twelve (12) month period thereafter. Operating Year shall be a single, unified period for the Hotel Property and shall not restart, reset, or re-commence upon the opening of any additional hotel on the Hotel Property. For the avoidance of doubt, and by way of example, Operating Year 1 as used in this Lease shall mean and refer to the first full calendar year starting on the Initial Opening Date, and so on.

The amounts set forth above represent the Annual Minimum Rent payable for a single hotel and the Annual Minimum Rent payable for two hotels, respectively. At such time as a second hotel is built, Annual Minimum Rent shall be adjusted according to the adjustments set forth below; provided, however, that Annual

Minimum Rent shall be calculated using the right-hand column in the schedule above (for two hotels), and shall take into account all adjustments that would have occurred had two hotels originally been built; provided, however, that such adjustment shall not alter, reset, or otherwise affect the then-current Operating Year or the commencement or progression of any Operating Year.

The Annual Minimum Rent for the Hotel Property shall increase at the commencement of the 6th Operating Year and every five (5) years thereafter upon the commencement of every fifth (5th) Operating Year (each, an "**Adjustment Date**") by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Hotel Property for the immediately prior Operating Year, and (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index, not to exceed fifteen percent (15%). Said Consumer Price Index for the month of December for the Operating Year that is five (5) years prior to the applicable Adjustment Date shall be considered the "**Base Period**." Said adjustment shall be made by comparing the Consumer Price Index for the Base Period to the Consumer Price Index for the month of December immediately preceding each such Adjustment Date. If at any time there shall not exist the Consumer Price Index, County and Lessee shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. In the event any moratorium is imposed on such increases in rent, such that no regularly scheduled adjustment can be made or only a partial adjustment may be made, an adjustment shall immediately take effect on the lifting of such moratorium, and regular adjustments thereafter shall be made as above provided.

EXHIBIT G

MINIMUM STANDARDS

1. Services. At all times Lessee shall provide diligent, first class, professional and competent hotel and real property management with service levels consistent with: (i) upscale hospitality standards for similarly situated coastal select-service hotels for the Select Service Hotel, and (ii) upper-upscale hospitality standards for similarly situated coastal full-service hotels for the Full Service Hotel; or comparable coastal hospitality standards for similarly situated resort hotels for the Hotel Property. Lessee shall employ a competent on-site operations manager who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order of the Hotel Property or separate Property Managers for the Hotel Property. Such person shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the Hotel Property, including the authority to enforce compliance by Lessee's tenants, agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee shall notify County in writing of the name of the manager currently so employed, as well as successor managers.

2. Public Services. The ultimate purpose of this Lease is the provision of public access to publicly accessible areas of the Hotel Property for the benefit of the public, and all facilities and services shall be made available to the public without discrimination. Lessee shall operate the Hotel Property under sound business practices. Lessee shall provide adequate security measures to reasonably protect persons and property on the Hotel Property. Lessee hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the Hotel Property and the Harbor Patrol function is to provide emergency and marine oriented law enforcement and fire services to the boating public. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Hotel Property.

3. Parking Management Plan. Lessee shall operate the Hotel Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County in its reasonable discretion. The Parking Management Plan shall be updated annually by Lessee during the term of this Lease and shall be made available to County at any time upon written request from the County. The purpose of the plan is to provide the public an adequate number of parking spaces, efficient internal traffic circulation, and access to the Hotel Property. The Plan shall include, but not be limited to the following issues and considerations:

a) Required and optional use mix;

b) Employee parking;

c) Contingency for off-site parking during overflow conditions;

d) Controlled parking;

e) Valet parking program;

f) Site plan of parking areas;

g) Parking signage program; and

h) Rideshare, shuttle, and alternative mobility management strategies during peak demand periods and special events.

All parking shall comply with applicable parking standards as regulated by any governmental agency with jurisdiction. Lessee agrees to comply with any Harbor-wide parking program or shared parking arrangement as may be required by the County on terms and conditions reasonably satisfactory to Lessee.

6. Entry Gates. Any County authorized controlled parking area shall be attended by Lessee's employees or controlled by automated systems. Such automated systems shall be convenient and efficient with regard to public use, capable of processing each type of transaction made for the various activities within the Hotel Property, including cashless payment systems.

7. Leasing. The leasing program shall consider the following criteria, not listed in any order of priority, and including but not limited to:

a. Use consistent with the Tidelands Grant from the State of California;

b. Feasible use that will produce a market value rental return;

c. Optimum land utilization;

d. Appropriate required and optional use mix;

e. Compatibility with other uses on the Hotel Property and within Dana Point Harbor;

f. High degree of public service;

g. Parking constraints and traffic circulation;

h. Aesthetics associated with the character of Dana Point Harbor; and

i. Compliance with the terms and conditions of this Lease.

8. Protection of Environment. Lessee shall take reasonable steps to prevent:

a. Littering within the Hotel Property;

b. Excessive noise from emanating within the Hotel Property;

c. Excessive light and glare from light fixtures within the Hotel Property that could impact the safe operation of automobiles, watercraft and airplanes in the area.

d. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source, into the waters within or adjacent to the Hotel Property or other activities that are harmful to water quality.

9. Protection Measures. Reasonable steps to prevent littering, excessive noise, and discharge of pollutants into the waters within the Hotel Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Hotel Property against littering, production of excessive noise and discharge of pollutants into the waters within the Hotel Property shall be posted in conspicuous places within the Hotel Property. All such signs shall be approved by the County.

b. All leases and rental agreements with tenants (except for hotel room rentals and event space rentals) shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Hotel Property constitute a material breach of such leases and rental agreements.

10. Policy and Procedures to be established by Lessee.

a. Lessee agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations concerning operations on the Hotel Property. Lessee further agrees to maintain a written policy and procedures manual (hereinafter referred to as "Policy and Procedures Manual") on the Hotel Property pertinent to the conduct of the required and optional services and uses provided for by this Lease. The Policy and Procedures Manual shall include, but not be limited to, maintenance standards, stormwater management and run-off management, storage and disposal of flammable liquids and hazardous materials, waste management and recycling programs, discharge of waste from boats, emergency preparedness and evacuation procedures (including fire, seismic, tsunami, and coastal hazard events), guest conduct and nuisance management policies, and sustainability and environmental compliance procedures applicable to the Hotel Property.

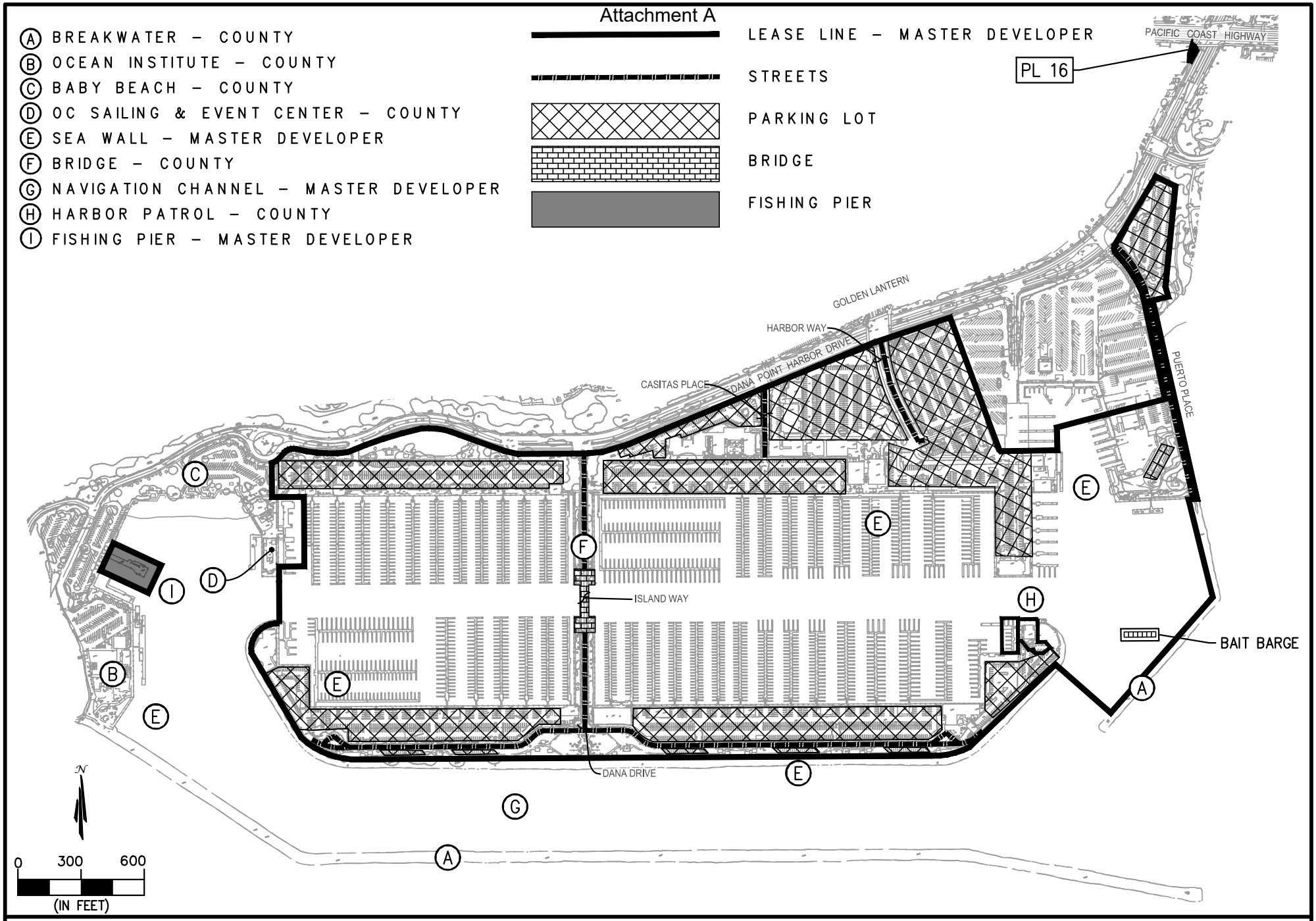
b. Upon written request Lessee shall furnish the County a copy of said Policy and Procedures Manual. Should County, upon review and conference with Lessee, decide any part of said Policy and Procedures Manual is not in accordance with any applicable governmental code, law, rule, and/or regulation, Lessee, upon written notice from County, shall modify said Policy and Procedures Manual to the satisfaction of the County. Primary consideration shall be the health, safety, and welfare of the public and protection of the environment.

EXHIBIT H

DEPICTION OF PROPERTY STRUCTURES

[Attached hereto]

Attachment A



DANA POINT HARBOR
EXHIBIT H
DEPICTION OF PROPERTY STRUCTURES

EXHIBIT I

BEST MANAGEMENT PRACTICES FACT SHEETS

Best Management Practices can be found at: https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/best-management-0https://ocerws.ocpublicworks.com/service-areas/oc-environmental-resources/unincorporated-countywide-compliance/best-management-0(which website may change from time to time)

Lessee shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Lessee's operations. Lessee is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

https://ocerws.ocpublicworks.com/service-areas/oc-environmental-

EXHIBIT J

PRE-APPROVED HOTEL BRANDS AND MANAGEMENT COMPANIES

As of the Effective Date and continuing for the Term of this Lease, the following hotel brands and management companies shall be deemed by the County to be experienced and qualified for purposes of Section 11.2: (i) any hotel management company which is an Affiliate of Lessee, and (ii) all of the following hotel brands and management companies:

Full Service Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Aman; (ii) Clarion Collection offered by Choice Brands; (iii) Starwood Capital Group brands: 1 Hotels, Baccarat Hotels & Resorts; (iv) Destination/Commune Hotels brands: Alila, Joie de Vivre and Thompson Hotels; (v) Denihan Hospitality: The James and Affinia; (vi) Dolce Hotels; (vii) Dream Hotels; (viii) Fairmont Hotels; (iv) Four Seasons Hotels; (x) Hard Rock Hotels; (xi) Hilton Brands: Curio, Canopy, Tapestry, Conrad and Waldorf-Astoria; (xii) Hyatt brands: Andaz, Hyatt Centric, Grand Hyatt, Hyatt Regency, and Park Hyatt; (xiii) IHG Hotel Brands: Intercontinental, Kimpton, Argonaut, Monaco, Palomar; (xiv) Kempinski; (xv) Loews Hotels; (xvi) Magnolia Hotel; (xvii) Mandarin Oriental; (xviii) Marriott International, Inc. management and brands: Autograph Collection, Bulgari, JW Marriott, Marriott, Renaissance Hotels, Ritz-Carlton Hotels, Le Meridien, Luxury Collection, Sheraton Resorts, St. Regis, Edition, Westin Hotels & Resorts, and W Hotel; (xix) Morgan Hotels (all brands); (xx) Montage Hotels & Resorts brands: Montage Hotels and Pendry Hotels; (xxi) Nobu Hotels; (xxii) Omni Hotels; (xxiii) Radisson Blu offered by Carlson; (xxiv) Raffles Hotels and Resorts; (xxv) Rosewood Hotels; (xxvi) Standard International Hotels—all brands; and (xxvii) Viceroy; (xxviii) Pyramid Hotel Group (franchise or independently branded); (xxix) Sage Hospitality Group (franchise or independently branded) .

Select Service Hotel Franchisors and Management Companies. The following Hotel Franchisors and Management Companies shall be deemed approved by County and shall require no further approval by County hereunder: (i) Ace Hotels; (ii) Citizen M; (iii) Destination/Commune: Tommie; (iv) Hilton brands; Tru, Hilton Garden Inn, Homewood Suites, Hampton Inn & Suites, Home2Suites; (v) Hyatt brands; Hyatt Place, Hyatt House; (vi) IHG brands: Even, Staybridge Suites, Holiday Inn Express; (vii) Mama Shelter; (viii) Marriott-Starwood, Marriott International Inc. management and brands; Moxy, Element, Courtyard by Marriott, Marriott Residence Inn, SpringHill Suites, Fairfield Inn & Suites, Townplace Suites, AC, Aloft, Tribute Portfolio; (ix) Pacifica Hotels; (x) Wyndham brands; Wyndham, Wyndham Garden; (xiv) Yotel; (xv) Pyramid Hotel Group (franchise or independently branded); (xvi) Sage Hospitality Group (franchise or independently branded).

EXHIBIT K

PERMITTED EVENTS

1. Festival of Whales
2. Fourth of July Fireworks Extravaganza
3. Tall Ships Festival
4. Turkey Trot
5. Holiday Boat Parade

EXHIBIT L

INTENTIONALLY OMITTED

EXHIBIT M

REQUIRED LEASE PROVISIONS

The restriction of the Sublessee's use under Section 1.9 of the Approved Retail Sublease to a Permitted Use pursuant to Section 3.1.1 of this Lease. (1.9 [Use of Premises] of the Approved Retail Sublease)

That the Sublessee shall not do or permit anything to be done in, on, or about the Hotel Property or bring or keep anything therein which conflicts with this Lease or the restrictive use covenants in this Lease. (3.1(vii) [Permitted Use] of the Approved Retail Sublease).

That the Sublessee agrees that it will not cause Lessee to be in violation of the terms of this Lease and that the Sublease is and shall be subject and subordinate to this Lease, the terms, covenants and conditions thereof, and any amendments and/or modifications thereto. (3.6 [Declaration; Ground Lease] of the Approved Retail Sublease)

That the Sublessee acknowledges and agrees that County is an intended third party beneficiary of Sections 3.1 [Permitted Use], 3.5 [Hazardous Substances], 3.6 [Declaration; Ground Lease], 3.8 [Best Management Practices], 3.9 [Public Contract Code Compliance], 5.4 [Taxes], 8.2 [Non-disturbance and Attornment], 8.3 [Mortgagee Protections], 11.1 [Insurance Requirements; Commercial General Liability Insurance], 11.8 [Waiver of Subrogation], 18.1 [Waiver], 18.2 [Indemnification], 18.3 [Duty to Defend] (if included in such Sublease), 28.2 [Financials] and 30.4 Nonrecourse Lease] and is entitled to enforce such provisions against Sublessee, together with the operative provisions of Sections 3.5, 3.8, 3.9, 8.2 and 30.4 to the extent terms are in favor of County. (3.1, 3.5, 3.6, 3.8, 3.9, 5.4, 8.2, 8.3, 11.1, 11.8, 18.1, 18.2, 18.3, 28.2 and 30.4 of the Approved Retail Sublease)

That if Lessee's interest in the premises subleased pursuant to the Sublease is acquired by County, Sublessee shall, notwithstanding any subordination, attorn to and become the tenant of the successor-in-interest to Lessee and recognize such successor-in-interest as the Landlord under the Sublease. That if County notifies the Sublessee of a default under this Lease and demands that the Sublessee pay rent and all other sums due under the Sublease to County or successor-in-interest to Lessee, the Sublessee shall honor such demand without inquiry and pay its rent and all other sums due under the Sublease directly to County or successor-in-interest to Lessee pursuant to such notice and shall not thereby incur any obligation or liability to Lessee in connection with any such payments made. The foregoing provisions shall be self-operative, and no further instrument of attornment or non-disturbance shall be required; provided, however, in confirmation of any attornment, the Sublease shall require that Sublessee execute, acknowledge and deliver an instrument that County may reasonably request to evidence such attornment, provided that such attornment further confirms the non-disturbance protection set forth in the Approved Retail Sublease. (8.2 [Non-disturbance and Attornment] of the Approved Retail Sublease)

That Sublessee agrees to notify County by certified mail, return receipt requested, with postage prepaid, of any default on the part of Lessee under the Sublease; that County shall have the right, but not the obligation, to cure any default on the part of Lessee; that the Sublessee agrees that if

County shall succeed to the interest of Lessee under the Sublease, neither the County nor its successors or assigns shall be: liable for any prior act or omission of any prior landlord (including Lessee); subject to any claims, offsets, credits or defenses which Sublessee might have against any prior landlord (including Lessee) (except that County shall not be relieved from the obligation to cure any defaults which are non-monetary, continuing in nature and reasonably susceptible to being cured); bound by any assignment (except as otherwise expressly permitted under this Lease), surrender, release, waiver, amendment or modification of any provisions of the Sublease made without County's prior written consent; or obligated to make any payment to Sublessee or liable for refund of all or any part of any security deposit or other prepaid charge to Sublessee held by any prior landlord (including Lessee) for any purpose unless the County shall have come into exclusive possession of such deposit or charge. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) the Sublessee agrees that, notwithstanding any provisions of the Sublease, no cancellation or termination of the Sublease and no abatement or reduction of the rent payable thereunder shall be effective unless the County has received notice of the same and shall have failed within the period of time provided under the Sublease after receipt of such notice to commence to cure such default and thereafter diligently prosecute such cure to completion, and if the County needs to obtain possession of the Premises to cure such default, to allow the County to obtain possession of the Premises, provided the County commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (8.3 [Mortgagee Protections] of the Approved Retail Sublease)

That for any Major Sublease, Section 10.1.3 [regarding permitted transfers for which Landlord's consent is not required] of the Approved Retail Sublease shall not be included in such Approved Retail Sublease without County's prior written consent. (10.1.3 [Assignment and Subletting Generally] of the Approved Retail Sublease)

The County shall be named as an additional insured on the commercial general and contractual liability insurance required to be carried by the Sublessee under the Sublease; all such insurance shall be primary and shall provide that any insurance of County shall be noncontributing; the insurance coverage required by Article 11 of the Sublease shall contain a clause pursuant to which the insurance carriers waive all rights of subrogation against County, with respect to losses payable under such policies to the extent such waiver of subrogation is commercially available or if such waiver is granted to Lessee under the Sublease. (Article 11 [Insurance] of the Approved Retail Sublease)

Each Major Sublease shall provide that (and Lessee shall use reasonable and diligent efforts to cause each Sublease that is not a Major Sublease to provide that) all such policies shall provide that they shall not be amended in any way that would materially adversely affect the interests of County, or cancelled, without at least thirty (30) days prior written notice to County, but such provision shall not be a required provision in a Sublease that is not a Major Sublease if the

Sublessee thereunder refuses to agree to the same despite Lessee's reasonable and diligent efforts to negotiate for the same. (Article 11 [Insurance] of the Approved Retail Sublease)

That the Sublessee acknowledge that County shall not be liable for any loss, injury or damage to the Sublessee or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts, willful misconduct or sole or active gross negligence of the County. (18.1 [Waiver] of the Approved Retail Sublease)

That the Sublessee shall defend, indemnify and hold harmless County for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises (and use reasonable and diligent efforts to cause such indemnity to also cover common areas) (except to the extent caused by the intentional torts or willful misconduct of County), and (ii) claims arising from Sublessee's omissions or breach of the Sublease together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, reasonable attorneys' fees and expenses at trial and upon appeal. Indemnification obligations shall include the duty to defend. (18.2 [Indemnification] and 18.3 [Duty to Defend] of the Approved Retail Sublease)

That notwithstanding anything to the contrary contained in the Sublease, County shall not be liable in any way or to any extent to the Sublessee under the Sublease, including but not limited to in connection with any breach by Lessor thereunder. If required by a Sublessee that is not a Major Sublessee despite Lessee's reasonable and diligent efforts to avoid the same, the foregoing may carve out claims against County based on its sole or active gross negligence or willful misconduct. (30.4 [Nonrecourse Lease] of the Approved Retail Sublease)

Section 3.8 and Exhibit H of the Approved Retail Sublease regarding Best Management Practices shall not be altered, except to the extent altered by, or with the prior written consent of, County.

The form of SNDA attached as Exhibit I to the Approved Retail Sublease shall not be altered without County's prior written consent if included as an Exhibit.