OPTION AGREEMENT

Dana Point Harbor Master Lease

THIS OPTION AGREEMENT ("**Option Agreement**") is made _____, 2018, ("**Effective Date**") by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called "**County**") and DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (hereinafter called "**Optionee**"). County and Optionee may sometimes hereinafter individually be referred to as a "**Party**" or jointly as the "**Parties**."

Recitals

A. County owns all the land and improvements located within Dana Point Harbor, in the City of Dana Point, California and depicted on **Exhibit A** attached hereto (the "**Property**").

B. County desires to lease the Property to a developer for the purpose of planning, designing, funding, constructing, renovating, marketing, operating, managing and maintaining the same (the "**Project**") for a period of sixty-six (66) years.

C. In response to a Request for Proposal issued by County to pre-qualified developers, Optionee submitted a written proposal (the "**Proposal**") to be the developer of the Property and County selected such Proposal as the best response to said Request for Proposal.

D. Optionee requires a period of time to complete due diligence investigations and inspections of the Property before agreeing to lease the same from County and, therefore, County has agreed to grant to Optionee an option to lease the Property upon the terms and conditions set forth in the Lease (as defined below).

NOW, THEREFORE the Parties agree as follows:

1. DEFINITIONS.

1.1. "**Board of Supervisors**" means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

1.2. "**Chief Real Estate Officer**" means the Chief Real Estate Officer, County Executive Office, County of Orange, or designee, or upon written notice to Optionee, such other person as may be designated by the Board of Supervisors.

1.3. "**City**" means the City of Dana Point, State of California, within which the Property is located.

1.4. "**County**" means the County of Orange, a political subdivision of the State of California. 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 Property and not the County in its capacity as a land use or other governmental approval authority.

1.5. "**Drystack Lease**" means that certain Master Ground Lease Agreement between County and Optionee's affiliate, Dana Point Harbor Partners Drystack, LLC, a California limited liability company, including any and all addenda, amendments and exhibits hereto.

1.6. "**Lease**" means that certain Master Ground Lease Agreement attached hereto as **Exhibit B**, including any and all addenda, amendments and exhibits hereto.

All other capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Lease.

2. OPTION. County hereby grants to Optionee the option ("**Option**") to lease the Property in accordance with the covenants and conditions set forth herein and in the Lease.

3. TERM. Subject to Section 5 below, the term of this Option Agreement ("**Option Term**") shall commence upon the Effective Date and continue until the date that is ninety (90) days following the Effective Date.

4. OPTION PRICE. As consideration for the Option, Optionee shall pay to County Twenty Thousand Dollars ($20,000) ("**Option Price**") on the Effective Date. The Option Price shall be paid to the County as consideration for the granting of the Option, shall be non-refundable to Optionee under any circumstances, and no portion of the Option Price shall be refunded or credited to rent payments under the Lease.

5. OPTION TERM EXTENSION. Optionee may extend the Option Term by up to an additional thirty (30) days ("**Extended Option Term**") with the prior written approval of the Chief Real Estate Officer, which approval may be given or withheld in the sole and absolute discretion of the Chief Real Estate Officer, provided that Optionee satisfies the following conditions at least fifteen (15) days prior to expiration of the Option Term:

5.1. Optionee shall have submitted written notice to the Chief Real Estate Officer requesting that the Option Term be extended and clearly stating the reasons for the required extension and the length of the required extension;

5.2. Optionee shall have submitted to the Chief Real Estate Officer a cashier's check made payable to the "*County of Orange*" in the amount of Ten Thousand Dollars ($10,000) (the "**Extension Fee**"). The Extension Fee shall be consideration for the extension of the Option Term and, if the Chief Real Estate Officer exercises his discretion in favor of the extension of the Option Term in accordance with Section 5.1 above, the Extension Fee shall be non-refundable to Optionee under any circumstances, nor credited to rent payments under the Lease. Any extension of the Option Term beyond the Extended Option Term shall be subject to prior approval by the Board of Supervisors; and

5.3. Optionee's affiliate shall have validly exercised its extension right under the Drystack Lease and have submitted the "Extension Fee", as defined in, and in accordance with the procedure set forth, in the Drystack Lease.

6. DUE DILIGENCE; INDEMNIFICATION.

6.1. Commencing upon the Effective Date and continuing for the duration of the Option Term and the Extended Option Term, if applicable, Optionee shall have the right to enter upon the Property to conduct such due diligence investigations and inspections of the Property as Optionee shall deem necessary in order to determine the viability of the Property and the Lease for Optionee's intended purposes; provided that (i) Optionee provides the Chief Real Estate Office with reasonable advance written notice of the need for entry upon the Property to perform such investigations, (ii) Optionee abides by all conditions to such entry as may be specified by the Chief Real Estate Officer from time to time, (iii) Optionee shall not conduct any invasive testing on the Property without the Chief Real Estate Officer's prior written approval, which shall not be unreasonably withheld and (iv) prior to entering upon the Property, Optionee and all of Optionee's consultants, members, directors, officers, employees, agents and representatives (collectively, "**Optionee Parties**") entering upon the Property for purpose of such due diligence shall provide County with a certificate of insurance evidencing that Optionee and each such Consultant has the insurance required under Section 12 below.

6.2. Optionee covenants and agrees as follows: (i) Optionee shall, and shall cause all Optionee Parties to, conduct all work or studies performed on the Property in a diligent and safe manner and not create any dangerous or hazardous condition on the Property; (ii) Optionee shall, and shall cause all Optionee Parties to, comply with all applicable laws and governmental regulations in connection with such work or studies; (iii) Optionee shall, and shall cause the Optionee Parties to, keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry upon the Property and work performed by any Optionee Parties upon the Property; and (iv) following Optionee's entry, or entry by any of the Optionee Parties, upon the Property for the purposes of performing investigations or inspections of the Property, Optionee shall, in a timely manner, repair any and all damage to the Property caused by such inspections or investigations.

6.3. Optionee shall indemnify, defend, protect and hold County, the Board of Supervisors, and their respective, officers, elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, successors and assigns (collectively, the "**County Parties**") and the Property free and harmless from and against any and all losses, liabilities, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising from Optionee's or any Optionee Parties' entry upon the Property, or from Optionee's or any Optionee Parties' failure to comply with the conditions to Optionee's or the Optionee Parties' right to enter upon the Property. Such undertaking of indemnity shall survive the termination of this Option Agreement for any reason or the exercise of the Option, as applicable. The indemnity described herein shall not extend to (i) any willful misconduct or concurrent active or sole gross negligence of County or any County Parties, or (ii) any pre-existing condition on or about the Property, except to the extent such pre-existing condition has been exacerbated by Optionee or any of the Optionee Parties.

6.4. Optionee hereby releases and waives all claims and recourse against County, the County Parties and the Property, 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 Option Agreement except claims arising from the willful misconduct or concurrent active or sole gross

negligence of County or any of the County Parties. Optionee hereby agrees to indemnify, defend (with counsel approved in writing by County), and hold harmless, County, the County Parties and the Property from and against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of Optionee's exercise of the rights under this Option Agreement, except for liability arising out of the willful misconduct or concurrent active or sole gross negligence of County or any of the County Parties including the cost of defense of any lawsuit arising therefrom. If County, any County Party or the Property is named as codefendant in a lawsuit relating to the exercise of Optionee's rights under this Option Agreement, then Optionee shall represent County in such legal action unless County elects to engage counsel to represent County as codefendant in such legal action, in which event Optionee shall reimburse County for all its litigation costs, expenses, and attorneys' fees incurred in connection with the defense of such action. If judgment is entered against County or any County Parties and Optionee by a court of competent jurisdiction because of the concurrent active negligence of County and Optionee, County and Optionee agree that liability will be apportioned between them as determined by the court. Neither Party shall request a jury apportionment.

6.5. Prior to the date of this Option Agreement, County and Optionee entered into that certain Agreement Between Dana Point Harbor Partners, LLC and The County of Orange to Authorize Discussions with Dana Point Harbor Operators, a copy of which is attached hereto as **Exhibit K** (the "**Agreement Authorizing Discussions**"). Such agreement authorized Optionee to commence discussions with Vintage Marina Partners, T.B.W. Company, Dana Point Marina Company and Great Western Hotels (collectively, the "**Operators**") regarding the operation of the Property pending the negotiation of this Option Agreement and the Lease, as more particularly set forth therein. Optionee's rights and obligations with respect to discussions with the Operators shall continue to be governed by the Agreement Authorizing Discussions during the Option Term, and accordingly, the terms and conditions thereof are hereby incorporated into this Option Agreement in full; provided, however, the first sentence of Section 2 of the Agreement Authorizing Discussions is hereby amended to provide that the term of such agreement shall be coterminous with the term of this Option Agreement. To the extent there are any conflicts between the terms or obligations of this Option Agreement and the terms or obligations of the Agreement Authorizing Discussions, the more stringent terms or obligations shall govern and control, and if neither is more stringent than the other, then the terms of this Option Agreement shall govern and control.

6.6. Within thirty (30) days after the date hereof, County shall endeavor to provide Optionee with an estoppel certificate from each of the Operators certifying that (i) its management contract with the County is in full force and effect, (ii) that no defaults exist thereunder, and (iii) attaching in each case its respective management agreement and all amendments thereto and certifying that such attachments constitute the entire management agreement and all executed amendments. Notwithstanding the foregoing or anything to the contrary contained in this Option Agreement, if for any reason County is unable to obtain an estoppel certificate from any or all of the Operators, or if Optionee disapproves of any estoppel certificate that County obtains from an Operator, County shall not be, or be deemed to be, in default under this Option Agreement by reason thereof, and Optionee's sole remedy as a result thereof shall be its election to not exercise the Option.

6.7. Optionee acknowledges that prior to the date hereof, County has provided or otherwise made available to Optionee copies of all of the documents, materials and other

information relating to the Property described on **Exhibit J** attached hereto (collectively, the "**County Documents**"). Notwithstanding the foregoing, Optionee acknowledges and agrees that any information provided or to be provided with respect to the Property by or on behalf of County, including, without limitation, the County Documents and the other documents and instruments to be delivered to, or otherwise made available to, Optionee pursuant to or in connection with this Option Agreement or otherwise, was obtained from a variety of sources, that County has not made any independent investigation or verification of such information, that all such information has been and shall be provided solely as an accommodation to Optionee, that County makes no representations or warranties as to the accuracy, truthfulness or completeness of such information, and that County is not, and shall not be, liable or bound in any manner by any verbal or written statement, representation or information pertaining to the Property, or the operation or condition thereof, furnished by or on behalf of County or any consultant, advisor, attorney, real estate broker, contractor, agent, employee, servant or other person. Optionee hereby unconditionally and irrevocably waives any and all actual or potential claims or rights against the County and any County Parties (as hereinafter defined) arising out of the inaccuracy or incompleteness of any materials so furnished, arising out of any alleged duty of the County and any County Parties to acquire, seek or obtain such materials. Such waiver is absolute, complete, total and unlimited in any way.

6.8. Following execution of this Option Agreement, Optionee shall have the right to obtain a preliminary title report issued through a title company selected by Optionee (the "**Title Company**") at its own cost, describing the state of title of the Property, (the "**Preliminary Title Report**"). Optionee shall notify the Chief Real Estate Officer in writing of any objections Optionee may have to title exceptions or other matters ("**Disapproved Exceptions**") contained in the Preliminary Title Report within thirty (30) days after Optionee's receipt of the Preliminary Title Report ("**Optionee's Objection Notice**"). In the event Optionee delivers Optionee's Objection Notice, the Chief Real Estate Officer shall have a period of thirty (30) days after receipt of Optionee's Objection Notice in which to notify Optionee of County's election, in its sole and absolute discretion, to either (a) agree to attempt to remove the Disapproved Exceptions prior to the exercise date hereunder; or (b) decline to remove any such Disapproved Exceptions ("**County's Notice**"). The Chief Real Estate Officer's failure to deliver County's Notice within said thirty (30) day period shall be deemed County's election to decline to remove the Disapproved Exceptions. If County notifies Optionee of its election to decline to remove the Disapproved Exceptions, if County is deemed to have elected to decline to remove the Disapproved Exceptions or if County is unable to remove the Disapproved Exceptions, Optionee may elect either to not proceed or to accept title to the Property subject to the Disapproved Exception(s). Optionee shall be deemed to have waived such objections if it elects to exercise this Option Agreement. Optionee shall have the right to obtain a policy insuring this Option Agreement at its own cost, and County agrees to reasonably cooperate, at no cost or expense to County, in causing Title Company to issue the option policy of elected by Optionee. For the avoidance of doubt, and notwithstanding anything in this Option Agreement to the contrary: (i) Optionee acknowledges that County has no obligation to remove, cure or undertake to cure any matters disapproved by Optionee and that neither County's election not to remove, cure or undertake to cure, nor County's failure or inability to remove or cure any disapproved matter shall constitute a breach or default hereunder by County, and (ii) in no event shall the Option Period be extended as a result of Optionee's title review, objections to title or the issuance or non-issuance of the policies of title insurance described herein.

7. DISCLAIMER OF REPRESENTATIONS OF WARRANTIES; AS-IS.

7.1. Optionee acknowledges and agrees that County has made no representations, warranties, or agreements as to any matters concerning the Property, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Property is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Optionee represents and warrants to County that it and the Optionee Parties have made, or prior to the exercise of the Option will make, their own independent inspection and investigation of such matters concerning the Property.

7.2. Optionee acknowledges and agrees that Optionee is experienced in the leasing and development of land similar to the Property and Optionee has inspected or will, prior to the exercise of the Option, inspect to its satisfaction the Property, and all due diligence information with respect to the Property, and that Optionee and/or or its representatives are qualified to make such inspections. Except as expressly provided herein, Optionee acknowledges that it is fully relying on Optionee's inspections of the Property and the due diligence information provided to Optionee with respect to the Property, and not upon any statements (oral or written) which may have been made or may be made (or purportedly made) by County, or any of its representatives or consultants, unless such written statements are set forth in this Option Agreement. Subject to the foregoing, Optionee's exercise of the Option shall evidence Optionee's agreement to accept the Property as of the Effective Date of the Lease in its "AS IS, WHERE IS" condition and with all faults, and without representations and warranties of any kind, express or implied, or arising by operation of law, except as expressly set forth herein, and further agrees that County has no obligation to make repairs, replacements or improvements to the Property. Subject to the express covenants, representations and warranties of County in this Option Agreement and/or in the Lease, Optionee releases County and the County Parties from, and waives any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and expenses) of any and every kind or character, known or unknown, for or attributable to, any latent or patent issue or condition at the Property, including without limitation, claims, liabilities and contribution rights relating to the presence, discovery or removal of any hazardous substances in, at, about or under the Property, or for, connected with or arising out of any and all claims or causes of action based thereon. 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. Optionee 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 Optionee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Optionee nevertheless hereby intends to release, discharge and acquit County and the County Parties from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Optionee 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."

Optionee acknowledges that the foregoing acknowledgments, releases and waivers including, without limitation, the waiver of the provisions of California Civil Code Section 1542 were expressly bargained for. The provisions of this Section 7.2 shall survive the exercise of the Option and execution of the Lease.

_____
Optionee Initials

8. OPTIONEE'S SUBMITTALS.

8.1. Site Plans, Architectural Drawings and Renderings. Attached hereto as **Exhibit C** are the following documents that Optionee has prepared with respect to each Component (collectively, the "**Conceptual Plans**"):

8.1.1. an initial design scheme that defines the general scope and conceptual design of the Project including scale and relationships between buildings;

8.1.2. a site demolition and removal plan indicating improvements and utility elements that will be demolished;

8.1.3. a construction mobilization and staging plan;

8.1.4. a site development plan that shows the redeveloped site including landscape, hardscape, parking (including handicap parking), entrances, traffic flow and circulation, sidewalks and pedestrian access paths, bike lanes, trash facilities and screening, outdoor seating, open space and recreation areas, signs, loading, delivery and storage spaces, and architectural elements;

8.1.5. building elevations, including building heights, detailed exterior building materials, colors, and description of any special building treatments; and

8.1.6. schematic floor plans indicating functional areas.

8.2. Budget. Attached hereto as **Exhibit D** is a detailed description of anticipated hard costs, soft costs and financing costs to design, construct, finance and lease the entire Project, broken down per Component (the "**Budget**") and including:

8.2.1. a detailed description of Optionee's plan to finance costs of entitlement, design and construction, including the mix and material terms of equity and debt financing;

8.2.2. a sources and uses budget for all estimated pre-development costs necessary to complete the entitlement, permitting, and CEQA processes; and

8.2.3. a development budget for all direct/hard and indirect/soft costs and financing expenses.

8.3. Construction Schedule. Attached hereto as **Exhibit E** is a detailed schedule for the proposed construction and development of each Component (the "**Construction Schedule**") including:

8.3.1. a summary timeline or other similar graphic representation of the development program for the Project; and

8.3.2. a detailed development schedule indicating expected timeline for due diligence, environmental reviews, entitlements, design, permitting, financing, community engagement, phasing of construction, leasing and anticipated absorption rates.

8.4. Marketing Plan. Attached hereto as **Exhibit F** is Optionee's plan to attract and recruit tenants, visitors, tourists, residents, businesses and individuals to the Property and each Component (the "**Marketing Plan**"), including:

8.4.1. proposed marketing approaches for each targeted market segment and a description of the strategies to be utilized for attracting and strengthening those markets; and

8.4.2. the expected lease-up period, amount of lease commissions, and assumed escalation and inflation rate assumptions.

8.5. Financial Plan. Attached hereto as **Exhibit G** is Optionee's proposed financial plan to ensure completion of construction of each Component as contemplated in this Option Agreement and the Exhibits hereto (the "**Financial Plan**"), including;

8.5.1. the anticipated source of Project funding, both in the construction and permanent financing phases; and

8.5.2. the capital structure terms including anticipated leverage ratios, debt interest rates, target investment rates, loan terms, financing costs, and any other relevant Project financing assumptions.

8.6. Management Plan. Attached hereto as **Exhibit H** is Optionee's proposed methodology for operation of the Project (the "**Management Plan**"), including:

8.6.1. a description of how Optionee is organized for operations, maintenance, hospitality, quality, safety, and security;

8.6.2. a safety and security plan;

8.6.3. a financial management plan including transparent systems for accounting sales, rents, revenues, costs, expenses, lease compliance, and making payments to the County;

8.6.4. a quality service plan including oversight of transitions from the current operators, operations and maintenance, and customer service;

8.6.5. Optionee's methodology for maintaining the Project in a safe, efficient, competent and clean manner for the public, visitors, tenants and vendors and generally to the standards required under the Lease, including:

(i) a plan for daily housekeeping, cleaning, trash disposal, litter removal and extermination;

(ii) a preventative maintenance program;

(iii) a landscape, sidewalks, paved areas and grounds maintenance program;

(iv) a water quality management program;

(v) a plan for structural maintenance, preventative and predictive maintenance, routine repairs and replacement; and

(vi) a plan for future capital improvements, expansions, renovations, modernizations and refurbishment.

8.6.6. the standards and requirements set forth in Exhibit G to the Lease.

The final approved Management Plan will be referred to in the Lease as the "**Minimum Standards**" and shall replace Exhibit G thereto.

8.7. Approval of Optionee's Submittals. Optionee acknowledges that County's acceptance of the Proposal shall not be deemed County's approval of all documents submitted by Optionee to County together with the Proposal including those submittals attached hereto as Exhibit C, D, E, F, G and H, respectively (collectively, the "**Proposal Submittals**"). During the Option Term and the Extended Option Term, if applicable, (i) County may require various changes to be made to the Proposal Submittals in order for the Project to be more in line with County's goals and objectives for the Project as stated in the Request for Proposal, in which event the Parties shall use good faith efforts to reach agreement on revisions to the Proposal Submittals during the Option Term, or Extended Option Term, if applicable, and (ii) Optionee may propose changes to the Proposal Submittals, provided that such changes do not differ materially from the Proposal Submittals and any such changes shall be subject to the approval of the Chief Real Estate Officer. If Optionee makes changes to any of the Proposal Submittals pursuant to clause (i) or (ii) above, then Chief Real Estate Officer shall have fifteen (15) business days following receipt of any such changed Proposal Submittals within which to approve or disapprove such submission in writing, in his sole and absolute discretion. Failure of Chief Real Estate Officer to approve such revised Proposal Submittals (or any component thereof) in writing within said fifteen (15) business day period shall be deemed disapproval. Following any disapproval of revised Proposal Submittals by Chief Real Estate Officer, County shall, within ten (10) business days after receipt of a written request from Optionee, disclose to Optionee in writing Chief Real Estate Officer's reasons for objecting to the revised Proposal Submittals. Optionee hereby acknowledges that any approval by the County under this Section shall be deemed approval by the County solely in its proprietary capacity as owner of the Property and not in its governmental capacity. Accordingly, no approval,

or consent given by County, or its officers, employees, or agents, acting in its governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by County, as a Party hereto, or by the Chief Real Estate Officer as County's representative, be deemed confirmation that the applicable submittal complies with applicable governmental codes, laws, rules, and/or regulations, or be deemed a waiver of Optionee's obligation under the Lease to obtain all required governmental approvals and permits for the Project. Nothing herein shall be deemed a representation or covenant on the part of the County that the Proposal Submittals will ultimately be approved by County officials acting in their governmental capacity or by any other governmental agency with jurisdiction over the Property and no approvals granted by the County under this Option Agreement shall give rise to any claim that County is estopped from rejecting, in its governmental capacity, any applications for approval of the Project subsequently submitted by Optionee to the County in its regulatory capacity.

9. CONDITIONS. The Option may not be exercised until all the following terms and conditions shall have been satisfied:

9.1. County Approvals. Chief Real Estate Officer shall have approved, in writing, the final form and substance of all the Proposal Submittals, such that the Conceptual Plans, Budget, Construction Schedule, Marketing Plan, Financial Plan and Management Plan, as same may have been revised in accordance with this Option Agreement prior to the exercise of the Option, can be attached as exhibits to the Lease (such approved versions are collectively referred to herein as the "**Approved Proposal Submittals**"). Any changes to such Exhibits after the exercise of the Option shall be subject to the terms and conditions of the Lease. During the Option Term, and the Extended Option Term, if applicable, the Parties shall discuss and negotiate in good faith any changes to the Proposal Submittals, provided, however, the County's approval of any Proposal Submittals shall be in County's sole and absolute discretion.

9.2. Deliverables. Optionee shall have delivered to the Chief Real Estate Officer:

9.2.1. at least two (2) duplicate originals of the Lease, executed in counterpart by Optionee and with all the Approved Proposal Submittals attached;

9.2.2. a cashier's or certified check made payable to the "*County of Orange*" in an amount equal to first installment of Annual Minimum Rent due under the Lease;

9.2.3. a cashier's or certified check made payable to the "*County of Orange*" in the amount of the Security Deposit required under Section 7 of the Lease, or such other alternative security as Optionee decides to serve as the Security Deposit in accordance with such of the Lease;

9.2.4. all documents required to be delivered by Optionee to County under the Lease as a condition precedent to the effectiveness of the Lease including, without limitation, (i) certificates of insurance for all insurance coverage required under the Lease, and (ii) evidence that Optionee has procured all bonds required and insurance required under Section 5 of the Lease;

9.2.5. a quitclaim deed, in the form attached hereto as **Exhibit I**, quitclaiming all right title and interest created by this Option Agreement back to the County ("**Quitclaim Deed**").

9.2.6. Optionee and County shall have agreed, each in its sole and absolute discretion, upon the following:

(i) The procedure for the transition of existing slip leases per Section 11.5 of the Lease, which procedure shall be prepared initially by Optionee for County's review and consideration;

(ii) The Approved Storage Lease and Approved Slip Lease per Section 12.1.3 of the Lease, the forms of which shall be prepared initially by Optionee for County's review and consideration;

(iii) The "Required Lease Provisions" per Section 12.1.3 of the Lease (to serve as Exhibit M to the Lease), which the County shall prepare following receipt of the form of Approved Retail Sublease, which shall be prepared by Optionee for County's review and consideration;

(iv) Exhibits A-1 [Legal Description of Property], A-2 [Depiction of Property], and A-3 [Depiction of Dredging Area] of the Lease, each of which shall be prepared by County for Optionee's review and consideration; and

(v) Exhibit E [Assumed Contracts and Leases], and G [Minimum Standards] to the Lease, each of which shall be prepared (or, for Exhibit G, revised) by Optionee for County's review and consideration.

9.2.7. all conditions to the exercise of the "Option" under the Drystack Lease shall have been satisfied and Optionee's affiliate shall have concurrently exercised its Option thereunder.

9.3. Closing Costs. Optionee shall have paid all third party fees and costs relating to the exercise of the Option including, without limitation, (i) the costs of recording any and all documents in the Official Records of Orange County and all documentary transfer taxes, if any, that may arise from the recording of such documents, and (ii) the premium for any title insurance policy that Optionee may purchase to insure its rights under this Option Agreement.

10. EXERCISE OF OPTION. Provided that Optionee shall have satisfied all the conditions to exercise of the Option set forth in Section 9 above, Optionee may exercise the Option at any time during the Option Term or the Extended Option Term, as applicable, by delivering to Chief Real Estate Officer written notice of Optionee's election do so.

11. EXECUTION OF LEASE. Following the satisfaction of all the conditions to exercise of the Option set forth in Section 9 above and Optionee's exercise of the Option, Chief Real Estate Officer, as County's designated representative, shall have authority to execute the Lease on behalf of County. The Effective Date of the Lease shall be the date of execution of the Lease by County, which date shall be the same for both the Lease and the Drystack Lease.

12. INSURANCE.

12.1. General Requirements.

12.1.1. Optionee shall, prior to Optionee or any Optionee Parties entering upon the Property to perform any inspections or investigations, purchase all insurance required under this Option Agreement, at Optionee's expense, and deposit with County certificates evidencing such insurance, including all endorsements required herein.

12.1.2. The Option shall automatically terminate upon the termination of any insurance coverage required to be carried by Optionee under this Option Agreement. If, within ten (10) business days after such termination, Optionee obtains and provides evidence that the required insurance coverage has been procured by Optionee, then this Option Agreement may be reinstated at the sole and absolute discretion of Chief Real Estate Officer. Optionee shall pay County Seven Hundred Fifty Dollars ($750.00) for processing the reinstatement of this Option Agreement.

12.1.3. Optionee and the Optionee Parties shall not be present on the Property at any time that all the insurance required under this Option Agreement is not in full force and effect as evidenced by a certificate of insurance and applicable endorsements. Chief Real Estate Officer will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Optionee also agrees that upon cancellation, termination, or expiration of Optionee's insurance, County may take whatever steps are necessary to prevent Optionee Parties from accessing the Property or from continuing any work on the Property until such time as the Chief Real Estate Officer reinstates this Option Agreement.

12.1.4. Optionee's failure to provide Chief Real Estate Officer with a valid certificate of insurance and endorsements at any time during the Option Term or the Extended Option Term, as applicable, shall constitute a material breach of this Option Agreement and, irrespective of whether or not County delivers to Optionee a notice of default in connection with such breach, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the Property, and to prevent any persons, including, but not limited to, members of the general public, and Optionee's employees and agents, from entering the Property until such time as Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Optionee further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from County's action.

12.1.5. All contractors and subcontractors performing work on behalf of Optionee pursuant to this Option Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for Optionee. Optionee shall not allow contractors or subcontractors to enter upon the Property if such parties have less than the level of coverage required by County from the Optionee under this Option Agreement. It is the obligation of the Optionee to provide written notice of the insurance requirements to every contractor and subcontractor and to receive proof of insurance prior to allowing any contractor or subcontractor to enter upon the Property. Such proof of insurance must be maintained by Optionee through the entirety of the Option Term and the

Extended Option Term, if applicable, and be available for inspection by a County representative at any reasonable time.

12.1.6. All self-insured retentions ("**SIRs**") and deductibles shall be clearly stated on the certificates of insurance. Any SIR or deductible in excess of Twenty-Five Thousand Dollars ($25,000) ($5,000 for automobile liability), shall require specific approved by County Executive Office/Office of Risk Management, or designee ("**Risk Manager**") following a review of Optionee's current audited financial statements.

12.2. Qualified Insurer. All policies of insurance required under this Option Agreement must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com).** The insurer shall be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

12.3. Minimum Required Limits. Optionee shall, for the duration of the Option Term, maintain the following policies of insurance with the following minimum limits and coverage:

Coverages	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence

12.4. Coverage Forms. The Commercial General Liability insurance policy shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

12.5. Required Endorsements.

12.5.1. Commercial General Liability. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

(i) an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County and County Parties as Additional Insureds;

(ii) a primary non-contributing endorsement evidencing that the Optionee's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non- contributing; and (iii) all insurance policies required by this Option Agreement shall waive all rights of subrogation against the County, Board of Supervisors, and the County Parties when acting within the scope of their appointment or employment.

12.5.2. Workers' Compensation. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County, Board of Supervisors, and the County Parties.

12.6. Cancellation. With respect to each policy of insurance required under this Option Agreement, Optionee shall notify County in writing within thirty (30) days of any such policy cancellation and within ten (10) days following non-payment of premium for any such policy and provide a copy of the cancellation notice to County. Failure to provide such written notice will constitute a material breach of the Option Agreement, upon which the County may terminate this Option Agreement.

12.7. Severability of Interest Clause - Commercial General Liability. The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

12.8. Delivery. Optionee shall forward all insurance certificates required hereunder to County at the address provided in Section 16 below.

12.9. Insurance Requirement Changes. County expressly retains the right to require Optionee to increase or decrease insurance of any of the above insurance types throughout the Option Term and the Extended Option Term, if applicable, to the extent that Risk Manager deems such change of insurance as appropriate to adequately protect County, so long as the revised amounts are consistent with the amounts of such liability insurance then being required by County for other comparable facilities or businesses within the County. Chief Real Estate Officer shall notify Optionee in writing of any such changes in the insurance requirements under this Option Agreement. Optionee shall provide County with certificates of insurance and endorsements evidencing such changes within ten (10) days following Optionee's receipt of such notice.

12.10. Effect of Insurance on Indemnity. The procuring of policies of insurance required under this Option Agreement shall not be construed to limit Optionee's liability under this Option Agreement nor to fulfill the indemnification provisions and requirements of this Option Agreement, nor in any way to reduce the policy coverage and limits available from the insurer.

13. ASSIGNMENT. Optionee shall not assign or transfer all or any portion of its rights or obligations under this Option Agreement or in the Property, whether by assignment, sublease, license agreement, concession agreement, management agreement, mortgage, deed of trust, pledge, encumbrance or any other agreement or instrument, as applicable, without the consent thereto by County, which may be granted or withheld in the County's sole and absolute discretion. In addition to the foregoing, no Controlling Interest in Optionee shall be assigned or transferred, whether by assignment, pledge, encumbrance or any other agreement or instrument, as applicable, without the consent thereto by the County, which may be granted or withheld in County's sole and absolute

discretion. This Section shall apply to each permitted assignee of this Option Agreement, and each such assignee shall have the right to further assign this Option Agreement only in accordance with the provisions of this Section. For purposes of this Section, "Controlling Interest" shall have the meaning set forth in the Lease.

14. TERMINATION. This Option Agreement, and the Option, shall automatically terminate and be of no further for or effect if Optionee fails to exercise the Option during the Option Term or Extended Option Term, if applicable, in accordance with Section 10 above. Furthermore, County shall have right to terminate the Option Agreement if Optionee defaults on any of its obligations under this Option Agreement. The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the duration of the Option Term and Extended Option Term, if applicable, provided that Chief Real Estate Officer shall be authorized to record the Quitclaim Deed in the Official Records of Orange County upon the termination of this Option Agreement for any reason. In the event of termination of this Agreement, Optionee shall promptly return to County all due diligence materials delivered by County to Optionee with respect to the Property (including, without limitation, the County Documents) and shall provide copies to County of all non-proprietary reports and studies prepared by third parties for Optionee with respect to the Property, at no cost to County, but without representation or warranty as to the quality, accuracy or completeness of any of such materials.

15. CONFIDENTIALITY AND PUBLIC RECORDS ACT. Optionee acknowledges that all materials submitted by Optionee to County pursuant to this Option Agreement and/or the Lease will be subject to the provisions of the California Public Records Act (California Code Government Code 6250 et seq.) (the "PRA") and will be disclosed or withheld in accordance therewith. Optionee shall not request that certain information be treated as exempt from the PRA, and any such documents submitted to the County should not be marked as confidential or proprietary. In the event that any information is marked as confidential or proprietary, as it may be absolutely necessary, Optionee shall have the sole responsibility for obtaining any applicable injunctive relief or other protective order to prevent the disclosure of such confidential or proprietary information. In the event of litigation concerning the disclosure of any information submitted by the Optionee in connection with this Option Agreement and/or the Lease and wherein the County is not a party, the County's sole involvement will be as a stakeholder, complying with all applicable laws concerning the disclosure of such information. Optionee, at its sole expense and risk, shall be responsible for any and all fees and costs relating to the prosecution or defense of any action relating to the disclosure of such information, and shall indemnify and hold the County harmless from all costs and expenses, including attorney's fee, County incurs in connection with any such action.

16. NOTICES. All notices, documents, correspondence and communications concerning this Option Agreement shall be addressed as set forth in this Section 16, or as the Parties may hereafter designate by written notice, and shall be sent through the United States certified mail, return receipt requested or with other proof of delivery, with postage prepaid, by personal delivery, Federal Express or similar courier service, or by facsimile. Notices so given shall be deemed to have been given upon receipt with the exception of transmittals via facsimile which shall be deemed delivered on the day transmitted provided transmitted by 5:00 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To County: **To Optionee:**

County Executive Office
Attn: Chief Real Estate Officer
Hall of Administration
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, California 92701
Fax: (714) 834-6166

Burnham-Ward Properties, LLC
1100 Newport Center Drive, Suite 200
Newport Beach, California 92660
Attn: Scott Burnham and Bryon Ward
Fax: (949) 760-0430

With a Copy to:

Office of County Counsel
Attn: Michael Haubert, Senior Deputy
Hall of Administration
333 W. Santa Ana Blvd., 4th Floor
Santa Ana, California 92701
Fax: (714) 834-2359

And to:

Bellwether Financial Group, Inc.
450 Newport Center Drive, Suite 590
Newport Beach, California 92660
Attn: Joe Ueberroth
Fax: (949) 723-7786

And to:

Director
OC Parks
13042 Old Myford Road
Irvine, California 92602
Fax: (714) 834-2359

And to:

Olson Real Estate Group, Inc.
c/o RD Olson Development
520 Newport Center Drive, Suite 600
Newport Beach, California 92660
Attn: Dustin Schmidt
Fax: (949) 271-1080

Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

17. VENUE. The Parties hereto agree that this Option Agreement 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 Option Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, 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.

18. SEVERABILITY. If any term, covenant, condition, or provision of this Option Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. ATTORNEYS' FEES. In any action or proceeding brought to enforce or interpret any provision of this Option Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney fees and costs in connection with such action or proceeding.

20. <u>SUCCESSORS AND ASSIGNS</u>. The terms, covenants and conditions contained herein shall inure to the benefit of, and be binding on, the heirs, successors, executors, administrators, and permitted assigns of the Parties hereto.

21. <u>ENTIRE AGREEMENT</u>. This Option Agreement and the Lease contain the entire agreement between the Parties relating to the Option granted herein and all negotiations and agreements between the Parties hereto or their agents with respect to this transaction are merged herein. Any oral representations, modifications, or waivers concerning this instrument shall be of no force and effect, except in a subsequent instrument made in writing and signed by both Parties. Time is of the essence in the performance of the Parties' respective obligations herein contained.

22. <u>COUNTERPARTS</u>. This Option Agreement, including any exhibits attached hereto, may be executed by the Parties in several counterparts, each of which shall be deemed to be an original copy.

[signatures on next page]

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

DANA POINT HARBOR PARTNERS, LLC,
a California limited liability company

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

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

By:_____
Chief Real Estate Officer

RECOMMENDED FOR APPROVAL:

CEO/Corporate Real Estate

By: _____

APPROVED AS TO FORM:

County Counsel

By: Michael A. Haubert 7/2/18
Senior Deputy

EXHIBIT A

Depiction of Property

[Attached hereto]

DESIGNED AND PRODUCED BY:
OCCR - OC Parks GIS

DATA SOURCE:
- Geomatics Land Information Systems Division - 2017 Eagle Aerial

The County of Orange and OCCR/OC Parks/Survey/GIS/LIS make no representations or warranties regarding the registration or accuracy of the data from which this map was derived. Neither the County nor OCCR/ OC Park/Survey/GIS/LIS shall be liable under any circumstances for any direct, indirect, special, incidental or consequential damages with respect to any claim by any user or any third party on account of or arising from the use of this map.

DATE: June 26, 2018

0 125 250 500 Feet

- A Break Water - County
- B Ocean Institute - County
- C Baby Beach - County
- D OC Sailing & Events Center - County
- E Sea Wall - Master Developer
- F Bridge - Master Developer
- G Navigation Channel - Master Developer
- H Harbor Patrol - County
- I Fishing Pier - Master Developer

Master Developer - Sea Wall
Approx. 17,503.88 Linear Feet

Master Developer

County of Orange

Dana Point Harbor

Exhibit A
Depiction of Property

OCparks
Orange County
California

EXHIBIT B

Form of Ground Lease

[Attached hereto]

MASTER GROUND LEASE AGREEMENT

by and between

COUNTY OF ORANGE

and

DANA POINT HARBOR PARTNERS, LLC

Dated as of _____, _____

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EXHIBIT E ..... ASSUMED CONTRACTS AND LEASES
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EXHIBIT L ..... COUNTY DOCUMENTS
EXHIBIT M ..... REQUIRED LEASE PROVISIONS

MASTER GROUND LEASE AGREEMENT DANA POINT HARBOR

THIS MASTER GROUND LEASE AGREEMENT ("**Lease**") is made and entered into as of the _____ day of _____ ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), as lessor, and DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (together with its permitted successors and assigns, "**Lessee**"), as lessee. County 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 "**Property**") located in the City of Dana Point and comprised of the land described on **Exhibit A-1** attached hereto and depicted on **Exhibit A-2** attached hereto, together with all the Improvements (as defined below) located thereon;

WHEREAS, County and Lessee have entered into that certain Option to Lease dated as of _____, 2018 (the "**Option Agreement**"), pursuant to which County granted Lessee an option (the "**Option**") to lease the Property in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, the redevelopment and renovation of the Property, all in accordance with the terms and provisions hereof; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

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 5.18.

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 each Component, the construction of any alterations or modifications to the Improvements located on such Component or the construction of any new Improvements on the Property, at any time during the Term, excluding the Redevelopment Work and Subsequent Renovation.

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 each Component, all out-of-pocket hard construction costs paid to unaffiliated third parties for the construction of the Redevelopment Work on such Component, including the profit, overhead and conditions in reasonable market standard amounts paid to an unaffiliated general contractor that is responsible for the construction of the Redevelopment Work for such Component.

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 "APPROVED SLIP LEASE" shall have the meaning set forth in Subsection 12.1.3.

1.1.19 "APPROVED STORAGE LEASE" shall have the meaning set forth in Subsection 12.1.3.

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

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

1.1.22 "ASSUMED CONTRACTS" means all those leases and other contracts listed on **Exhibit E** attached hereto, which contracts County has assigned to Lessee, and Lessee has taken assignment of, effective as of the Effective Date, as contemplated by the Option Agreement.

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

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

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

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

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

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

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

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

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

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

1.1.33 "CAD Files" shall have the meaning set forth in Subsection 5.8.7.

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

1.1.35 "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.16.

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

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

1.1.38 "CDP" shall mean the Dana Point Harbor Revitalization, Commercial Core Project, Coastal Development Permit (CDP13-0018), as amended from time to time.

1.1.39 "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.

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

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

1.1.42 "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.

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

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

1.1.45 "CO DATE" means, (a) with respect to the Commercial Core Component, the date of the issuance of a Certificate of Occupancy for the Improvements in the Commercial Core identified as the "Retail Center" on **Exhibit A-2**, (b) with respect to the Hotel Component, the date of the issuance of a Certificate of Occupancy for the Hotel Improvements, and (c) with respect to the Marina Component, the date the last of the Marina Improvements has been completed in accordance with the building permit issued therefor as reasonably determined by the Governmental Authority that issued such building permit.

1.1.46 "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.

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

1.1.48 "COMMERCIAL CORE" or "COMMERCIAL CORE COMPONENT" means the Component of the Property identified as such on **Exhibit A-2** and currently operated by Vintage Marina Partners, LP ("**Commercial Core Operator**") pursuant to that certain Operating Agreement for the operation of the Commercial Core, entered into by and between the County and Commercial Core Operator, as of February 6, 2001.

1.1.49 "COMPONENT" means each of three (3) portions of the 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 Lessee's right to reallocate portions of the Property wherein marina related services are provided and which are currently located within the Commercial Core Component to the Marina Component, subject to the reasonable consent of the County. In addition, subject to the limitations contained herein, Lessee shall have the right to consolidate or re-allocate the management of the parking areas on the Property, in whole or in part.

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

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

1.1.52 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index for Los Angeles- Riverside-Orange County [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)], as published from time to time by the United States Department of Labor 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.

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

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

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

1.1.56 "COST" shall have the meaning set forth in Subsection 1.1.90(b)(13).

1.1.57 "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 Property and not the County in its capacity as a land use or other governmental approval authority.

1.1.58 "COUNTY DOCUMENTS" shall mean those certain documents, materials and other information relating to the Property provided by the County to Lessee prior to the Effective Date pursuant to the Option Agreement, including without limitation, the documents, materials and other information described on **Exhibit L** attached hereto.

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

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

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

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

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

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

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

1.1.66 "DRB SPECIFICATION" shall have the meaning set forth in Subsection 5.18.

1.1.67 "DRY MARINA" means the land-side portions of the Marina Component, which consists of all portions of the Marina Component excluding the Wet Marina. **[PARTIES TO REVISIT THIS CONCEPT DURING OPTION PERIOD AND REMOVE REFERENCES IN THIS LEASE TO THOSE PORTIONS OF THE MARINA THAT ARE COVERED BY DRYSTACK LEASE]**

1.1.68 "DRY STORAGE IMPROVEMENTS" shall mean the overnight boat dry storage area located within the Marina Component.

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

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

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

1.1.72 "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.

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

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

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

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

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

1.1.78 "EXCLUDED HARBOR OFFICES" shall have the meaning set forth in Section 11.13.

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

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

1.1.81 "EXEMPT INDIVIDUAL BOAT TRANSACTION" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.82 "EXISTING EIR" shall have the meaning set forth in Subsection 5.5.7.

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

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

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

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

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

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

1.1.89 "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, 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 any Component or the Subsequent Renovation thereof, a delay in such construction caused by a hidden and unforeseeable condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the 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 or Subsequent Renovation, 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; and (b) 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 or Subsequent Renovation, as applicable, an injunction or restraining order against the performance of the Redevelopment Work or Subsequent Renovation 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.

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

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

1.1.92 "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 Property.

1.1.93 "GROSS RECEIPTS" shall mean, with respect to each Component, the aggregate of (A) for any portion of the Property which is subject to an arms-length Sublease to a person or entity which is not an Affiliate, 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 Property on which Lessee or an Affiliate 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 such Component of the Property, 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. 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 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 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 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 Property or any portion thereof; and

(11) all other funds received by Lessee from sales by any Sublessee, concessionaire or licensee of Lessee on the 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 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 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 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;

(12) amounts received for services rendered by a live-aboard Sublessee of an individual slip in connection with the operation by such live-aboard Sublessee of an in-home business on the boat of such live-aboard, as long as the primary purpose of Sublessee's use of the boat is for residential occupancy and such in-home business is an incident to such residential use; or

(13) 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 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 (13), 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 (13) 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.

(14) 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, with such interpretations to be a guideline in implementing Subsection 4.2.2(a) of this Lease.

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

1.1.95 "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.

1.1.96 "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.

1.1.97 "HOTEL" or "HOTEL COMPONENT" means the Component of the Property identified as the Hotel on **Exhibit A-2** including, without limitation, the hotel currently known as the "Dana Point Marina Inn" and associated amenities, and currently operated by Great Western Hotel Operator ("**Hotel Operator**") pursuant to that certain Operating Agreement for the operation of the Hotel, entered into by and between the County and Hotel Operator, dated as of June 8, 2009.

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

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

1.1.100 "HOTEL OPERATOR" shall have the meaning set forth in Subsection 1.1.97.

1.1.101 "IMMEDIATE FAMILY" shall have the meaning set forth in Subsection 4.3.1(e)(3).

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

1.1.103 "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 constructed or installed by Lessee upon the 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 Property, whether existing as of the Effective Date or as constructed by Lessee, any Sublessee, or otherwise, as the case may be.

1.1.104 "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; 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 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, 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.

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

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

1.1.107 "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.

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

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

1.1.110 "LANDSIDE IMPROVEMENTS" means all Improvements on the Property other than the Marina Improvements.

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

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

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

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

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

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

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

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

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

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

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

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

1.1.123 "MARINA" or "MARINA COMPONENT" means the Component of the Property identified as the Marina on **Exhibit A-2**.

1.1.124 "MARINA IMPROVEMENTS" shall mean all docks, gangways, anchorage slips, end-ties and related anchorage Improvements, all as depicted on **Exhibit A-2**.

1.1.125 "MATERIAL MODIFICATION" shall mean, with respect to each Component, an Alteration or any modification, revision or other change to the Redevelopment Work or Subsequent Renovation, as applicable, for such Component with respect to which any one of the following applies: (a) for purposes of the Redevelopment Work or Subsequent Renovation, the modification(s), individually or in the aggregate, result in a decrease in the previously approved Budget for such Component by more than ten percent (10%) (provided any decreases to the Required Cost Amount for a 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 such Component, adjusted to reflect the percentage change in the ENR Index from the date on which the Redevelopment Work for such 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 such Component by more than five percent (5%), (ii) reduces the number of parking spaces within such Component by more than five percent (5%), except for a corresponding reduction in the number of parking spaces required for the Improvements within such Component (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the interior square footage of the Improvements within such Component or changes in the Applicable Law regarding the number of parking spaces required for the Improvements within such Component (without variance), (iii) with respect to the Hotel Component, (A) reduces the number of guest rooms for the "affordable" hotel (e.g., the Marina Inn and its successors) 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 "boutique" hotel, if constructed, or (iv) with respect to the Marina Component, reduces the lineal footage of the slips and side ties in the Marina Component by more than ten percent (10%), reduces the lineal footage of the transient slips and side ties in the Marina Component by more than ten percent (10%), or relocates more than twenty percent (20%) of transient slips and side ties in the Marina Component; (f) for purposes of the Redevelopment Work and Subsequent Renovation, 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 or Subsequent Renovation. 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, Subsequent Renovation 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.

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

1.1.127 "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 commercial and/or public marina or harbor projects (as applicable) in the County.

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

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

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

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

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

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

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

1.1.135 "OPERATING YEAR" shall have the meaning set forth in Subsection 5.17.1.

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

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

1.1.138 "OUTSIDE AGREEMENT DATE" shall have the meaning set forth in Subsection 4.3.3(b).

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

1.1.140 "PA/DSS" shall have the meaning set forth in Section 11.10.

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

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

1.1.143 "PCI/DSS" shall have the meaning set forth in Section 11.10.

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

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

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

1.1.147 "PERMITTED BOAT BROKERAGE BUSINESS" shall have the meaning set forth in Subsection 3.2.2(g).

1.1.148 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.16.2.

1.1.149 "PERMITTED EVENTS" shall have the meaning set forth in Section 11.12.

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

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

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

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

1.1.154 "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.

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

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

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

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

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

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

1.1.161 "RECOVERY PLAN" means, with respect to each Component, 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 such Component in order to enable Contractor to: (a) achieve an Interim Milestone for such Component by the applicable Interim Milestone Date; and/or (b) achieve the CO Date for such Component on or before the applicable Required Construction Completion Date.

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

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

1.1.164 "REQUIRED CONSTRUCTION COMMENCEMENT DATE" means (a) with respect to the Hotel, March 1, 2023 for the "affordable" hotel, and, if built, March 3, 2025 for the "boutique" hotel, (b) with respect to the Commercial Core, January 1, 2021, and (c) with respect to the Marina, January 1, 2022.

1.1.165 "REQUIRED CONSTRUCTION COMPLETION DATE" means (a) with respect to the Hotel, July 30, 2027 for the "affordable" hotel, and, if built, July 30, 2027 for the "boutique" hotel, (b) with respect to the Commercial Core, December 31, 2024, and (c) with respect to the Marina, December 31, 2027.

1.1.166 "REQUIRED COST AMOUNT" means (a) with respect to the Hotel, Eighteen Million Dollars ($18,000,000.00) in the event one (1) hotel is developed and Ninety Million Dollars ($90,000,000.00) in the event two (2) hotels are developed, (b) with respect to the Commercial Core, Sixty Million Dollars ($60,000,000.00), and (c) with respect to the Marina, Eighty Million Dollars ($80,000,000.00).

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

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

1.1.169 "SAILING AND EVENT CENTER" shall have the meaning set forth in Section 11.14.

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

1.1.171 "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.

1.1.172 "STATE" shall mean the State of California.

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

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

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

1.1.176 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Subsection 5.15.1.

1.1.177 "SUBSEQUENT RENOVATION FUND" shall have the meaning set forth in Subsection 5.15.3.

1.1.178 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.15.2.

1.1.179 "SUBSTANTIAL COMPLETION" means the completion of the Redevelopment Work, Subsequent Renovation 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.

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

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

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

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

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

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

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

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

1.1.188 "WET MARINA" means the water-side portions of the Marina Component, such as slips, docks, gangways and waterways.

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, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the 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 Property in its present condition notwithstanding the fact that there may be certain defects in the Property, whether or not known to either Party as of the Effective Date. Lessee represents that, pursuant to the Option Agreement, it was afforded a reasonable opportunity to conduct a thorough due diligence investigation of the Property prior to its exercise of the Option and that, prior to the Effective Date, it performed all investigations of the Property that it deemed necessary or appropriate in order to evaluate the condition of the Property and the viability of the Property for Lessee's intended purposes. Lessee hereby accepts the 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 Property, including without limitation: (a) the quality, nature, adequacy and physical condition and aspects of the 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 Property, (d) the development potential of the Property, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Property for any particular purpose, (e) the zoning, entitlements or other legal status of the Property, and any public or private restrictions affecting use or occupancy of the Property, (f) the compliance of the 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 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 Property, and (j) the economics of the operation of the Property.

1.2.2 Tidelands Grant. This Lease and the rights and privileges granted Lessee in and to the 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 ("**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 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 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 Property and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the 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 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, Assumed Contracts, easements and rights of way (including, without limitation, those granted under the Assumed Contracts, if any) 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 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 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 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 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 Property, and (iii) vessels within the waterways of the 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 "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. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease ("**Term**") commenced 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 the sixty-sixth (66th) anniversary of the Effective Date. 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 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 Property (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the 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 Property, any signage identifying Lessee (as opposed to other signage used in the operation of the 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 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 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 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 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 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 PROPERTY.

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

3.1.1 The Commercial Core and the Improvements located thereon shall be used by Lessee solely for the operation and management of: (a) retail, restaurant, bar, restaurant/bar, coffee shop, nightclub or tavern space; administrative offices, museum(s), institutional uses or educational facilities (including a sailing school and Harbor Patrol offices as described below); filming or other television or motion picture activities; leasing to a Permitted Boat Brokerage Business; professional offices which offer services to the general public and which are normally found in first class shopping centers such as escrow offices, title insurance offices, insurance offices, dentists, optometrists, accountants, lawyers, doctors, real estate and stock brokerage offices; and service oriented uses which are normally found in first class shopping centers such as travel agencies, blow-dry bars, hair salons, therapeutic massage (such as Massage Envy), shaving, waxing, insurance agencies, weight loss clinics and financial institutions; live events, performances and demonstrations; catering and event activities; and entertainment oriented uses which are normally found in first class shopping centers such as movie theaters; (b) the so-called "Embarcadero Marina" (including a boat ramp, dry boat storage or storage for other water recreational equipment and marine vessels; dry stack storage, mast-up storage, boat slips, the rental of dry or landside storage facilities; the rental of boats, motors, tackle, or recreational

equipment (including, without limitation, wave- runners, paddle boards, kayaks, bicycles, cycles carriages, scooters etc.), the sale or rental of boat related tools and equipment; subject to the limitations in Subsection 3.2.2(h) below, automobile rental; the sale of marine insurance where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning (but only for drop off and pick up of clothing which is cleaned at another location that is not on the Property), boat launch day parking and miscellaneous boater services and boater related services); (c) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (d) 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 (e) 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 The Hotel 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) 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 (i) 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.

3.1.3 The Marina and the Improvements located thereon shall be used by Lessee solely for the operation and management of a marina similar with the following uses and services: (a) yacht club facilities; (b) boat repair facilities; (c) boat anchorage facilities, including the rental or use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and other water-side facilities; (d) commercial boating activities including, but not limited to, charter boats, bareboat charters and sport fishing; (e) boat rentals; (f) sailing lessons; (g) lockers for boaters; (h) fuel and oil sales; (i) the sale of bait and boat and fishing supplies; (j) boat cleaning and other boater related services including the launch and retrieval of small boats; (k) Permitted Boat Brokerage Business; (l) filming or other television or motion picture activities; (m) the operation of excursion, sightseeing or tour boats, or any water taxi; (n) parking associated with each the foregoing, subject to the terms, conditions and limitations set forth in this Lease; (o) 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 (p) 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.

3.1.4 All of the aforementioned uses, as they relate specifically to each Component, shall be referred to herein as the "**Permitted Uses**" of each such Component.

Except as specifically provided herein, each Component 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 applicable to such Component. 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 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 Property, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Property be permitted to be operated or maintained in a manner that renders the 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 Property and Improvements as set forth in this Lease, the following uses of the Property are expressly prohibited:

(a) The 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 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 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 Property which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the 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 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 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 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 Property, including, without limitation, into subsurface waters, provided, however, (i) Hazardous Substances may be stored or used on the 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 Property as a result of defects or deficiencies in the Excluded Improvements or the existing breakwater adjacent to the 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 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) boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor, except those emanating from Lessee's boat slip Sublessees. Lessee shall use all reasonable and diligent efforts to cause such boat slip Sublessees, and transient boat owners to the extent feasible, to comply with all applicable BMPs, environmental laws and regulations, and requirements of this Lease. 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 Property or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Property, and (II) with respect to Hazardous Substances that did not originate at or from the 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**"). Notwithstanding anything in this Subsection 3.2.2(f) to the contrary, Lessee shall require in its slip rental agreements that, as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels be required to comply with all applicable BMPs, environmental laws and regulations, and the restrictions on Hazardous Substances set forth herein, and all of Lessee's slip leases shall provide that any newly tenanted vessel which does not so comply shall be ineligible for continued slip tenancy on the Property and shall be subject to removal from the Property by Lessee in accordance with applicable law for non-compliance with the requirements of the slip lease.

(g) Except for (i) a Permitted Boat Brokerage Business, (ii) an Exempt Individual Boat Transaction, (iii) the sale or lease, or display for sale or lease, of small

watercraft by a tenant of interior retail space in the Property, whether in such retail space or from an adjacent sidewalk or other hardscape area (such activity under this clause (iii) is hereby confirmed to constitute retail use under Percentage Rent category (4) of Subsection 4.2.2(a) below), or (iv) any periodic boat show or boating event lasting no more than three (3) consecutive weeks per show or event and taking place no more often than two (2) times per calendar year, no portion of the 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**"). A "**Permitted Boat Brokerage Business**" means the sale or lease, or the display, storage or exhibition for sale or lease, of new or used boats or watercraft by a Sublessee that leases office space for the legitimate operation of such business at the Property, including the display, storage or exhibition of new or used boats or watercraft from anchorage slips leased by such Sublessee in connection with the operation of such sale or leasing brokerage business from the office space leased by such Sublessee at the Property. Each Permitted Boat Brokerage shall display exterior business identification signage. An "**Exempt Individual Boat Transaction**" means the sale or lease by an individual Sublessee of a boat owned and moored by such Sublessee at an anchorage slip leased by such Sublessee at the Property, for personal purposes (whether such sale is consummated with or without the assistance of a third party boat broker) and not in connection with the sale or lease of boats as a business or commercial endeavor or in connection with providing boat brokerage sale or leasing services to others.

(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 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 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 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 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.

3.3.2 Notwithstanding anything in this Lease to the contrary, the fishing pier identified on **Exhibit A-2** shall at all times remain a fishing pier that is open and available to the general public for fishing and associated recreational uses, subject to only those temporary closures as may be necessary from time to time for the limited duration of any required maintenance to be performed by Lessee as and to the extent set forth in this Lease.

3.4 Days and Hours of Operation. All Improvements on the Property shall be open every day of the year for at least the operating hours applicable to such Improvements as set forth on **Exhibit G** attached hereto, or, if not specified therein, then for at least the operating hours typical for institutional grade retail projects, hotels and marinas, as applicable, in the Southern California area, subject to (a) the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses in Dana Point Harbor are customarily closed, and (b) Lessee's right to temporarily close portions of the Property while such portions of the Property are under construction in accordance with the Redevelopment Work or Subsequent Renovation.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs, billboards, 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 be only 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 Improvement Project. Signs, banners, flags, etc., that are not consistent with the Permitted Uses or that are not approved as set forth herein or consistent with the sign criteria or sign program approved by the City with respect to the Improvement Project may be removed by the CREO Office, at Lessee's sole cost and expense, in the event Lessee fails to remove the same 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 and permits related to or affecting the use, operation, maintenance, repair or improvement of the 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, (c) the terms and conditions of all Assumed Contracts, and (d) 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 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 Property and Improvements, including without limitation the parking areas included within the 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 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 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 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 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 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 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 each Component, 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**"). The Annual Minimum Rent for the Commercial Core, Hotel and Dry Marina Components will be abated on a Component-by-Component basis during the period (the "**Abatement Period**") that the Redevelopment Work for such Component is commenced through and until the earlier of (i) the CO Date for such Component, or (ii) the Required Construction Completion Date for such Component; provided, however, for the Hotel Component, the Abatement Period shall end upon the first of the foregoing dates to occur for either the "affordable" or the "boutique" hotel notwithstanding that work on the other of such hotels may not be complete, and such earlier date shall be referred to in this Lease as the "**Hotel Deemed Completion Date**". Notwithstanding the foregoing, and for the avoidance of doubt, the Annual Minimum Rent for each Component shall continue to adjust as set forth in Subsection 4.2.1(b) below during the Abatement Period for such Component. For purposes hereof, the date upon which the commencement of the Redevelopment Work for a particular Component has occurred will be the first date that visible construction activity for such Component (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 for each Component 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. With respect to each Component, commencing on the first anniversary of the Effective Date (in each instance, the "**First Adjustment Date**") and recurring as set forth on **Exhibit F** attached hereto (each an "**Adjustment Date**"), the Annual Minimum Rent for such Component shall be adjusted as set forth on **Exhibit F** attached hereto.

4.2.2 Percentage Rent. Commencing on the Effective Date, 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 such Component, less (ii) (A) the Annual Minimum Rent payable by Lessee for such Component during such month, and (B) all amounts required to be paid by Lessee to reimburse to any tenant at the 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. Notwithstanding the foregoing, subject to the limitations set forth on **Exhibit F** attached hereto, Percentage Rent for the Hotel Component shall be abated for the initial thirty (30) months following 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 Property, or as a result of operations from the Property (e.g., internet sales), shall be reported under one or more of the following percentage categories, as applicable:

(1) TEN PERCENT (10%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and ELEVEN PERCENT (11%) of Gross Receipts thereafter from boat slips (including, without limitation, transient slips), anchorages, moorings, dockside gear lockers, dockside storage space, and other water-side facilities;

(2) TEN PERCENT (10%) of Gross Receipts from dry stack storage or mast-up storage;

(3) TWENTY PERCENT (20%) of Gross Receipts from overnight trailer storage located within the designated overnight storage surface parking lot;

(4) FIVE PERCENT (5%) of Gross Receipts from (i) any other dry or landside storage facilities, (ii) the rental or other fees for boats, motors, tackle, recreational equipment (including, without limitation, wave- runners, paddle boards, kayaks, etc.), tools, equipment, (iii) launch and retrieval of small boats, (iv) the sale of live bait, (v) the sale of fuel or oil, or (vi) miscellaneous boater services;

(5) THREE AND SEVEN-TENTHS PERCENT (3.7%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and FIVE AND SEVEN-TENTHS PERCENT (5.7%) thereafter from the lease, use or occupancy of space for (a) office (including boat brokerage), administrative offices, museum(s), institutional uses or educational facilities (including a sailing school as described below) or yacht

club purposes; (b) retail sales, service and ancillary uses within the Commercial Core Component; (c) the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on premises sale of alcoholic beverages except as provided for in Subsection 4.2.2(a)(9) below, (d) the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, take-out food operations and (e) facilities featuring entertainment, excluding movie theaters, which is provided for in Subsection 4.2.2(a)(17) below;

(6) FIVE PERCENT (5%) of Gross Receipts from the lease, use or occupancy of space used for the display of new or used boats, recreational vehicles, trailers or trailer cabanas, or for filming or other television or motion picture activities;

(7) FOUR PERCENT (4%) from the Gross Receipts for the lease, use or occupancy of the boat repair shop;

(8) With respect to services such as car rental, the sale of marine insurance where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning, and other similar activities where earnings are normally on a commission basis, FIVE PERCENT (5%) of the Gross Receipts therefrom;

(9) FIVE PERCENT (5%) of Gross Receipts from the lease, use or occupancy of space for both events and catering of events which are not held at the hotel;

(10) With respect to service enterprises other than those operated within the Commercial Core Component or at the hotel, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts therefrom;

(11) TEN PERCENT (10%) of Gross Receipts generated from parking operations;

(12) FIVE PERCENT (5%) of the Gross Receipts from the rental of boats or from other commercial boating activities including, but not limited to, charter boats, bareboat charters and sport fishing, or from the rental of bicycles, cycles carriages, scooters or other similar equipment;

(13) FIVE PERCENT (5%) of the Gross Receipts from the installation or operation of coin-operated vending or service machines;

(14) FIVE PERCENT (5%) of Gross Receipts from club dues, initiation fees, and assessments received by Lessee, except that separate assessments for capital improvements may be exempted;

(15) FIVE PERCENT (5%) of Gross Receipts from the operation of excursion, sightseeing or tour boats, or any water taxi;

(16) FIVE PERCENT (5%) of Gross Receipts from boat haul-out or for boat repair, including maintenance, repair, painting, tugboat, salvage and boat pump-out services and similar activities, except that this subsection is subject to Subsection 4.2.2(a)(7) above with respect to the operation of the boat repair shop;

(17) THREE AND SEVEN-TENTHS PERCENT (3.7%) of Gross Receipts commencing on the Effective Date through the fifteenth (15th) anniversary of the Effective Date and FIVE AND SEVEN-TENTHS PERCENT (5.7%) of Gross Receipts thereafter from any movie theater operation;

(18) Intentionally omitted;

(19) SIX PERCENT (6%) of Gross Receipts from the existing Marina Inn hotel room revenue commencing from the Effective Date through the date the same is permanently closed to the public. Thereafter, THREE PERCENT (3%) of Gross Receipts from the Affordable Hotel and Boutique Hotel room revenue, as applicable, commencing on the fourth (4th) anniversary of the Affordable Hotel Operation Date or Boutique Hotel Operation Date, as applicable, and continuing through the eighteenth (18th) anniversary of the Effective Date, and FOUR PERCENT (4%) of Gross Receipts thereafter from hotel room revenue from the applicable hotel; and

(20) 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.

(1) Effect of Sublessees Doing Business. Subject to Subsection 1.1.93(b)(14) 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.

(2) Allocation Between Office Space and Anchorage Slips. The rent or other Gross Receipts payable by a Sublessee described under Subsection 3.2.2(g) for the office space leased by such Sublessee, and the rent or other Gross Receipts payable by such Sublessee for the anchorage slips leased by such Sublessee, shall each be separately allocated between such office space and

anchorage slips consistent with relative fair market rental value such that there is no artificial manipulation of the rent or other Gross Receipts payable by such Sublessee 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 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) 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 or Sublessee, as applicable, 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 by Component, and with respect to the Hotel Component and Marina Component, such statement shall separately set forth the amount of Monthly Minimum Rent being paid for each sub-component thereof (i.e., the “boutique” and “affordable” hotel sub-components for the Hotel Component, and the Wet Marina and Dry Marina for the Marina Component) 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 each Component, (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 such Component during the preceding calendar month (including Gross Receipts generated by Sublessees), including such backup as County may reasonably require from time to time, and for the Hotel and Marina Components, 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 above generated from operations on such Component for such previous month, less the installment of Monthly Minimum Rent applicable to such Component 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 of 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:	Revenue Recovery
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 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 for purposes of performing the Redevelopment Work. 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 primarily 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) 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)(3) below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

(2) 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;

(3) 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)(3) 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.

(4) 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;

(5) 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;

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

(7) 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.

(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 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 4.3.6(a) 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 (collectively, the "**Redevelopment Work**") with respect to each Component as set forth for each 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**"). Lessee shall perform the Redevelopment Work for each 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, (f) the terms and conditions of the Assumed Contracts, and (g) 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 each Component, Lessee shall expend on the Redevelopment Work for such Component not less than the Required Cost Amount applicable to such 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 a Component is not the maximum amount that Lessee is required to expend for Applicable Redevelopment Costs on such Component, and (b) Lessee shall be required to perform the Redevelopment Work for such 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 Effective Date. As the Parties anticipate that a significant period of time will elapse between the Effective Date and the commencement of the Redevelopment Work on some or all of the Components, the Required Cost Amount for each Component will be increased as of the date that construction of the Redevelopment Work for such Component commences (each, a "**Required Cost Adjustment Date**") by the same percentage increase in the Consumer Price Index during the period from the 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 each Component, (a) commence the Redevelopment Work no later than the applicable Required Construction Commencement Date for such Component, (b) achieve each Interim Milestone by the date (the "**Interim Milestone Date**") set forth for the same in the Construction Schedule for such Component, and (c) achieve the CO Date for such Component no later than the applicable Required Construction Completion Date for such Component. Following Commencement of Construction of the Redevelopment Work for each 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 each Component (each, a "**Construction Schedule**") is included in the Approved Proposal Submittals. The Construction Schedule includes, with respect to each Component: (a) the Required Construction Commencement Date for such Component, (b) the anticipated CO Date for such Component, (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 such Component will be completed by the applicable anticipated CO Date for such Component. 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 each 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. If such Event of Default relates to the failure to complete the Redevelopment Work for a Component by the applicable Required Construction Completion Date and County decides not to exercise its right to terminate the Lease as a result of such Event of Default, County shall have the right, in addition to any other rights or remedies available to County under this Lease or Applicable Law following an Event of Default, to increase the Monthly Minimum Rent for such Component to the amount set forth on **Exhibit F** hereto for the period commencing upon the anticipated CO Date for such Component.

5.3.4 Lessee acknowledges that (a) certain private enterprises operating on property leased from County adjacent to the Property may require access to their properties via the Property at all times during the course of the Redevelopment Work, and (b) the Redevelopment Work pertaining to the Marina Improvements must be performed in phases in a manner reasonably acceptable to Chief Real Estate Officer. Lessee shall schedule the Redevelopment Work in such a way as to minimize interruption with such private business enterprises and in compliance with all requirements for notices and accommodation of existing slip tenants under their leases.

5.4 Plans and Specifications.

5.4.1 Schematics and Narrative. Within one hundred eighty (180) days following the Effective Date, Lessee shall, with respect to each Component, submit to Chief Real Estate Officer six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Improvements to be constructed by Lessee on each Component (collectively, "**Lessee's Deliverables**"). The Lessee's Deliverables shall (a) identify and illustrate all boundaries of the Property and of each Component, and all affected rights-of-way or other areas reserved to County or third parties which are located thereon, (b) clearly delineate the architectural theme or motif of the Improvements, (c) include references to the size of each Improvement in terms of height and interior square feet, and (d) be consistent, in all material respects, with the Approved Proposal Submittals previously approved by Chief Real Estate Officer, or otherwise include a detailed explanation of the reasons for any material deviations from the Approved Proposal Submittals. After receipt of the Lessee's Deliverables, Chief Real Estate Officer shall have sixty (60) days within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such sixty (60) 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 5.4.1 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S DELIVERABLES. YOUR FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF THEM."

Failure of Chief Real Estate Officer to approve or disapprove Lessee's Deliverables 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 of Lessee's Deliverables by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Lessee in writing Chief Real Estate Officer's objections to Lessee's Deliverables together with its proposed modifications that will be necessary to obtain Chief Real Estate Officer's approval. 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 applicable Component, Lessee shall, with respect to each Component, submit to Chief Real Estate Officer six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Redevelopment Work on such Component (collectively, the "**Preliminary Plans**"). The Preliminary Plans for each Component shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the Lessee's Deliverables for such Component 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 such Component, 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 receipt within which to approve or reasonably disapprove the Preliminary Plans submitted for each 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 a Component or any subsequent change to the Preliminary Plans for a 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 A COMPONENT OR ANY MATERIAL MODIFICATIONS TO THE PRELIMINARY PLANS FOR A 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 A COMPONENT ANY SUBSEQUENT CHANGE TO THE PRELIMINARY PLANS FOR A COMPONENT."

Failure of Chief Real Estate Officer to approve or disapprove such submitted Preliminary Plans for a Component or any such submitted change to the Preliminary Plans for a Component in writing within said additional twenty (20) day period shall be deemed approval of the same. 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 a 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 such 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 such Component. Chief Real Estate Officer shall have thirty (30) days after receipt of Lessee's Final Submittals for a 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 such 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.

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, Subsequent Renovation 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 each Component may be performed in phases and, accordingly, Lessee may commence with the Redevelopment Work on one Component upon satisfaction of all such conditions applicable to such Component, even if all conditions to the commencement of Redevelopment Work on the other Components have not yet been satisfied:

5.5.1 Permits and Other Approvals. Lessee shall have (a) provided the CREO Office with 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 structural engineers 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) and structural engineer(s) 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 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 construction costs set forth in the most recently updated Construction Budget for the applicable Improvement Project approved by County as set forth above:

(a) 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 construction costs 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) 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: (a) a completion guaranty, in form and substance 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 5.5.4 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 5.5.4 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 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 Property. With regard to the Redevelopment Work, Lessee acknowledges and agrees that, prior to commencing with the Redevelopment Work on any one Component, it shall be required to satisfy this condition with respect to such 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 each Component from time to time.

5.5.7 Environmental Requirements. Concurrently with, or prior to the submission of the Preliminary Plans for the Redevelopment Work and for any subsequent development, redevelopment and/or renovation plans that significantly change the project outlined in the Preliminary Plans, Lessee shall submit to the CREO Office a preliminary analysis, prepared at Lessee's expense, of the effect that each Component of the Redevelopment Work may have on the environment and an analysis of whether additional or new environmental review, above and beyond the existing Dana Point Harbor Revitalization Final Environmental Impact Report (FEIR) 591 (the "**Existing EIR**"), is required. The analysis shall include all information and documentation that the applicable Governmental Authority requires in order to determine whether further environmental review, including a subsequent or supplement to the Existing EIR, or an addendum, or new documentation including a project-level Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report will be necessary for the applicable work. At least sixty (60) days prior to the submission of any required further or new environmental documentation to the applicable Governmental Authority, Lessee shall submit to the CREO Office a draft of the environmental documentation for review and comment. Prior to Commencement of Construction, Lessee shall provide evidence that any required

environmental documentation has been certified, approved, or adopted by the applicable Governmental Authority.

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, the Subsequent Renovation, 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, any Subsequent Renovation, and Alterations on the 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 any Component, Lessee shall thereafter diligently pursue the completion of the Redevelopment Work for each Component 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 a Component by the applicable Interim Milestone Date, or completing the Redevelopment Work for a Component, 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 such Component, 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 5.18 below.

5.7.2 Unreasonable County Action.

(a) In the case of the Redevelopment Work and the Subsequent Renovation, the definition of Force Majeure shall also include delays in the commencement and completion of the Redevelopment Work or Subsequent Renovation (as applicable) 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 Property, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications for the Redevelopment Work or Subsequent Renovation (as applicable) 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 Subsequent Renovation (as applicable); 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 Subsequent Renovation (as applicable); 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 5.18 below.

5.7.3 Recovery Plans. If progress of the Redevelopment Work for a 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 such Component 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, the Subsequent Renovation 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 tenants under slip leases) 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 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 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 Property, including without limitation the Redevelopment Work, Subsequent Renovation 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, the Subsequent Renovation and any Alterations so that Chief Real Estate Officer may timely inspect the Property to assure proper safeguarding of any County-owned improvements existing on or around the 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 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 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 Property immediately and without notice to or accompaniment by Lessee.

5.8.7 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work, the Subsequent Renovations, 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 Conoflex or Mylar final as-built plans and specifications of the Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)) (the "**As-Built Plans**"), (b) a magnetic tape, disk or other storage device containing the As-Built Plans in a form usable by County, to County's satisfaction, on County's computer aided mapping and design equipment (CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk or CD ROM) ("**CAD Files**"), and (c) a copy of the final construction costs for the construction of such Improvements.

5.9 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the Redevelopment Work, Subsequent Renovation, 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 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 1.1.125 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, (b) required to be performed by Lessee in order to comply with Applicable Laws, or (c) an interior tenant improvement made by Lessee to an existing Improvement in connection with a retail Sublease on the Commercial Core Component, shall require the prior approval of County unless the same would otherwise constitute a Material Modification as set forth in Subsection 1.1.125 above. Prior to

commencing any Alteration involving an expenditure in excess of One Hundred Thousand Dollars ($100,000.00), 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 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 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 Property any notices which County may deem necessary for the protection of County, the 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 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 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 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 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 Property.

5.15 Subsequent Renovation of Marina and Commercial Core.

5.15.1 Schedule for Completion of Subsequent Renovation. In addition to the Redevelopment Work, Lessee shall be required to complete an additional renovation of the Improvements during the remaining Term of the Lease in accordance with the terms and provisions of this Section 5.15 (the "**Subsequent Renovation**"). The construction of the Subsequent Renovation shall be commenced by Lessee by such date as will reasonably permit the completion of the Subsequent Renovation by not later than December 31, 2045; provided,

however that Lessee shall not commence the Subsequent Renovation prior to January 1, 2042. Lessee shall substantially complete the Subsequent Renovation by not later December 31, 2045. The Subsequent Renovation shall consist of such renovation and construction work as necessary to revitalize and upgrade the exterior, the common areas (both exterior and interior) and the landscaping of the Improvements for each Component to a condition and appearance at least equal to that of the Improvements as of the CO Date for such Component. The parties agree that the Subsequent Renovation shall not be required to include renovation or replacement of the Marina Improvements if the useful life of the Wet Marina Improvements installed in connection with the Redevelopment Work extends beyond the Term, as reasonably determined by the County.

5.15.2 Subsequent Renovation Plan. Prior to the commencement of the Subsequent Renovation, Lessee shall submit to the CREO Office a renovation plan for the Subsequent Renovation (the "**Subsequent Renovation Plan**"), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably requested by Chief Real Estate Officer, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Chief Real Estate Officer reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.15 and Section 5.4 above, and the estimated time required to obtain all necessary governmental approvals and permits, will reasonably be expected to allow Lessee to complete the Subsequent Renovation by the date required under this Section 5.15. Chief Real Estate Officer shall have sixty (60) days after receipt of the Subsequent Renovation Plan within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Chief Real Estate Officer in Chief Real Estate Officer's reasonable judgment. If Chief Real Estate Officer fails to approve or disapprove the Subsequent Renovation Plan within such sixty (60) 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 5.15.2 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE LESSEE'S SUBSEQUENT RENOVATION PLAN. 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 SUBSEQUENT RENOVATION PLAN."

Failure of Chief Real Estate Officer to approve or disapprove the Subsequent Renovation Plan in writing within said additional twenty (20) day period shall be deemed approval of the same. If Chief Real Estate Officer disapproves a proposed Subsequent Renovation Plan, he or she shall do so by written notice to Lessee stating the reasons for such disapproval. Upon Chief Real Estate Officer's approval or deemed approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. The plans,

specifications, budgets and schedule for the Subsequent Renovation shall all be subject to the prior written approval of Chief Real Estate Officer and the procedure for obtaining such approval shall be the same as set forth above Section 5.4 with respect to Redevelopment Work.

5.15.3 Subsequent Renovation Fund. With respect to each of the Marina and Commercial Core Components, commencing with the first January 15 that is ten (10) years after the earlier of the CO Date for such Component or the Required Construction Completion Date for such Component, and continuing until the completion of the Subsequent Renovation, Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Subsection 5.15.3 for the purpose of funding the cost of the Subsequent Renovation; provided, however, that Lessee's obligation to perform the Subsequent Renovation shall not be limited to the funds available in the Subsequent Renovation Fund. The Subsequent Renovation Fund shall be held in an account established with a reputable financial institution reasonably acceptable to Chief Real Estate Officer (which shall include Lessee's Encumbrance Holder) into which deposits shall be made by Lessee pursuant to this Subsection 5.15.3. Commencing on the first January 15 set forth hereinabove, and continuing on the 15th of each month thereafter during the period which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovation Fund in the following amounts:

(a) Commercial Core Sub-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Commercial Core for the immediately preceding month.

(b) Marina Sub-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Marina for the immediately preceding month, unless no reserve is required for the Wet Marina Improvements pursuant to Subsection 5.15.1 above, in which case, such percentage shall be derived from the Dry Storage Improvements for the immediately preceding month.

All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Subsection 5.15.3. Upon thirty (30) days' prior written notice from Chief Real Estate Officer to Lessee no more often than quarterly, Lessee shall deliver to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer of the account in which the Subsequent Renovation Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Subsequent Renovation Fund. In lieu of monthly deposits to the Subsequent Renovation Fund, Lessee and Chief Real Estate Officer may mutually agree upon substitute arrangements satisfactory to Chief Real Estate Officer, in its sole discretion, for the establishment of an adequate security source for the performance of the Subsequent Renovation, such as a bonding mechanism or a letter of credit.

5.15.4 Disbursements from Renovation Fund. Disbursements shall be made from the Subsequent Renovation Fund only for costs for the design, permitting, entitlements and construction of the Subsequent Renovation which have been reasonably approved by Chief Real Estate Officer. Notwithstanding the foregoing, no more than ten percent (10%) of the total cost to complete the Subsequent Renovation shall be applied towards soft construction costs. Prior

to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to the CREO Office applicable invoices, mechanic lien waivers, evidence of payment and other back-up materials reasonably acceptable to Chief Real Estate Officer concerning the use of amounts from the Subsequent Renovation Fund. Chief Real Estate Officer shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Chief Real Estate Officer has approved Lessee's Subsequent Renovation Plan and Lessee has furnished to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer that Lessee has sufficient financial resources (taking into consideration the Subsequent Renovation Fund) to pay for all costs of such Subsequent Renovation. If this Lease is terminated for any reason prior to the completion of the Subsequent Renovation, then any funds remaining in the Subsequent Renovation Fund as of the date of termination shall be released to County in addition to any other rights or remedies that County may have with respect to such early termination of the Lease. Only after the Subsequent Renovation of all the Improvements has been completed in accordance with this Section 5.15 and paid for in full by Lessee shall the balance of any funds then remaining in the Subsequent Renovation Fund be released to Lessee.

5.15.5 Security Interest. Lessee hereby grants to County a lien and security interest in and to the Subsequent Renovation Fund to secure Lessee's payment of the Subsequent Renovation work pursuant to this Lease. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Commercial Code of California so that County shall have and may enforce a security interest in the Subsequent Renovation Fund. Lessee agrees to execute as debtor and deliver such financing statement or statements and any further documents as County may now or hereafter reasonably request to protect such security interest pursuant to such code. County may also at any time file a memorandum of this Lease as a financing statement. County, as secured party, shall be entitled to all rights and remedies afforded as secured party under such code, which rights and remedies shall be in addition to County's liens and rights provided by law or by the other terms and provisions of this Lease.

5.16 Capital Improvement Fund for Marina and Commercial Core.

5.16.1 With respect to each of the Marina and Commercial Core Components, commencing with the first January 15 that is seven (7) years after the earlier of the CO Date for such Component or the Required Construction Completion Date for such Component, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.16 for the cost of Permitted Capital Expenditures for the Property. Deposits to the Capital Improvement Fund shall be segregated into the following two (2) sub-funds: (a) a sub-fund for the Commercial Core Improvements, and (b) a sub-fund for the Marina Improvements. All Capital Improvement Fund deposits attributable to Gross Receipts derived from a particular Component shall be deposited into the sub-fund for such Component, and amounts shall be dispersed from such sub-fund only for Permitted Capital Expenditures for such Component. All interest and earnings on each sub-fund of the Capital Improvement Fund shall be added to such sub-fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.16. On or before the fifteenth (15th) day of each month during the Term and continuing until the time set forth in Subsection 5.16.5 below, Lessee shall make a monthly deposit to each sub-fund of the Capital Improvement Fund in the following amounts:

(a) Commercial Core Cap-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Commercial Core for the immediately preceding month until the completion of the Subsequent Renovation, and one percent (1%) of Gross Receipts derived from the Commercial Core for the immediately preceding month thereafter.

(b) Marina Improvements Cap-Fund: one-half of one percent (0.5%) of Gross Receipts derived from the Marina Improvements for the immediately preceding month.

5.16.2 The Parties acknowledge and agree that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Property, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**"). Notwithstanding any contrary provision of this Lease, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, the Capital Improvement Fund shall not be used for building additions, new project amenities consisting of equipment (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements or their major systems in a good, operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Furthermore, Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on **Exhibit D** attached to this Lease are examples of categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund, as well as categories of expenditures that do not qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

5.16.3 The Capital Improvement Fund shall be held in a separate account established with a reputable financial institution (including Lessee's Encumbrance Holder) reasonably acceptable to Chief Real Estate Officer into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.16. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder for capital improvements, provided that such Encumbrance Holder acknowledges that such amounts shall be administered in accordance with, and shall be subject to, the terms and conditions of this Section 5.16. On or before January 15 and July 15 of each year (and at any other time within thirty (30) days prior written notice from Chief Real Estate Officer to Lessee) Lessee shall deliver to the CREO Office evidence reasonably satisfactory to Chief Real Estate Officer of the account in which the Capital Improvement Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Capital Improvement Fund.

5.16.4 No disbursements shall be made from the Capital Improvement Fund to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Chief Real Estate Officer and that satisfy the requirements of this Section 5.16. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). For the purpose of obtaining Chief Real Estate Officer's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to the CREO Office on an annual calendar year basis a capital expenditure plan for the upcoming year that details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Chief Real Estate Officer's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Chief Real Estate Officer as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Chief Real Estate Officer (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to the CREO Office for Chief Real Estate Officer's approval revisions to the then-current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Chief Real Estate Officer applicable invoices, evidence of payment, mechanic lien waivers, and other back-up materials reasonably acceptable to Chief Real Estate Officer concerning the use of amounts from the Capital Improvement Fund.

5.16.5 No Capital Improvement Fund deposits shall be required to be made by Lessee during the final year of the Term of the Lease.

5.16.6 If this Lease is terminated for any reason prior to the end of the Term, then any funds remaining in the Capital Improvement Fund as of the date of termination shall be released to County in addition to any other rights or remedies that County may have with respect to such early termination of the Lease. Furthermore, the balance of any funds remaining in the Capital Improvement Fund upon the expiration of the Term of this Lease shall be delivered to County.

5.16.7 Lessee hereby grants to County a lien and security interest in and to the Capital Improvement Fund to secure Lessee's payment of the Permitted Capital Expenditures. Such lien and security interest shall be in addition to any landlord's lien provided by law. This Lease shall constitute a security agreement under the Commercial Code of California so that County shall have and may enforce a security interest in the Capital Improvement Fund. Lessee agrees to execute as debtor and deliver such financing statement or statements and any further documents as County may now or hereafter reasonably request to protect such security interest pursuant to such code. County may also at any time file a memorandum of this Lease as a financing statement. County, as secured party, shall be entitled to all rights and remedies afforded as secured party under such code, which rights and remedies shall be in addition to County's liens and rights provided by law or by the other terms and provisions of this Lease.

5.17 Capital Reserve Fund for Hotel Component.

5.17.1 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 the first Operating Year, two percent (2%) of Gross Receipts derived from the Hotel Component for said year; (ii) for the second Operating Year, three percent (3%) of the of Gross Receipts derived from the Hotel Component for said year; and (iii) for the third and each subsequent Operating Year through the balance of the Term, four and one-half percent (4.5%) of the of Gross Receipts derived from the Hotel Component for each said 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.

5.17.2 Within thirty (30) days after the close of each Operating Year during the Term, Lessee shall submit to Lessor (a) evidence 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.

5.17.3 The Hotel Capital Reserve Fund shall not be pledged or encumbered, except to a permitted Encumbrance Holder or to an industry recognized hotel chain of comparable quality to the national or regional hotel chains and management companies listed on **Exhibit J**, and shall be used only for capital expenditures for additions, replacements, renovations, or significant upgrades of or to the Improvements on the Hotel Component, including fixtures and equipment, that have a useful life of not less than five (5) years which benefit the Hotel Component and which are 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.

5.17.4 Upon the expiration or earlier termination of this Lease, all funds in the Hotel Capital Reserve Fund shall be allocated first 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.

5.18 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 5.18, 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 5.18. 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 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 5.18, 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 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 Property, any Improvements on

the 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 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 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 Property is rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Property shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction, Lessee's business on the 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 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 Property is taken by Condemnation and this Lease remains in full force and effect as to the portion of the 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 Property not so taken to the fair market value of the entire 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 Subsection 4.2.1(b) above, 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 Property which remains after the Partial Taking bears to the fair market value of the entire 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 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 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 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 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 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 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 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 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 Capital Improvement Fund, the Subsequent Renovation Fund and the Security Deposit.

6.7.4 Disputes. Any dispute under this Article 6 concerning the fair market value of the 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 Three Hundred Thousand Dollars ($300,000.00), until such time as the Redevelopment Work for the Property has been completed and the final CO Date for the same has occurred (the "**Final CO Date**"). Following the Final

CO Date, such sum shall be reduced to One Hundred Twenty-Five Thousand Dollars ($125,000.00), and as long as no Event of Default by Lessee then exists under the Lease, 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.

8.1 Indemnification. Except to the extent caused by the willful misconduct or active or sole gross negligence of any County Indemnified Party, 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 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 Property or the Improvements by Lessee or its agents, officers, employees, licensees, contractors, concessionaires, permittees or Sublessees, including any occurrence in or on the 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, or (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. 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 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 Property in such legal action unless County undertakes to represent such County Indemnified Party or 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 Property and Lessee by a court of competent jurisdiction because of the concurrent liability 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 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 Property or the Improvements caused by or resulting from any peril which may affect the Property or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Property or the Improvements, whether such damage or injury results from conditions arising upon the 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 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

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.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) 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:	$20,000,000
Personal and Advertising Injury:	$10,000,000
Each Occurrence:	$10,000,000

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.

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 One Million Dollars ($1,000,000) of Primary Coverage and One Million Dollars ($1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." 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 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 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 Property and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the 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 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 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, testing, preservation of property, excavation costs, landscaping, shrubs and plants 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," "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, etc.). This coverage shall also provide an extended two-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) Asbestos Liability or Contractors Pollution Liability. Such insurance shall be required if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Redevelopment Work or Alterations.

(f) Marine-Specific Coverages. For any construction projects on the water or aboard any vessel on the water, Lessee agrees to maintain, or cause its contractors and subcontractors to maintain, in addition to the insurance described in this Subsection 9.1.5 above, the following types and amounts of insurance (County reserves the right to determine the coverage and minimum limits required on a project by project basis):

Coverage	Minimum Limit(s)
Protection & Indemnity (with Jones Act)	$5,000,000 per occurrence $10,000,000 aggregate
Marine General Liability	$10,000,000 per occurrence $20,000,000 aggregate
Longshore and Harbor Workers' Compensation	Statutory
Hull and Machinery	Actual Cash Value
Contractors' Pollution Liability (including coverage for NODS)	$5,000,000 per occurrence $10,000,000 aggregate

The Protection & Indemnity coverage shall apply to all crewmembers, and shall be written on Form SP23 or equivalent and be based on either a primary or excess layer. The Hull and Machinery coverage shall insure the replacement cost of the vessels and shall be written on a form using the American Institute Hull Clauses or equivalent. The Contractors' Pollution Liability coverage shall be written on a form underwritten by WQIS, EPG, Safe Harbor or equivalent.

9.1.6 If the use of the Property or Improvements involves any manufacture, distribution 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.

9.2 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, the proceeds of property and builder's risk insurance 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 if the insurance proceeds received with respect to a loss are less than $500,000 (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.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, 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, shall be filed with the CREO Office no later than the Effective Date, provided that the 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 $25,000 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) in any property insurance policy, a waiver of 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) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, 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 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 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 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 a Component, Lessee shall (i) not be obligated to perform any capital improvements for such Component 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, and/or (ii) be entitled to close-off portions of the Marina and Commercial Core Components if such portions, in their then-existing condition, create a danger to the health or safety of any persons occupying, using, working at, or patronizing such Component. Furthermore, notwithstanding the foregoing, with respect to the Hotel Component, Lessee shall make interim capital improvements to the existing Hotel and expend not less than Five Hundred Thousand and no/100 Dollars ($500,000.00) thereon within twenty-four (24) months of the Effective Date and shall provide documentation to County (in a form that can be audited by County) supporting the expenditure of such third-party costs and expenses. The Hotel Component and Commercial Core Component shall be maintained commencing upon completion of the Redevelopment Work at a level commensurate with

institutional grade hotel and retail developments in the Southern California area and the Marina Component shall be maintained at a level commensurate with first-class marinas 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 Property and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the 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 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 of 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) boat pump-out replacement, services and similar activities; (b) seawall (provided, however, that Lessee's replacement obligation for the seawall shall be limited to replacing specific segments thereof an as-needed basis 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); (c) buoys & navigational aids within the harbor; (d) derelict vessel abatement anywhere within the Harbor; (e) fishing pier, (f) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Property; (g) shelters, restrooms and park-scape within the parks located within the Property designated on **Exhibit A-2**; (h) the surface and landscaping on the Bridge Structure; (i) all trees and parking lots within the Property boundaries; and (j) the dredging of that portion of the harbor designated on **Exhibit A-3**, portions of which lie outside the Property; provided this responsibility for dredging shall in no way affect or supplant any responsibility that the Army Corps of Engineers may have for dredging, to the extent such responsibility exists. To the extent any such items to be maintained are located outside of the Property boundaries, Lessee shall coordinate the timing and performance of such maintenance work with the County through the County Public Property Permit system.

Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Property and the building footprints on the Property at a level commensurate with the standards set forth above with respect to each Component. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the 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 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 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 Marina Maintenance. During the Term, Lessee shall complete float repair and replacement for the docks on an as-needed basis. Following the construction of the Marina Improvements pursuant to the Redevelopment Work, any requirement for subsequent repair of such Marina Improvements due to a deficiency notice issued by the CREO Office shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts.

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 any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Lessee's facilities.

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

(3) Prevent the light fixtures of the Property from emitting light that could negatively affect neighboring homeowners, or the operation of cars, boats, or airplanes in the area.

(4) Prevent all pollutants from Lessee's operations on the Property from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. 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 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 Property and/or review Lessee records at any time to assure that activities conducted on the Property comply with the requirements of this Subsection.

(b) Water Quality and MS4. During the remaining Term of the Lease, Lessee shall comply with any water quality management requirements hereafter enacted by the County, the Orange County Flood Control District and cities within the County, as co-permittees (hereinafter collectively referred to as "**County Parties**") related to the permits addressed in this subsection below, in order to comply with permitting or similar obligations imposed on the County Parties, provided such requirements are imposed on a non-discriminatory basis. Such requirements shall include, without limitation, the following:

(1) 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 assure that pollutants generated from the Property do not enter the MS4, and to ensure that pollutants do not directly impact Receiving Waters.

(2) The San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County Parties. The NPSES permits regulate the discharge of pollutants from areas within the County, including the 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 and Receiving Waters. For the avoidance of doubt, the County Parties shall retain the right to enter upon the Property to perform such actions as are necessary or desirable 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.

(3) To assure 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 that contains Best Management Practices ("**BMPs**") that parties using properties within the County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the County's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures 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.

(4) 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 the Chief Real Estate Officer shall provide Lessee with any such

modified BMP Fact Sheets. Lessee, its agents, contractors, representatives and employees and all persons authorized by Lessee to conduct activities on the Property shall, throughout the Term of the Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

(5) 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.

(6) Chief Real Estate Officer may enter the Property and/or review Lessee's records at any reasonable time during normal business hours to assure that activities conducted on the 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.

(7) While Lessee is permitted to use the existing sewer and MS4 within the Property and the harbor for outflows 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.

(8) 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 empties into the harbor, to the extent that such pollutants do not emanate from or are generated and enter the drainage channel as a result of Lessee's or any Lessee's Parties' use or activities on the Premises. Lessee shall not be responsible for pollutants entering into the drainage channel from boat products (including paint and its components such as lead, copper, and zinc) emanating from boats in the harbor, except those emanating from Lessee's boat slip Sublessees. Lessee shall use all reasonable and diligent efforts to cause such boat slip Sublessees, and transient boat owners to the extent feasible, to comply with all applicable BMPs and environmental laws and regulations, and requirements of this Lease. 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 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 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 Property where all or substantially all of the Improvements on the 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 Property; secure the Property against trespassers; and, at County's election, remove all remaining Improvements on the 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 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 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 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 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 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 Property. Any entry by County onto the Property pursuant to this Section 10.8, and any entry onto the 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 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 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 Property caused by the activities of County and/or it contractors on the Property pursuant to this Section 10.8 or Section 10.7. If repair of the Breakwater requires access to the 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 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 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 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 Effective Date, and/or as might be required as a part of the Redevelopment Work or any Subsequent Renovation. 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 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 each Component of the Property ("**Property Manager**"), who shall be responsible for the day to day full-time management, operation, maintenance, cleanliness, and general order of such Component. Each Property Manager shall have the requisite skill, experience and expertise for the type of operation being conducted on the applicable Component, and, with respect to (a) the Marina Component: (i) the Property Manager shall be an experienced, professional marina management firm, and (ii) the executive management of the such Property Manager shall have a minimum of ten (10) years' experience in the successful management and operation of marinas comparable quality to the Marina to be operated and maintained on the Marina Component, (b) the Commercial Core Component: (i) the Property Manager shall be an experienced and qualified manager of first class or institutional retail projects, and (ii) the executive management of the such Property Manager shall have a minimum of ten (10) years' experience in the successful management and operation of first class or institutional retail projects, and (c) the Hotel Component: (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 Component, 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 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 applicable Component of the 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 each Component, 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/or hotel franchisor) 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 manager to correct such behavior or shall replace such Property Manager or hotel franchisor with a new management firm or hotel franchisor with personnel experienced in managing institutional quality projects and 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 management firm 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 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 Slip Rent Roll & Slip Compliance Obligations. On or before July 1 of each year during the Term, Lessee shall deliver to Chief Real Estate Officer a rent roll report which contains the following information with respect to every vessel (including floating homes) moored in the water at the Property to Lessee's knowledge: (a) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (b) the state registration or federal document number, and name (if any), of the vessel; (c) whether the vessel is a power vessel, sailing vessel or floating home; and (d) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. Lessee shall require in its slip rental agreements that, as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels be required to be seaworthy and all of Lessee's slip leases shall provide that any newly tenanted vessel which is not seaworthy shall be ineligible for continued slip tenancy on the Property and shall be subject to removal from the Property by Lessee in accordance with applicable law for non-compliance with the requirements of the slip lease. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Applicable Law. In the event Lessee is advised that any vessel has been determined to not be seaworthy by the

Harbor Patrol, Lessee shall use commercially reasonable and diligent efforts to enforce the foregoing provisions in its slip leases.

11.4 Transient Docks. Lessee shall make available not less than one thousand four hundred ninety-five (1,495) lineal feet of slips to be reserved for transient boat docking purposes at market rates established by Lessee in the areas designated in the Approved Proposal Submittals. Lessee shall be responsible for ensuring that the transient slips are in compliance with all Applicable Laws for the use described in this Section 11.4.

11.5 Slip Priority; Waitlists. **[PARTIES TO ESTABLISH PROCEDURE FOR TRANSITION OF EXISTING SLIP LICENSEES AND WAITLISTED INDIVIDUALS DURING OPTION PERIOD]** During the Option Period, County and Lessee have agreed upon a procedure for allocating slips within the harbor to parties that are interested in leasing the same following completion of the Redevelopment Work for the Wet Marina, including without limitation, current tenants and/or licensees under existing Slip Leases and those individuals or entities identified on existing waitlists that County has provided to Lessee. The prioritization of offers made for occupancy of future slip space are based, in part, on an acknowledgment of the order and longevity of the foregoing existing agreements and waitlists. Following the completion of the Redevelopment Work for the Wet Marina, Lessee agrees to implement such procedure and shall not make any material modifications to such procedure without the prior reasonable approval of the Chief Real Estate Officer.

11.6 Right to Work and Minimum Wage Laws.

11.6.1 In accordance with the United States Immigration Reform and Control Act of 1986, Lessee shall require its employees that directly or indirectly service the 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 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.

11.6.2 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 Property, in any manner whatsoever. Lessee shall require and verify that all its contractors or other persons servicing the Property on behalf of the Lessee also pay their employees no less than the greater of the Federal or California Minimum Wage.

11.6.3 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 Property or terms and conditions of this Lease.

11.6.4 Notwithstanding the minimum wage requirements provided for in this Section 11.6, 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 11.7 below.

11.7 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.

11.8 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.

11.9 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 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. In addition to the foregoing, with respect to the Slip Leases specifically, Lessee shall be required to provide advance written notice to County and all tenants and/or licensees under existing Slip Leases of any raises in the slip rental rates, which notice shall include Lessee's rationale for such raise as well as its methodology for determining the same.

11.10 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 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 Component, Lessee shall be permitted to comply with the payment card standards imposed by a franchisor or operator under a management agreement under the "flag" of a national or regional hotel chain utilizes, provided such standards are substantially similar to the PCI/DSS and PA/DSS standards. Lessee agrees to immediately notify County in the event Lessee should ever become non-compliant 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 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 with respect to the Hotel Component as contemplated above complies with the PCI/DSS and/or PA/DSS standards and that Lessee complies with the same.

11.11 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 Property.

11.12 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 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 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.

11.13 Harbor Patrol Office and Orange County Dana Point Harbor Offices. The parties acknowledge and agree that buildings depicted on **Exhibit A-2** as the Harbor Patrol Office and the Orange County Dana Point Harbor Office (collectively, the "**Excluded Harbor Offices**") are not a part of the Property. County, at its sole cost and expense, shall maintain or cause to be maintained the Harbor Patrol Office and the Orange County Dana Point Harbor Office in a safe, clean, wholesome and sanitary condition, in compliance with all Applicable Laws, and, if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board, in compliance with the Minimum Standards. In the event that County discontinues its use of the Excluded Harbor Offices, or either of them (as applicable, the "**Offered Property**"), and desires to lease the same to a third party, then prior to entering into negotiations with any third party tenants, County shall provide Lessee with written notice of its intention to lease the Offered Property (the "**First Offer Notice**"). Lessee shall thereafter have a right of first offer (the "**Right of First Offer**") with respect to leasing the Offered Property. If Lessee wishes to exercise the Right of First Offer, then Lessee shall deliver written notice to County of Lessee's intention to exercise its Right of First Offer with respect to the entirety of the Offered Property within thirty (30) days after County's delivery of the First Offer Notice to Lessee. If Lessee does not exercise the Right of First Offer within said thirty (30) day period, or if Lessee timely exercises the Right of First Offer but County and Lessee are unable for a period of sixty (60) days after Lessee has provided written notice of its election to exercise the Right of First Offer to reach agreement on the material terms of Lessee's lease of such Offered Property to both parties' satisfaction, in each party's sole and absolute discretion, then Lessee's Right of First Offer with respect to the Offered Property shall terminate and County shall be free to lease such Offered Property to any third party in accordance with County's policies and procedures. Notwithstanding the foregoing, Lessee shall have no Right of First Offer and County shall have no obligation to deliver a First Offer Notice (a) if, as of the date County would otherwise deliver such First Offer Notice, an Event of Default exists under this Lease, and/or (b) during the last five (5) years of the Term.

11.14 Sailing and Event Center. The parties acknowledge and agree that the sailing and event center and associated docks and parking as depicted on **Exhibit A-2** (collectively, the "**Sailing and Event Center**") are not currently a part of the Property. Notwithstanding the foregoing, the parties may amend this Lease to incorporate the Sailing and Event Center as part of the Property upon such terms and conditions as the parties may mutually agree in their sole and absolute discretion; provided that such terms and conditions must include, among other things, that the underlying purpose and operations of the Sailing and Event Center will be preserved by Lessee.

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 Property or the Improvements, or a right to use the 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 one or more Components 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 Hotel Component, no hotel franchise or management agreement, room reservation or event area reservation shall constitute a "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, Approved Retail Sublease, Approved Slip Lease or Approved Storage Lease, 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 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 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), there are no substantive revisions to any of the Required Retail Provisions described on **Exhibit M** attached hereto

[DPHP TO PROVIDE FORM FOR COUNTY'S REVIEW PRIOR TO EXPIRATION OF OPTION PERIOD; PARTIES TO AGREE UPON DEFINITION FOR "REQUIRED RETAIL PROVISIONS" DURING OPTION PERIOD], 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**"), (b) any Sublease or license of an individual dry stack storage space in the ordinary course (but not the master lease of multiple units) to a person or persons, as long as such Sublease or license agreement is in the form of the standard dry stack storage lease hereafter submitted to and approved in writing by County **[DPHP TO PROVIDE FORM FOR COUNTY'S REVIEW AND APPROVAL PRIOR TO EXPIRATION OF OPTION PERIOD]** (each, an "**Approved Storage Lease**"), or (c) any Sublease or license of an individual anchorage slip in the ordinary course (but not the master lease of more than five (5) slips) to a person or persons (each, a "**Slip Lease**"), as long as such Sublease or license agreement is in the form of the standard anchorage slip hereafter submitted to and approved in writing by County **[DPHP TO PROVIDE FORM FOR COUNTY'S REVIEW AND APPROVAL PRIOR TO EXPIRATION OF OPTION PERIOD]** (each, an "**Approved Slip Lease**"). The terms and provisions of Sections 12.2 and 12.3 of this Lease shall not be applicable to Approved Storage Leases or Approved Slips Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Storage Leases and Approved Slip Leases and a copy of all of such Approved Storage Leases and Approved Slip Leases.

12.1.4 Non-Disturbance Agreements. With respect to 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 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 Property, or license the use of all or substantially all of the 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 CO Date for each Component, County shall have the right to withhold its consent to any assignment or Major Sublease for such Component in County's sole and absolute discretion. After the CO Date for a Component, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease for such Component. If County withholds its consent to an assignment or Major Sublease after the CO Date for the applicable Component, 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 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 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 Property) and for any contemplated improvement thereof, demonstrating such proposed

assignee's financial capability to so operate the 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 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 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 Property), including pro forma financial projections for the 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 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 Property and any proposed alterations or improvements to the 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 Property, contracts in excess of $25,000 affecting the Property, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the 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 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 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 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 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 Property, Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the 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 Property remaining with Lessee to the fair market value of the entire 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 Subsection 4.2.1(b) above, 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 Property which remains after such acquisition bears to the fair market value of the entire 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 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)(2) 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 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.

(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.

(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: (i) any two of Burnham-Ward Properties, LLC, Bellwether Financial Group, Inc. or Olson Real Estate Group, Inc. remain members of Lessee and hold collectively not less than sixty-six percent (66%) of the membership interests of Lessee,

and (ii) no transfer of the Beneficial Interest of either of such two remaining entities shall have occurred since the Effective Date, then Lessee may consummate one or more Financing Event(s) without with 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 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 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 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 Property shall not exceed seventy-five percent (75%) of the budgeted Improvement Costs across all Components collectively, 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 Property shall not exceed seventy-five percent (75%) of the fair market value of Lessee's leasehold interest in the Property across all Components, collectively, or for any particular Component, individually, 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 Property and Improvements to be developed on the 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 of the fair market value of Lessee's leasehold interest in the 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 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 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 Subsequent Renovation Fund, Capital Improvement Fund and/or the Hotel Capital Reserve Fund, and any condemnation awards and/or insurance proceeds relating to the Property 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 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 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.

13.3 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 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 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 any 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 or Section 5.15 above (other than any obligations to make deposits into the Subsequent Renovation Fund) 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.

13.4 No Subordination. County's rights in the 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 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 in its sole discretion 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 in its sole discretion. 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, for the Hotel Component, each approved hotel franchisor and Property Manager, shall have the right, at any time during the term of its Encumbrance, Major Sublease, property 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 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, for the Hotel Component, 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 for the Hotel Component). 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 the Hotel Component, 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, for the Hotel Component, 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 for the Hotel Component). 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, for the Hotel Component, 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 or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee 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 Encumbrance Holder or Major Sublessee 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 Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee or, for the Hotel Component, 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 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.

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 Property first arising or attaching to the 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 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 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 Subsequent Renovation Fund, the Capital Improvement Fund and/or the Hotel Capital Reserve Fund (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 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 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 Property, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

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 Subsequent Renovation Fund, the Capital Improvement Fund and/or the Hotel Capital Reserve Fund), 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 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 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.

14.1.5 Dry Stack Ground Lease. The occurrence of an "Event of Default" under that certain Master Ground Lease Agreement entered into by and between County and Dana Point Harbor Partners Drystack, LLC, dated as of even date herewith.

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 Property and in all Improvements shall terminate. Promptly after such termination, Lessee shall surrender and vacate the Property and all Improvements in broom-clean condition, and County may re-enter and take possession of the 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 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 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 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 Property, expenses of reletting, including necessary repair, renovation and alteration of the 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, Percentage Shares, 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), 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 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 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 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 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, Percentage Share and other sums due under this Lease, Lessee and all Sublessees 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 Property separate and apart from those in connection with Lessee's (or a 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 either: (a) the accrual method of accounting, or (b) a modified method of accounting, modified in that (i) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, (ii) Gross Receipts are reported monthly on a cash basis with full reconciliation to accrual treatment on the annual statement of Gross Receipts, and (iii) depreciation is calculated on a tax basis rather than a GAAP basis. 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, the Property and each Component. 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 Property, or other cash or credit sales of goods or services are conducted, 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 (including licensees, permittees, concessionaires and any other occupants of any portion of the Property) 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 Subsequent Renovation Fund, the Capital Improvement Fund and the Hotel Capital Reserve Fund, 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 1.1.93(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 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 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 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) original records and books of account at the 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) 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 Property, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Property.

15.9 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees and others conducting business operations on or from the Property (and shall include language in all Subleases requiring each 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 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 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 its Sublessees (including licensees or concessionaires) fail 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 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 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 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 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 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 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 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 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 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 Property in the case of an Event of Default, or in case of abandonment or vacation of the Property by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Property and remove any and all persons and property whatsoever situated upon the 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 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 Hall of Administration 333 W. Santa Ana Blvd., 3rd Floor Santa Ana, California 92701 Attn: Chief Real Estate Officer Fax: (714) 834-6166
With a Copy to:	Office of County Counsel Hall of Administration 333 W. Santa Ana Blvd., 4th 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:	Burnham-Ward Properties, LLC 1100 Newport Center Drive, Suite 200 Newport Beach, California 92660 Attn: Scott Burnham and Bryon Ward Fax: (949) 760-0430
and to:	Bellwether Financial Group, Inc. 450 Newport Center Drive, Suite 590 Newport Beach, California 92660 Attn: Joe Ueberroth Fax: (949) 723-7786
and to:	Olson Real Estate Group, Inc. c/o RD Olson Development 520 Newport Center Drive, Suite 600 Newport Beach, California 92660 Attn: Dustin Schmidt Fax: (949) 271-1080

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 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 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.

[SIGNATURES ON FOLLOWING PAGE]

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

DANA POINT HARBOR PARTNERS, LLC,
a California limited liability company

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

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

By:_____
Chief Real Estate Officer

RECOMMENDED FOR APPROVAL:

CEO/Corporate Real Estate

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____
Senior Deputy

EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

[To be finalized during Option Period and added prior to execution of Lease]

EXHIBIT A-2

DEPICTION OF PROPERTY

[To be finalized during Option Period and added prior to execution of Lease]

DESIGNED AND PRODUCED BY:
OCCR - OC Parks GIS

DATA SOURCE:
- Geomatics Land Information Systems Division - 2017 Eagle Aerial

The County of Orange and OCCR/OC Parks/Survey/GIS/LIS make no representations or warranties regarding the registration or accuracy of the data from which this map was derived. Neither the County nor OCCR/ OC Park/Survey/GIS/LIS shall be liable under any circumstances for any direct, indirect, special, incidental or consequential damages with respect to any claim by any user or any third party on account of or arising from the use of this map.

DATE: June 26, 2018

0 125 250 500 Feet

- A Break Water - County
- B Ocean Institute - County
- C Baby Beach - County
- D OC Sailing & Events Center - County
- E Sea Wall - Master Developer
- F Bridge
- G Navigation Channel - Master Developer
- H Harbor Patrol - County
- I Fishing Pier - Master Developer

Master Developer - Sea Wall
Approx. 17,503.88 Linear Feet

Master Developer

County of Orange

Dana Point Harbor

Exhibit A-2
Depiction of Property

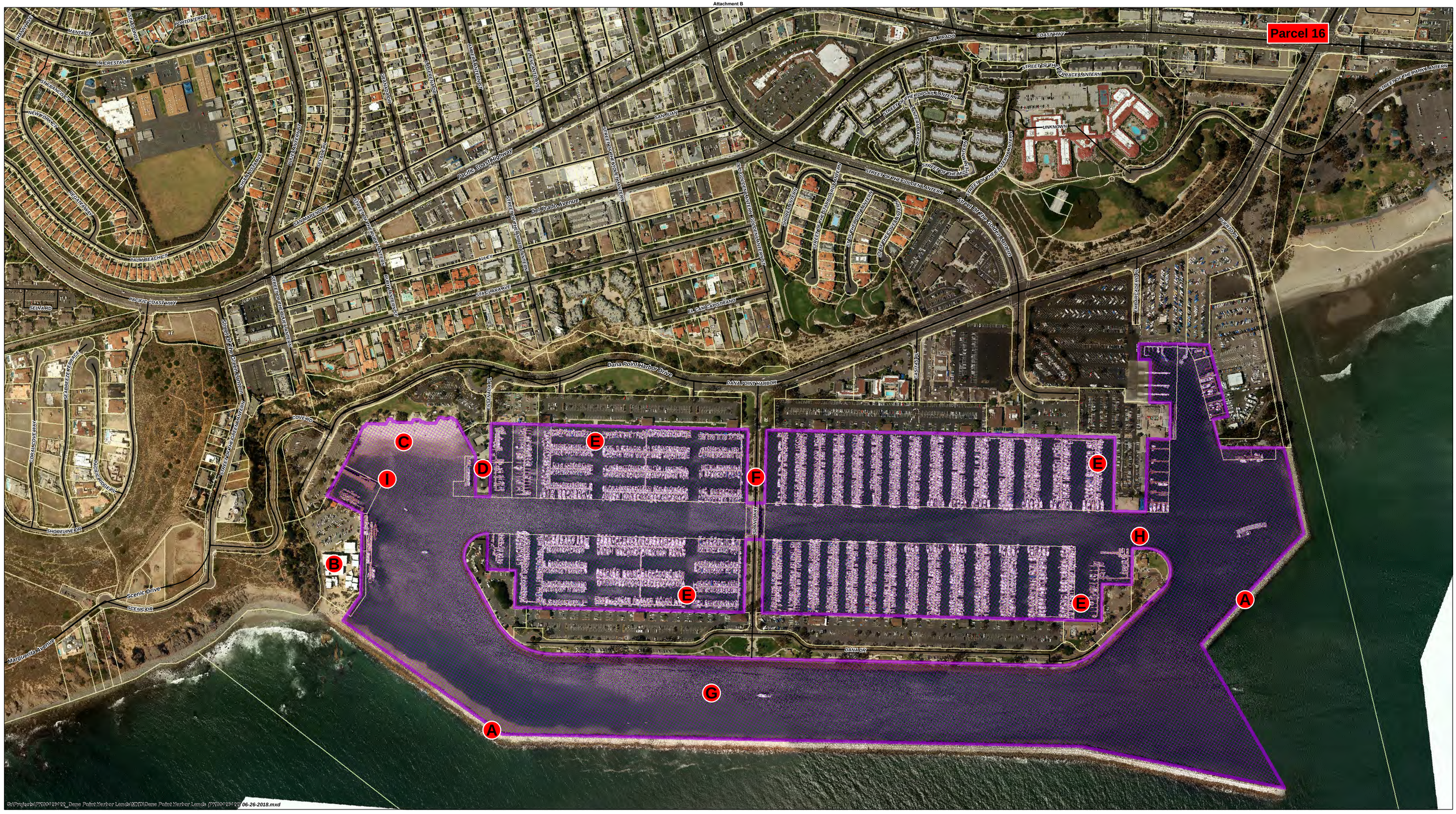
Draft

OCparks
Orange County California

EXHIBIT A-3

DEPICTION OF DREDGING AREA

[To be finalized during Option Period and added prior to execution of Lease]



DESIGNED AND PRODUCED BY:
OCCR - OC Parks GIS

DATA SOURCE:
- Geomatics Land Information Systems Division - 2017 Eagle Aerial

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DATE: June 26, 2018

N

0 125 250 500 Feet

- A Break Water - County
- B Ocean Institute - County
- C Baby Beach - County
- D OC Sailing & Events Center - County
- E Sea Wall - Master Developer
- F Bridge
- G Navigation Channel - Master Developer
- H Harbor Patrol - County
- I Fishing Pier - Master Developer

Dredging Area

Dana Point Harbor
Exhibit A-3
Depiction of Dredging Area

Draft

Orange County California

EXHIBIT B

APPROVED PROPOSAL SUBMITTALS

[To be finalized during Option Period and added prior to execution of Lease]

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 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 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 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

EXAMPLES OF PERMITTED CAPITAL EXPENDITURES

Subject to the terms and provisions of Section 5.16 of the Lease, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

Painting, refinishing or stuccoing of the building exterior or storefront remodeling*

Walkways, parking lot and driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal), hardscape repair or replacement

Windows and doors replacement*

Roof replacement* (may be on a building by building basis)

Elevators (replacement or addition)

HVAC mechanical, electrical, plumbing, vertical transportation, security replacement and upgrades

Light fixtures replacement* (interior and exterior)

Irrigation system* (replacement or major addition)

Parking control upgrades, gate replacement and gate installation

Wifi, communication and technology upgrades including installation of fiber optics, repeaters and/or mesh systems or similar technologies or their technological evolution

Boardwalk repair or replacement

Marina trash system installation or replacement

Marine electrical systems installation or replacement

Fire, life, safety system upgrades, installations or replacements

Energy efficiency, energy generation or utility system upgrades, installations or replacements

Installations, replacements or improvements required to comply with any change in laws, building codes, planning, disability or safety regulation

Gates, ramps and railing repair, installation or replacement

Float replacement or renovation

*To qualify, the foregoing expenditures need to incorporate replacement or renovating of at least seventy percent (70%) of the items or facilities in question.

Routine Maintenance shall not be a Permitted Capital Expenditure, and shall be defined as any small scale activities associated with regular (daily, weekly, monthly etc.) upkeep of a building, equipment, machine, plant, or system against normal wear and tear, including, without limitation:

Widow and door repairs

Roof repairs

Parking lot slurry seal

Parking lot restriping

Minor touch up with paint, stucco etc., Interior/exterior walls

Lightbulb replacement

Irrigation repairs

HVAC maintenance

Landscaping

Fencing/gate repairs

Dock/Pier repairs

EXHIBIT E

ASSUMED CONTRACTS AND LEASES

[To be determined during Option Period and to be added prior to execution of Lease]

EXHIBIT F

RENT SCHEDULE

HOTEL COMPONENT:

Period	Annual Minimum Rent (One Hotel)	Annual Minimum Rent (Two Hotels)
Lease Year 1	$37,500	$75,000
Lease Year 2	$75,000	$150,000
Lease Year 3	$125,000	$250,000
Lease Year 4	$125,000	$250,000
Lease Year 5	$125,000	$250,000

Notwithstanding anything in the foregoing schedule to the contrary: (a) Annual Minimum Rent for the Hotel Component shall be abated until the earlier to occur of: (i) the date that is thirty (30) months following the Effective Date, and (ii) the date upon which such abatement of Annual Minimum Rent, when taken together with the abatement of Percentage Rent under Subsection 4.2.2 of the Lease, collectively totals Five Hundred Thousand Dollars ($500,000), at which time such abatement of Annual Minimum Rent and Percentage Rent shall terminate, (b) thereafter, for so long as the existing Marina Inn shall remain in operation and until commencement of the Redevelopment Work on the Hotel Component affecting the existing Marina Inn, the Annual Minimum Rent for the Hotel Component shall be One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars ($166,666), and (c) thereafter, Annual Minimum Rent for the Hotel Component 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 Component shall be payable based on the foregoing schedule, which schedule only covers Lease Years 1 through 5, and adjustments to the same shall occur thereafter as set forth below.

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, if at all, 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.

The Annual Minimum Rent for the Hotel Component shall increase at the

commencement of the 6th Lease Year and every five (5) years thereafter upon the commencement of every fifth (5th) Lease Year (each, an "**Adjustment Date**") by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Hotel Component for the immediately prior Lease 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 Lease 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.

COMMERCIAL CORE COMPONENT:

Period	Annual Minimum Rent
Lease Year 1	$100,000
Lease Year 2	$125,000
Lease Year 3	$150,000
Lease Year 4	$250,000
Lease Year 5	$250,000

The Annual Minimum Rent for the Commercial Core Component shall increase at the commencement of the 6th Lease Year and every Adjustment Date thereafter by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Commercial Core Component for the immediately prior Lease 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 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.

MARINA (WET MARINA) COMPONENT:

The Annual Minimum Rent for the Wet Marina portion of the Marina Component shall be $1,250,000 commencing at the beginning of Lease Year 1 and shall increase at the commencement of the 6th Lease Year and every Adjustment Date thereafter by the greater of: (i) ten percent (10%) of the Annual Minimum Rent payable for the Wet Marina portion of the Marina Component for the immediately prior Lease 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 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

To be determined by the Parties during the Option Period, but shall include, at a minimum, the following:

1. Services. At all times Lessee shall provide diligent, first class, professional and competent real property management for the 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 Property or separate Property Managers for each Component. Such person shall be vested with the authority of Lessee with respect to the supervision over the operation and maintenance of the 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 complete and continuous public use of the 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 Property under sound business practices. Lessee shall provide adequate security measures to reasonably protect persons and property on the Property. Lessee hereby acknowledges that County's Harbor Patrol is not responsible for routine security services or landside police services on the 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 Property.

3. Launch Ramp. The launch ramp facility shall be open for the benefit of the public twenty-four (24) hours per day, every day of each year, except as Lessee, County or any governmental agency with regulatory jurisdiction may deem conditions to be unsafe to the public and order closure. In the event a governmental agency ordered closure, Lessee shall immediately notify the County of such closure and unsafe condition existing. All rates charged for launching, parking and boat wash down shall be fair and reasonable. Lessee shall not allow any third party to conduct or solicit business activity or allow mechanical servicing activity on or from the launch ramp facility.

4. Dry Boat Storage. Lessee shall make dry boat storage available on fair and reasonable terms and without discrimination. Lessee shall use reasonable and diligent efforts to develop and implement procedures or services to allow for removal of boats from dry storage for after-hours access and departures.

5. Parking Management Plan. Lessee shall operate the Property under the provisions of a comprehensive Parking Management Plan prepared by the Lessee and approved by the County. 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 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. Launch ramp parking;

d. Surface area utilized for dry boat storage;

e. Long term parking (e.g., sport fishing, Catalina service);

f. Contingency for off-site parking during overflow conditions;

g. Controlled parking;

h. Valet parking program;

i. Site plan of parking areas; and

j. Parking signage program.

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.

6. Entry Gates. All entry gates to the launch ramp and dry boat storage areas and 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 Property. Lessee shall make attendants available for controlling launch ramp activity at all times of heavy congestion and overflow conditions.

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 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 Property;

b. Excessive noise from emanating within the Property;

c. Excessive light and glare from light fixtures within the 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 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 Property shall include, but are not limited to:

a. Appropriate signs warning tenants and visitors to the Property against littering, production of excessive noise and discharge of pollutants into the waters within the Property shall be posted in conspicuous places within the Property. All such signs shall be approved by the County.

b. All leases and rental agreements with tenants shall contain provisions which specify that littering, production of excessive noise and discharge of pollutants into the waters within the Property constitute a material breach of such leases and rental agreements.

c. In addition to the lease and rental agreement provisions required by subsection (b) above, all leases and rental agreements with owners of watercraft occupying slips, mooring, docks or other places within the Property, where a boat may be secured (other than facilities for dry boat storage), shall contain provisions that all such watercraft shall be equipped with an approved wastewater holding tank designed to retain all waste on board. Such leases and rental agreements shall further provide that watercraft wastewater holding tanks shall, at all times, be maintained to industry standards for first-class marinas.

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 Property. Lessee further agrees to maintain a written policy and procedures manual (hereinafter referred to as “Policy and Procedures Manual”) on the 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, run-off management disposal of flammable liquids, hazardous waste, waste management and the discharge of waste from boats within the 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.

11. Water/Dock Area. Subject to the limitations set forth in Subsection 10.1 of the Lease:

a. Lessee's maintenance obligations shall include, but shall not be limited to the quay wall and structural elements of the dock system, decks, pilings, ramps, gangways, handrails, landing platforms, flotation systems, dry rot repair, repair of deteriorated areas resulting from corrosion, repair of concrete cracking and deterioration, hardware, cleats, bumper stripping, utilities and connections, storage boxes and fire suppression systems servicing the dock area.

b. Preventative Maintenance Program (PMP). The following PMP is based on regular periodic inspections of Marina dock systems and related equipment and components. The various intervals of inspection noted in this PMP shall be considered a minimum acceptable standard for Lessee's performance of maintenance activities. Actual conditions and rates of failure may require added measures or more immediate action.

a) Daily:

i) Clean all restrooms restocking supplies and emptying trash.

ii) Empty all trash containers.

iii) Inspect all parking gates for proper operation.

iv) Police all landside areas for litter.

b) Weekly:

i) Thoroughly sweep all parking lots of debris.

c) Semi Monthly (every two weeks) :

i) Dock Light Check: Replace broken or spent lamps and photocells as necessary.

ii) Clean trash containers & wash around each service building.

iii) Walking surface: Inspect the surface of the concrete dock floats - for hazardous conditions. Hazardous conditions include but are not limited to: trip hazards of lift or greater, holes or missing or broken sections of concrete, float instability or listing, exposed nails, screws or bolts.

iv) Structural Concerns: Inspect the structural integrity of docks for signs of failure:

v) Look for signs of gusset board for deterioration, pile roller failure, water deterioration or failure of floatation connections, insufficient freeboard. Repair.

vi) Fire Systems: Check fire hose enclosures for broken glass or door latch failure. Ensure fire extinguisher is charged & present. Hose should be inspected for deterioration and to ensure properly hung. Gate valve should be inspected for leaking. Backflow leaks should be repaired by certified contractor.

vii) Gangways: Inspect surface for non-skid integrity, exposed nails, screws or bolts, and stability of hand railings.

viii) Water System: Replace leaking hose bibs and repair all other types of water leaks. Replace leaking gangway hoses.

d) Monthly:

i) Thoroughly scrub all restroom floors, walls and showers.

ii) Inspect facility sidewalks for trip hazards (1/2” lift or greater).

iii) Wash sidewalks which have become stained or otherwise dirty.

iv) Inspect docks for rub rail problems.

v) Accessory item attachment: Inspect and repair connections to all cleats, dock boxes, fire hose enclosures and electrical panels.

vi) Check all dock utility lines that may be submerged or improperly supported. Re-support lines as required.

vii) Electrical System: Inspect & repair all power centers. Repair cover and hinge assemblies, replacing receptacles and breakers as necessary. More serious electrical issues must be repaired by licensed electrical contractor.

viii) Replace missing pile caps and dock box lids.

ix) Inspect gangways for excessive wear or misalignment.

x) Building & Parking lighting should be inspected. Replace spent lights, ballasts, or photocells, broken lenses or covers.

xi) Inspect all docks for marina rules violations. Such violations are often violate fire or safety codes.

e) Annually:

i) Recharge & certify all fire extinguishers.

ii) Recertify all back flow devices.

iii) Inspect all piles for signs of failure, i.e. listing, cracking, and excessive deterioration.

EXHIBIT H

DEPICTION OF PROPERTY STRUCTURES

E
F
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E
Pacific Coast Highway
Del Prado Avenue
Dana Point Harbor Drive
DANA POINT HARBOR
DANA DR
STAR WAY
COVE RD
SCENIC DR
Scenic Drive
Marguerite Avenue
SHORELINE DR
PACIFIC COAST HWY
COAST HWY
DEL PRADO
SAN JUAN
STREET OF THE GOLDEN LANTERN
STREET OF THE PARK LANTERN
UNKNOWN
EMBARCADERO PL
PLAZA DR
CASTAS PL
EL SAN CAPISTRANO
STA CLARA AVE
SAN MARCO PL
PALM BEACH CT
SERVARD
SCARLET EVERGREEN
CORAL COVE WAY
PACIFIC RIDGE PL
SANTA VITA AVE
NEWPORT CT
PORTO VERDE
MANTA CT
LA CRESTA DR
PLAZA WAY
ROSE VALLEY PL
ROSE VALLEY
STREET OF THE SILVER LANTERN
STREET OF THE RUBY LANTERN
STREET OF THE SAPPHIRE LANTERN
STREET OF THE EMERALD LANTERN
STREET OF THE PEARL LANTERN
STREET OF THE GREEN LANTERN
STREET OF THE BLUE LANTERN
STREET OF THE PURPLE LANTERN
STREET OF THE ORANGE LANTERN
STREET OF THE MILKY LANTERN
STREET OF THE TOPAZ LANTERN
STREET OF THE AMBER LANTERN
STREET OF THE PINK LANTERN
STREET OF THE PARK LANTERN
SHORE LANTERN
ALTA VIEW DR
ALTA VIEW PL
ALTA VIEW TER
ALTA VIEW WAY
ALTA VIEW CIR
ALTA VIEW LN
ALTA VIEW CT
ALTA VIEW PLAZA
ALTA VIEW PLAZA
ALTA VIEW PLAZA

EXHIBIT I

BEST MANAGEMENT PRACTICES FACT SHEETS

Best Management Practices can be found at: http://ocwatersheds.com/default.aspx (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.

Suggested BMPs Fact Sheets may include, but may not be limited to (the following list shown below and can be found at: http://ocwatersheds.com/IndustrialCommercialBusinesses Activities.aspx (which website may change from time to time) and copies of current versions of which are attached hereto:

IC3 Building Maintenance
IC4 Carpet Cleaning
IC6 Contaminated or Erodible Surface Areas
IC9 Outdoor Drainage from Indoor Areas
IC10 Outdoor Loading/Unloading of Materials
IC12 Outdoor Storage of Raw Materials, Products, and Containers
IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment
IC17 Spill Prevention and Cleanup
IC21 Waste Handling and Disposal
IC22 Eating and Drinking Establishments
IC23 Fire Sprinkler Testing/Maintenance
IC24 Wastewater Disposal Guidelines

IC3. BUILDING MAINTENANCE

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	
Metals	x
Bacteria	x
Oil & Grease	
Organics & Toxicants	
Pesticides	
Oxygen Demanding	

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Properly collect and dispose of water when pressure washing buildings, rooftops, and other large objects.
- Properly prepare work area before conducting building maintenance.
- Properly clean and dispose of equipment and wastes used and generated during building maintenance.
- Store toxic material under cover when not in use and during precipitation events.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Properly collect and dispose of water when pressure washing buildings, rooftops, and other large objects.
    - If pressure washing where the surrounding area is paved, use a water collection device that enables collection of wash water and associated solids. Use a sump pump, wet vacuum or similarly effective device to collect the runoff and loose materials. Dispose of the collected runoff and solids properly. Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
    - If pressure washing on a landscaped area (with or without soap), runoff must be dispersed as sheet flow as much as possible, rather than as a concentrated stream. The wash runoff must remain on the landscaping and not drain to pavement.
2. Properly prepare work area before conducting building maintenance.
    - Use ground or drop cloths underneath outdoor painting, scraping, and sandblasting work, and properly dispose of collected material daily.
    - Use a ground cloth or oversized tub for activities such as paint mixing and tool cleaning.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

3. Properly clean and dispose of equipment and wastes used and generated during building maintenance.
    - Clean paint brushes and tools covered with water-based paints in sinks connected to sanitary sewers or in portable containers that can be dumped into a sanitary sewer drain. Brushes and tools covered with non-water-based paints, finishes, or other materials must be cleaned in a manner that enables collection of used solvents (e.g., paint thinner, turpentine, etc.) for recycling or proper disposal.
    - Properly dispose of wash water, sweepings, and sediments.
    - Properly store equipment, chemicals, and wastes.
    - Do not dump any toxic substance or liquid waste on the pavement, the ground, or toward a storm drain.

    OPTIONAL:
    - Recycle residual paints, solvents, lumber, and other materials to the maximum extent practicable
4. Employ soil erosion and stabilization techniques when exposing large areas of soil.
    - Confine excavated materials to pervious surfaces away from storm drain inlets, sidewalks, pavement, and ditches. Material must be covered if rain is expected.
    - Use chemical stabilization or geosynthetics to stabilize bare ground surfaces.
5. Store toxic material under cover when not in use and during precipitation events.
6. Properly dispose of fluids from air conditioning, cooling tower, and condensate drains.
7. Regularly inspect air emission control equipment under AQMD permit.
8. Switch to non-toxic chemicals for maintenance when possible.
    - If cleaning agents are used, select biodegradable products whenever feasible
    - Consider using a waterless and non-toxic chemical cleaning method for graffiti removal (e.g. gels or spray compounds).
9. Use chemicals that can be recycled.
    - Buy recycled products to the maximum extent practicable

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

King County Stormwater Pollution Control Manual. Best Management Practices for Businesses. King County Surface Water Management. July 1995. On-line: http://dnr.metrokc.gov/wlr/dss/spcm.htm

Stormwater Management Manual for Western Washington. Volume IV Source Control BMPs. Prepared by Washington State Department of Ecology Water Quality Program. Publication No. 99-14. August 2001.

For additional information contact:

County of Orange/ OC Watersheds
Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

IC4. CARPET CLEANING

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	
Floatable Materials	
Metals	
Bacteria	
Oil & Grease	
Organics & Toxicants	x
Pesticides	
Oxygen Demanding	

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Discharge wash water to sink, toilet, or other drain connected to the sanitary sewer system (Refer to fact sheet *IC24 Wastewater Disposal* for appropriate disposal methods to the sanitary sewer).

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

Discharge wash water to sink, toilet, or other drain connected to the sanitary sewer system.

- Never discharge wash water to a street, gutter, parking lot, or storm drain. Either:
  - empty the spent cleaning fluid tank into a utility sink or other indoor sewer connection at the service provider's home base

  or
  - arrange with the customer to discharge into a toilet or utility sink on their premises.
- Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer..
- These guidelines apply even to cleaning products labeled "nontoxic" and "biodegradable."

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - BMP IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

Water Quality Guidelines for Carpet Cleaning Activities. Orange County Stormwater Program. Prepared by Watershed & Coastal Resources Division. January 2002. On-line: http://www.ocwatersheds.com/PublicEducation/pe_brochures_carpet.asp

Orange County Stormwater Program. 2002. Water Quality Guidelines for Carpet Cleaning Activities. March.

For additional information contact:

County of Orange/ OC Watersheds
Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

IC6. CONTAMINATED OR ERODIBLE SURFACES AREAS

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Protect contaminated or erodible surface areas from rainfall and wind dispersal.
- Protect materials from stormwater runoff and runon.
- Conduct routine maintenance.

Stencil storm drains

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	
Metals	x
Bacteria	x
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Protect contaminated or erodible surface areas from rainfall and wind dispersal though one or more of the following:
    - Preserve natural vegetation.
    - Re-plant or landscaping bare ground surfaces.
    - Use chemical stabilization or geosynthetics to stabilize bare ground surfaces.
    - Remove contaminated soils.
    - Cover materials with a fixed roof or a temporary waterproof covering made of polyethylene, polypropylene or hypalon. Keep covers in place at all times when work is not occurring. If areas are so large that they cannot feasibly be covered and contained, implement erosion control practices at the perimeter of the area and at any catch basins to prevent dispersion of the stockpiled material.
2. Protect materials from stormwater runoff and runon. Construct a berm around the perimeter of the area to prevent the runon of uncontaminated stormwater from adjacent areas as well as runoff of stormwater from the material.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

3. Minimize pooling of water. Paved areas should be sloped in a manner that minimizes the pooling of water in the area. A minimum slope of 1.5 percent is recommended.
4. Conduct routine maintenance. Sweep paved areas regularly to collect loose materials.
    - DO NOT hose down area to a storm drain or conveyance ditch.
    - Properly dispose of waste materials.

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

King County Stormwater Pollution Control Manual. Best Management Practices for Businesses. King County Surface Water Management. July 1995. On-line: http://dnr.metrokc.gov/wlr/dss/spcm.htm

Stormwater Management Manual for Western Washington. Volume IV Source Control BMPs. Prepared by Washington State Department of Ecology Water Quality Program. Publication No. 99-14. August 2001.

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24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

IC9. OUTDOOR DRAINAGE FROM INDOOR AREAS

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Utilize dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	X
Nutrients	X
Floatable Materials	X
Metals	X
Bacteria	X
Oil & Grease	X
Organics & Toxicants	X
Pesticides	X
Oxygen Demanding	X

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Design operating areas to minimize stormwater exposure.
    - Construct a berm or intercept trench at doorways.
    - Install a collection system for pretreatment and sewer disposal under permit.
2. Utilize dry cleanup methods such as sweeping for removal of litter and debris, or use of rags and absorbents for leaks and spills. Properly dispose of collected wastes.
3. Use secondary containment or protective barriers for indoor liquid storage.
4. Install a fire sprinkler containment system for hazardous material storage.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

California Storm Water Best Management Practice Handbooks. Municipal Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

For additional information contact:

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Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

IC10. OUTDOOR LOADING/UNLOADING OF MATERIALS

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	
Metals	x
Bacteria	
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Park vehicles and conduct loading/unloading only in designated loading/unloading areas so that spills or leaks can be contained.
- Clean loading/unloading areas regularly to remove potential sources of pollutants.
- Reduce exposure of materials to rain.
- Use drip pans underneath hose and pipe connections and other leak-prone spots during liquid transfer operations, and when making and breaking connections.
- Inspect equipment regularly.
- If possible, conduct loading and unloading in dry weather.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Properly design loading/unloading areas to prevent storm water runon, runoff of spills, etc.
    - Grade and/or berm the area to prevent runon.
    - Position roof downspouts to direct stormwater away from the area.
    - Grade and/or berm the loading/unloading area to a drain that is connected to a dead-end.
    - The area where truck transfers take place should be paved. If the liquid is reactive with the asphalt, Portland cement should be used to pave the area.
    - Avoid placing loading/unloading areas near storm drains.
2. Park vehicles and conduct loading/unloading only in designated loading/unloading areas so that spills or leaks can be contained.
3. Clean loading/unloading areas regularly to remove potential sources of pollutants. This includes outside areas that are regularly covered by containers or other materials.
4. Reduce exposure of materials to rain.
    - Cover the loading/unloading areas.
    - If a cover is unfeasible, use overhangs, or seals or door skirts to enclose areas.
5. Use drip pans underneath hose and pipe connections and other leak-prone spots during liquid transfer operations, and when making and breaking connections.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

6. Inspect equipment regularly
    - Designate a responsible party to check under delivery vehicles for leaking fluids, spilled materials, debris, or other foreign materials.
    - Check loading/unloading equipment regularly for leaks.
7. If possible, conduct loading and unloading in dry weather.

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Train employees on the proper techniques used during liquid transfers to avoid leaks and spills.
4. Train forklift operators on the proper loading and unloading procedures.
5. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
6. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

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IC12. OUTDOOR STORAGE OF RAW MATERIALS, PRODUCTS, AND CONTAINERS

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	
Metals	x
Bacteria	
Oil & Grease	x
Organics & Toxicants	x
Pesticides	
Oxygen Demanding	

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Store materials indoors, if feasible.
- Store materials on paved or impervious surfaces.
- Protect materials stored outside from rainfall and wind dispersal.
- Protect materials stored outside from stormwater runon.
- Properly store and handle chemical materials.
- Keep outdoor storage containers in good condition.
- Conduct regular inspections of storage areas.
- If drums are stored in an area where unauthorized persons may gain access secure them in such a manner as to prevent accidental spillage, pilferage, or any unauthorized use.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Store materials indoors, if feasible.
2. Store materials on paved or impervious surfaces.
3. Protect materials stored outside from rainfall and wind dispersal.
    - Cover materials with a fixed roof or a temporary waterproof covering made of polyethylene, polypropylene, or hypalon.
    - Keep covers in place at all times when work is not occurring.
    - If areas are so large that they cannot feasibly be covered and contained, implement erosion control practices at the perimeter of the area and at any catch basins to prevent dispersion of the stockpiled material.
4. Protect materials stored outside from stormwater runon. Construct a berm around the perimeter of the material storage area to prevent the runon of uncontaminated stormwater from adjacent areas as well as runoff of stormwater from the material.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

5. Minimize pooling of water. Slope paved areas to minimize the pooling of water on the site, particularly with materials that may leach pollutants into stormwater and/or groundwater, such as compost, logs, and wood chips. A minimum slope of 1.5 percent is recommended.
6. All materials stored outside should have a secondary containment system.
    - Surround storage tanks with a berm or other secondary containment system.
    - Slope the area inside the berm to a drain.
    - Drain liquids to the sanitary sewer if available.
    - DO NOT discharge wash water to sanitary sewer until contacting the local sewer authority to find out if pretreatment is required. If discharge to the sanitary sewer is not allowed, pump water to a tank and dispose of properly.
    - Pass accumulated stormwater in petroleum storage areas through an oil/water separator.
7. Properly store and handle chemical materials.
    - Designate a secure material storage area that is paved with Portland cement concrete, free of cracks and gaps, and impervious in order to contain leaks and spills.
    - Do not store chemicals, drums, or bagged materials directly on the ground. Place these items in secondary containers.
    - Liquid materials should be stored in UL approved double walled tanks or surrounded by a curb or dike to provide the volume to contain 10 percent of the volume of all the containers or 110 percent of the volume of the largest container, whichever is greater.
    - Keep chemicals in their original containers, if feasible, and keep them well labeled.
8. Keep outdoor storage containers in good condition.
    - Keep storage areas clean and dry.
    - Sweep and maintain routes to and from storage areas.
9. Conduct regular inspections of storage areas.
    - Check for external corrosion of material containers, structural failures, spills and overfills due to operator error, failure of piping system, etc.
    - Inspect tank foundations, connections, coatings, tank walls, and piping system.
    - Look for corrosion, leaks, cracks, scratches, and other physical damage that may weaken tanks or container systems.
10. If drums are stored in an area where unauthorized persons may gain access secure them in such a manner as to prevent accidental spillage, pilferage, or any unauthorized use.

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Train forklift operators on the proper loading and unloading procedures.
4. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
5. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

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California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

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IC14. PAINTING, FINISHING, AND COATINGS OF VEHICLES, BOATS, BUILDINGS, AND EQUIPMENT

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Use drop/ground cloths.
- Shelter any blasting and spray painting activities.
- Maintain a clean working environment.
- Cover and seal nearby storm drain inlets.
- Properly clean, store, and dispose of painting, finishing, and coating materials.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	
Nutrients	
Floatable Materials	
Metals	x
Bacteria	
Oil & Grease	x
Organics & Toxicants	x
Pesticides	
Oxygen Demanding	

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Use drop/ground cloths.
    - Underneath outdoor painting, scraping, and sandblasting work.
    - Underneath outdoor mixing of paints, solvents, and tool cleaning.
2. Shelter any blasting and spray painting activities.
    - Hang wind-blocking tarps to prevent sand blasting dust and overspray from escaping.
    - Do not conduct these activities when wind conditions are such that containment is ineffective.
    - Do not conduct these activities over open water.
3. Maintain a clean working environment.
    - Utilize dry cleaning methods (e.g. sweeping). If washing is unavoidable, collect wash water for treatment and/or proper disposal.
    - Vacuum loose paint chips and paint dust to prevent discharges
    - Properly dispose of surface chips, used blasting sand, residual paints, and other materials. Use temporary storage containment that is not exposed to rain.
4. Cover and seal nearby storm drain inlets.
    - Cover and seal nearby storm drain inlets with waterproof material, mesh, or other runoff control device.
    - Leave covers in place until job is complete.
    - Clean covers daily and remove any debris for proper disposal.
5. Properly clean, store, and dispose of painting, finishing, and coating materials.
    - Do not dispose of toxic substances or liquid wastes on the pavement, ground, or storm drain.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

- Cover materials with a temporary waterproof covering made of polyethylene, polypropylene or hypalon.
- Clean paint brushes and tools covered with water-based paints in sinks connected to sanitary sewers or in portable containers that can be poured into a sanitary sewer drain. Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
- Clean paint brushes and tools covered with non-water-based paints, finishes, or other materials such that used solvents (e.g., paint thinner, turpentine, etc.) can be collected for recycling or proper disposal.
- Recycle paint, paint thinner, solvents, and other recyclable materials whenever possible.

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact Sheet IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates, Uribe and Associates, Resources Planning Associates for Stormwater Quality Task Force. March 1993.

King County Stormwater Pollution Control Manual. Best Management Practices for Businesses. King County Surface Water Management. July 1995. On-line: http://dnr.metrokc.gov/wlr/dss/spcm.htm

Stormwater Management Manual for Western Washington. Volume IV Source Control BMPs. Prepared by Washington State Department of Ecology Water Quality Program. Publication No. 99-14. August 2001.

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IC17. SPILL PREVENTION AND CLEANUP

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Develop procedures to prevent/mitigate spills to storm drain systems.
- Post "No Dumping" signs with a phone number for reporting illegal dumping and disposal.
- Conduct routine cleaning, inspections, and maintenance.
- Properly store and handle chemical materials.
- Protect materials stored outside from stormwater runon.
- Secure drums stored in an area where unauthorized persons may gain access to prevent accidental spillage, pilferage, or any unauthorized use.
- Identify key spill response personnel.
- Clean up leaks and spills immediately.
- Report and track spills.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	x
Metals	x
Bacteria	x
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	x

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

Spill Prevention

1. Develop procedures to prevent/mitigate spills to storm drain systems.
   Standardize reporting procedures, containment, storage, and disposal activities, documentation, and follow-up procedures.
2. Post "No Dumping" signs with a phone number for reporting illegal dumping and disposal.
3. Conduct routine cleaning, inspections, and maintenance
   - Sweep and clean storage areas consistently at a designated frequency (e.g. weekly, monthly). DO NOT hose down areas to storm drains.
   - Place drip pans or absorbent materials beneath all mounted taps, and at all potential drip and spill locations during filling and unloading of tanks. Reuse, recycle, or properly dispose of any collected liquids or soiled absorbent materials.
   - Check tanks (and any containment sumps) frequently for leaks and spills. Replace tanks that are leaking, corroded, or otherwise deteriorating with tanks in good condition. Collect all spilled liquids and properly dispose of them.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

- Check for external corrosion of material containers, structural failures, spills and overfills due to operator error, failure of piping system, etc.
- Inspect tank foundations, connections, coatings, and tank walls and piping system.

4. Properly store and handle chemical materials.
    - Designate a secure material storage area that is paved with Portland cement concrete, free of cracks and gaps, and impervious in order to contain leaks and spills.
    - Do not store chemicals, drums, or bagged materials directly on the ground. Place these items in secondary containers.
    - Keep chemicals in their original containers, if feasible.
    - Keep containers well labeled according to their contents (e.g., solvent, gasoline).
    - Label hazardous substances regarding the potential hazard (corrosive, radioactive, flammable, explosive, poisonous).
    - Prominently display required labels on transported hazardous and toxic materials (per US DOT regulations).
5. Utilize secondary containment systems for liquid materials.
    - Surround storage tanks with a berm or other secondary containment system.
    - Slope the area inside the berm to a drain.
    - Drain liquids to the sanitary sewer if available. DO NOT discharge wash water to sanitary sewer until contacting the local sewer authority to find out if pretreatment is required
    - Pass accumulated stormwater in petroleum storage areas through an oil/water separator.
    - Use catch basin filtration inserts.
6. Protect materials stored outside from stormwater runon. Construct a berm around the perimeter of the material storage area to prevent the runon of uncontaminated stormwater from adjacent areas as well as runoff of stormwater from the material.
7. Secure drums stored in an area where unauthorized persons may gain access to prevent accidental spillage, pilferage, or any unauthorized use.

Spill Control and Cleanup Activities

8. Identify key spill response personnel.
9. Adopt the Orange County Hazardous Materials Area Plan or an equivalent plan, which includes a set of planned responses to hazardous materials emergencies. The plan should include:
    - Description of the facility, owner and address, activities and chemicals present
    - Facility map
    - Notification and evacuation procedures
    - Cleanup instructions
    - Identification of responsible departments
10. Clean up leaks and spills immediately.
    - Place a stockpile of spill cleanup materials where they will be readily accessible (e.g. near storage and maintenance areas).
    - Utilize dry cleaning methods to clean up spills to minimize the use of water. Use a rag for small spills, a damp mop for general cleanup, and absorbent material for larger spills. If the spilled material is hazardous, then used cleanup materials are also hazardous and must be sent to a certified laundry (rags) or disposed of as hazardous waste. Physical methods for the cleanup of dry chemicals include the use brooms, shovels, sweepers, or plows.
    - Never hose down or bury dry material spills. Sweep up the material and dispose of properly.
    - Clean up chemical materials with absorbents, gels, and foams. Use adsorbent materials on small spills rather than hosing down the spill. Remove the adsorbent materials promptly and dispose of properly.
    - For larger spills, a private spill cleanup company or Hazmat team may be necessary.

11. Reporting
    1. Report spills that pose an immediate threat to human health or the environment to local agencies, such as the fire department, and the Regional Water Quality Control Board.
    2. Establish a system for tracking incidents. The system should be designed to identify the following:
        - Types and quantities (in some cases) of wastes
        - Patterns in time of occurrence (time of day/night, month, or year)
        - Mode of dumping (abandoned containers, "midnight dumping" from moving vehicles, direct dumping of materials, accidents/spills)
        - Responsible parties
    3. Federal regulations require that any oil spill into a water body or onto an adjoining shoreline be reported to the National Response Center (NRC) at 800-424-8802 (24 hour).

Training
1. Educate employees about spill prevention and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Educate employees on aboveground storage tank requirements.
    - Train all employees upon hiring and conduct annual refresher training.
2. Train employees responsible for aboveground storage tanks and liquid transfers on the Spill Prevention Control and Countermeasure Plan.

Stencil storm drains

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References

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IC21. WASTE HANDLING AND DISPOSAL

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	x
Metals	x
Bacteria	x
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	x

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Prevent waste materials from coming in direct contact with wind or rain. .
- Keep waste collection areas clean.
- Secure solid waste containers when not in use.
- Regularly inspect, repair, and/or replace waste containers.
- Use all of a product before disposing of the container.
- Label and store hazardous wastes according to hazardous waste regulations.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Prevent waste materials from coming in direct contact with wind or rain.
    - Cover the waste management area with a permanent roof.
    - If this is not feasible, cover waste piles with temporary covering material such as reinforced tarpaulin, polyethylene, polyurethane, polypropylene, or hypalon.
    - Cover dumpsters to prevent rain from washing out waste materials.
2. Design waste handling and disposal area to prevent stormwater runon.
    - Enclose the waste handling and disposal area or build a berm around it.
    - Position roof downspouts to direct stormwater away from waste handling and disposal area.
3. Design waste handling and disposal area to contain spills.
    - Place dumpsters or other waste receptacles on an impervious surface.
    - Construct a berm around the area to contain spills.
    - Install drains connected to the public sewer or the facility's process wastewater system within these contained areas. DO NOT discharge to a public sewer until contacting the local sewer authority to find out if pretreatment is required.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

4. Keep waste collection areas clean.
    - When cleaning around waste handling and disposal areas use dry methods when possible (e.g. sweeping, use of absorbents).
    - If water must be used, collect water and discharge to the sewer if permitted to do so. DO NOT discharge to a public sewer until contacting the local sewer authority to find out if pretreatment is required. If discharge to the sanitary sewer is not allowed, pump water to a tank and dispose of properly.
    - Post "No Littering" signs.
5. Secure solid waste containers when not in use.
6. Regularly inspect, repair, and/or replace waste containers.
7. Do not fill waste containers with washout water or any other liquid.
8. Use all of a product before disposing of the container.
9. Segregate wastes by type and label and date wastes.
    - Do not mix wastes; this can cause chemical reactions, make recycling impossible, and complicate disposal.
    - Ensure that only appropriate solid wastes are added to solid waste containers.
    - Certain wastes such as hazardous wastes, appliances, fluorescent lamps, pesticides, etc. may not be disposed of in solid waste containers.
10. Label and store hazardous wastes according to hazardous waste regulations.
    - Consult your local hazardous waste agency or Fire Department for details.
    - Obtain a hazardous waste generator license or permit if necessary.
12. Minimize waste.
    - Recycle materials whenever possible.
    - Modify processes or equipment to increase efficiency.
    - Identify and promote use of non-hazardous alternatives.
    - Reduction in the amount of waste generated can be accomplished using many different types of source controls such as:
        - Production planning and sequencing
        - Process or equipment modification
        - Raw material substitution or elimination
        - Loss prevention and housekeeping
        - Waste segregation and separation
        - Close loop recycling
    - Establish a material tracking system to increase awareness about material usage. This may reduce spills and minimize contamination, thus reducing the amount of waste produced.

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees in proper waste handling and disposal.
3. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.

4. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
5. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

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IC22. EATING AND DRINKING ESTABLISHMENTS

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Use dry cleaning methods instead of water
- Clean equipment (floor mats, grease filters, grills, garbage cans, etc.) indoors or in a covered outdoor wash area that is plumbed to the sanitary sewer or in an area that will contain the wash water (Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer).
- Recycle and/or properly dispose of grease and oil.
- Block the storm drain when hosing or steam/pressure washing outside dumpster areas, sidewalks, and common areas.

Stencil storm drains

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	
Nutrients	x
Floatable Materials	x
Metals	
Bacteria	x
Oil & Grease	x
Organics & Toxicants	x
Pesticides	x
Oxygen Demanding	x

Provided below are specific procedures associated with each of the minimum BMPs along with procedures for additional BMPs that should be considered if this activity takes place at a facility located near a sensitive waterbody. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

1. Practice good housekeeping.
    - Conduct regular sweeping or vacuuming of outdoor areas: Dry sweep pavement areas including “drive-thru” areas, parking lots, sidewalks, outdoor eating areas and dumpster storage areas frequently.
    - Keep outside areas free of trash & debris.
    - Do not hose out dumpsters or fill them with liquid waste.
    - Regularly inspect, repair, and/or replace dumpsters.
2. Clean equipment (floor mats, grease filters, grills, garbage cans, etc.) indoors or in a covered outdoor wash area that is plumbed to the sanitary sewer.
    - Clean equipment in a mop sink if possible (never in a food preparation sink). If there is no mop sink, dedicate an indoor cleaning area where a drain is plumbed to the sanitary sewer.
    - Dispose mop water from cleaning floors in a mop sink, toilet or other drain that is plumbed to the sanitary sewer. Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
    - Do not pour wash water outside or into a street, gutter, or storm drain.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices”*

- Dispose of all wastewater containing oil and grease in a grease trap or interceptor.

3. Recycle and/or properly dispose of grease and oil. Collect and dispose of concentrated waste oil and grease and disposed of by a certified waste grease hauler. NEVER pour grease or oil into a sink, floor drain, storm drain or dumpster.
4. Block storm drain(s) when cleaning (hosing or steam/pressure washing) outside dumpster areas, sidewalks, and common areas with hot water, soap, or other cleaning agent. Collect water/waste and discharge to the sanitary sewer (with approval of the local sanitation district).

Training

1. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
2. Train employees on proper spill containment and cleanup.
    - Establish training that provides employees with the proper tools and knowledge to immediately begin cleaning up a spill.
    - Ensure that employees are familiar with the site's spill control plan and/or proper spill cleanup procedures.
    - Fact sheet IC17 discusses Spill Prevention and Control in detail.
3. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
4. Use a training log or similar method to document training.

Stencil storm drains

Storm drain system signs act as highly visible source controls that are typically stenciled directly adjacent to storm drain inlets. Stencils should read "No Dumping Drains to Ocean".

References

California Storm Water Best Management Practice Handbook. Industrial and Commercial. 2003. www.cabmphandbooks.com

Carlsbad Jurisdictional Urban Runoff Management Plan. Best Management Practices for Restaurants. City of Carlsbad. February 2002. On-line: http://www.ci.carlsbad.ca.us/cserv/jurmp.html

Orange County Stormwater Program. 2001. Water Quality Guidelines for Exterior Restaurant Cleaning Operations. Brochure. June.

Orange County Stormwater Program. Good Cleaning Practices Food & Restaurant Industry. Poster. Courtesy of the City and County of LA.

For additional information contact:

County of Orange/ OC Watersheds
Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

IC23. FIRE SPRINKLER TESTING/MAINTENANCE

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner[1]. The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

Provided below are specific procedures associated with this activity. In order to meet the requirements for medium and high priority facilities, the owners/operators must select, install and maintain appropriate BMPs on site. Since the selection of the appropriate BMPs is a site-specific process, the types and numbers of additional BMPs will vary for each facility.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Conduct activity on non-rainy days and for the shortest duration possible to minimize discharge volume.
- Inspect flow path and remove all debris and materials prior to testing or maintenance.

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	
Nutrients	
Floatable Materials	
Metals	x
Bacteria	
Oil & Grease	x
Organics & Toxicants	
Pesticides	
Oxygen Demanding	

Best Management Practices

1. Contain flows onsite and/or direct the water flows to landscaped or green areas whenever possible and safe to do so without causing damage or erosion.
2. Divert sprinkler system flows to the sewer, when practicable and with the permission of the local sewer agency. Refer to fact sheet *IC24 Wastewater Disposal* for guidance on appropriate methods for disposal of wash water to the sanitary sewer.
3. Training
   a. Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
   b. Establish a regular training schedule, train all new employees, and conduct annual refresher training.
   c. Use a training log or similar method to document training.

References

California Storm Water Best Management Practice Handbooks. Industrial/Commercial Best Management Practice Handbook. Prepared by Camp Dresser& McKee, Larry Walker Associates for California Stormwater Quality Association. January 2003.

For additional information contact:

County of Orange/ OC Watersheds
Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

IC24. DISPOSAL OF WASTEWATER GENERATED BY MOBILE BUSINESSES & OUTDOOR ACTIVITIES

Best Management Practices (BMPs)

A BMP is a technique, measure or structural control that is used for a given set of conditions to improve the quality of the stormwater runoff in a cost effective manner.[1] The minimum required BMPs for this activity are outlined in the box to the right. Implementation of pollution prevention/good housekeeping measures may reduce or eliminate the need to implement other more costly or complicated procedures. Proper employee training is key to the success of BMP implementation.

MINIMUM BEST MANAGEMENT PRACTICES

Pollution Prevention/Good Housekeeping

- Dispose of wastewater according to the instructions below. No wastewater shall be disposed of into the storm drain system.

Training

- Train employees on these BMPs, storm water discharge prohibitions, and wastewater discharge requirements.
- Provide on-going employee training in pollution prevention.

The BMPs outlined in this fact sheet target the following pollutants:

Targeted Constituents	
Sediment	x
Nutrients	x
Floatable Materials	x
Metals	x
Bacteria	x
Oil & Grease	x
Toxic Organic	x
Pesticides	x
Oxygen Demanding	x

Purpose of this BMP:

Orange County cities and the County of Orange are mandated under NPDES Permits issued by the California Regional Water Quality Control Boards to prohibit the discharge of pollutants and non-storm water runoff into the storm drain system. Therefore, untreated wastewater (including wastewater from mobile detailing, pressure washing, steam cleaning, carpet cleaning, or similar activities) shall not be discharged to the storm drain system.

In an effort to help businesses comply with the NPDES Permit, the cities of Orange County, County of Orange, South Orange County Wastewater Authority, Orange County Sanitation District, and Irvine Ranch Water District have developed the following best management practices (BMPs) for the proper disposal of wastewater generated by mobile business operations and outdoor activities.

If you have specific questions regarding any of the BMPs herein, please call your local sewering agency or your City's NPDES Coordinator.

[1] EPA " *Preliminary Data Summary of Urban Stormwater Best Management Practices"*

1. General Best Management Practices (BMPs) and Preparation of Work Area

What should I do prior to conducting a job?

The BMPs presented below are intended to help you comply with local and state regulations that prohibit wasteater from entering the storm drain system. The following BMPs must be followed by all mobile businesses or outdoor activities of a fixed business that generate wastewater, regardless of the type of surface to be cleaned or cleaning operation to be performed:

- Evaluate the chemicals and compounds used for cleaning and reduce or eliminate the use of those that contain solvents, heavy metals, high levels of phosphates, or very high/very low pH that exceeds the local sewering agency requirements.

- Walk through the area where the cleaning will occur prior to the start of the job and identify all area drains, yard drains, and catch basins where wastewater could potentially enter the storm drain system.

- Block/seal off identified drains or catch basins using sand bags, plugs, rubber mats, or temporary berms.

- Collect all trash and debris from the project area and place them in a trash bin for disposal.

- Sweep all surface areas prior to cleaning to minimize the amount of suspended solids, soil, and grit in wastewater.

- Identify the wastewater disposal option that will be used. Whether you are discharging to landscaping or the sanitary sewer, it is necessary that you meet all the requirements identified below.

- Conduct mobile washing in accordance with all operating instructions provided by the equipment supplier. Maintain equipment in good working order and routinely check and test all safety features.

What methods can be used to collect wastewater at a site?

There is no specific containment method that must be used for wastewater collection/diversion. However, the system must be adequately designed so that the wastewater does not flow into an on-site or off-site storm drain inlet. All mobile and existing businesses should use one of the following methods, regardless of the surface to be cleaned or the type of cleaning operation to be performed:

- Portable containment areas can be made from waterproof tarps, heavy-duty plastic, or rubber matting equipped with berms to prevent wastewater from running into storm drain inlets or discharge off-site. Materials that can be used for berms include sand bags or water-filled tubing. Whatever containment material is used, it must seal tightly to the ground so that no wastewater can pass under or over the berms.

- When power washing smaller pieces of equipment, containment devices to use may include portable vinyl swimming pools, plastic 55-gallon drums on casters, and flat metal or plastic containment pads.

- Depending on the volume of wastewater generated, it may be necessary to use a pump system, which may range in size from a wet-dry vacuum to a sump pump. A natural basin from which to pump can also be set up by establishing a slightly sloped containment area.

- Stationary or more permanent containment areas can be constructed with cement. Berms and pump systems may be used to contain wastewater and divert it to a holding tank.

- Commercial wastewater collection systems are also available for power washing. These systems can range from portable wash pits to self-contained water recycling systems. A list of companies selling this type of equipment can usually be found in the telephone book under "Pressure Washing Services and Equipment".

- Storm drain inlet covers can be made of an impermeable barrier such as a heavy-duty vinyl or plastic secured in place with materials such as concrete blocks, gravel bags, or sand bags. Storm drain inlet covers may also be available though commercial vendors.

Note: Blocking storm drain catch basin inlets in the public right-of-way (i.e. public street, or other publicly owned facility) is prohibited as a method of containment, unless expressly permitted by the municipality typically through an encroachment permit process. Wastewater should be contained on-site prior to entering the public right-of-way. Contact the local municipality for more information.

2. Wastewater Disposal Options

How can I dispose of my wastewater?

Wastewater is not allowed in the storm drain or street. However, the wastewater may be discharged to landscaping or the sanitary sewer, or it may be picked up and disposed of by a waste hauler. Please note that if you are unsure of the types of pollutants in the wastewater, laboratory analysis may be required to establish the proper disposal method.

Choose one of the three wastewater disposal options listed below based upon the following conditions:

Option 1: Discharge Wastewater to a Landscaped Area

The wastewater must meet the following requirements if discharging to landscaping:

- The pH must be between 6.5 and 8.5. This can be checked quickly and easily through the use of pH paper test strips.

- The wastewater should not contain large volumes or concentrations of:

    - Toxic materials.
    - Degreasers.
    - Pollutants that may create a fire or explosion hazard (e.g., gasoline, diesel).
    - Solid or viscous pollutants in amounts sufficient to cause obstruction or blockage of flow.
    - Petroleum oil, or other products of mineral oil origin.
    - Paint.

  Prior to surface washing, you must exercise any reasonable means to eliminate large volumes or concentrations of the above listed pollutants. Common methods to eliminate standing pools of pollutants include the placement of absorbent to adsorb the pollutant, dry-sweeping the absorbent, and disposing of the absorbent properly.

- In addition, wastewater from cleaning food-related vehicles or areas, vehicle exteriors or engines, and buildings with lead- or mercury-based paint should not be discharged to landscaping.

- Filter the wastewater if it contains debris, fibers, or other suspended solids.

- Ensure that the wastewater is fully contained within the landscaped area and will fully infiltrate into the ground prior to leaving the job site.

<u>Option 2: Discharge Wastewater to the Sanitary Sewer</u>

The wastewater must comply with the following conditions if disposed of into the sanitary sewer system:

- The wastewater temperature must be less than 140°F (60°C).

- The pH must be between 6.0 and 12.0. This can be checked quickly and easily through the use of pH paper test strips. Adjust the wastewater to a pH that is between 6.0 and 12.0. Dilution is not an effective or acceptable pretreatment.

- The wastewater quality must comply with the local sanitary sewer district's discharge limits and requirements. The wastewater should not contain large volumes or concentrations of:

    - Pollutants that may create a fire or explosion hazard (e.g., gasoline, diesel).
    - Solid or viscous pollutants in amounts sufficient to cause obstruction or blockage of flow.
    - Petroleum oil, non-biodegradable cutting oil, or other products of mineral oil origin.
    - Oil based paint.

  Prior to surface washing, you must exercise any reasonable means to eliminate large volumes or concentrations of the above listed pollutants. Common methods to eliminate standing pools of pollutants include the placement of absorbent to adsorb the pollutant, dry-sweeping the absorbent, and disposing of the absorbent properly.

- No wastewater shall be discharged into any publicly owned sewer manholes without the sewer agency's written authorization.

- Filter the wastewater if it contains debris, fibers, or other suspended solids.

- If chemicals (e.g., solvents or acids) are used during the cleaning process, additional precautions may be needed. Contact your local sanitation district to learn if wastewater containing these chemicals requires pretreatment before discharge to the sanitary sewer or if it needs to be treated as hazardous waste.

- Ensure that the wastewater is released at a flow rate and/or concentration, which will not cause problems, pass through, or interference with the sewerage facilities. Generally, if you are using a privately owned cleanout, sink, toilet, or floor drain at a client's property, and the flow does not backup, the flow amount will not cause problems, pass through, or interference with the sewerage facilities.

- Utilize an approved discharge point such as:

    - Privately owned cleanout (or sink, toilet or floor drain), oil/water separator, or below ground clarifier at the client's property where the wash water is generated;
    - Privately owned industrial sewer connection at the client's property where the wash water is generated;
    - Waste hauler station at sanitary sewer facility; and

- Any other disposal points approved by the sanitary sewer facility.

- Maintain a logbook of all discharges.

Option 3: Dispose of Wastewater Using a Professional Hazardous Waste Hauler

Wastewater that can be characterized in any of the following ways must be disposed of using a hazardous waste hauler:

- Is corrosive (as indicated by a pH value of less than 5.5) or caustic (as indicated by a pH value of greater than 10.0).

- Contains a pollutant that may create a fire or explosion hazard (e.g., gasoline, diesel fuel).

- Contains solid or viscous pollutants in amounts sufficient to cause obstruction or blockage of flow.

- Contains petroleum oil, non-biodegradable cutting oil, or other products of mineral oil origin.

- Contains other potential hazardous wastes. Examples of other potential hazardous wastes include:

    - Wastewater generated from power washing old paint off a building. Paint chips need to be collected, evaluated, and disposed of properly. Paint chips cannot be left on the ground at the job site. Old paint stripped off commercial buildings may contain metals (e.g., lead, chromium, cadmium, and mercury), causing it to be a regulated hazardous waste.
    - Wastewater used in conjunction with certain solvents and degreasing agents, which may cause the wastewater to be classified as a listed or characteristic hazardous waste.

You must comply with the following conditions if a hazardous waste hauler is used:

- Ensure that the waste hauler is certified by the appropriate sanitary sewering agency and the Orange County Health Care Agency, is Hazardous Waste DOT certified, and is complying with applicable discharge regulations, which may include obtaining necessary permits and conducting water quality monitoring requirements. Please contact the Orange County Health Care Agency and/or your local fire department for specific requirements.

- Identify the wastes involved and determine if a hazardous waste has been generated.

- Maintain a logbook of all discharges and hazardous waste manifests, if applicable.

For additional information contact:

County of Orange/ OC Watersheds
Main: (714) 955-0600
24 hr Water Pollution Hotline: 1-877-89-SPILL
or visit our website at www.ocwatersheds.com

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 & 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:

1.1. Boutique 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-Starwood: 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.

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 brands; Moxy, Element, Courtyard by Marriott, Marriott Residence Inn, SpringHill Suites, Fairfield Inn & Suites, Townplace Suites, AC, ALoft; (ix) Pacifica Hotels; (x) Wyndham brands; Wyndham, Wyndham Garden; (xiv) Yotel.

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

COUNTY DOCUMENTS

Source: www.ocdph.com/revitalization

I. Plan Information

1. Artist Conceptual Drawings
2. Plan Background
3. Task Force Plan Priorities
4. Implementation Plan
5. Land Use Plan

II. Landside Revitalization

1. Coastal Development Permit CDP 13-0018
   - A. OC DPH Revitalization Landside CDP Application
     - a. Revised Permit Application
     - b. Updated Schedule
   - B. OC DPH Revitalization Landside CDP Project Plans & Exhibits
     - a. Site Plan & Architectural Plans
     - b. Civil Engineering
     - c. Landscape Plans
     - d. Project Schedule & Phasing
     - e. Master Sign Program
     - f. DPH Commercial Core Renderings
     - g. DPH View Analysis
     - h. DPH Story Pole Analysis
   - C. OC DPH Revitalization CDP Technical Studies
     - a. Geotechnical Report

b. Geotech Setback Zone

c. Hydrology & Hydraulic Report – Boat Storage Parking Lot Interim Drainage Condition (Line D – Interim)

c. Hydrology & Hydraulic Report – Dana Point Harbor Revitalization Project

d. WQMP

e. Arborist Report

f. Nest Survey Report

g. Tree Planting, Maintenance & Mitigation Monitoring

h. Tree Mitigation Monitoring Report Field Evaluation Form

i. Summary of Proposed Lighting & Design Elements

j. Baseline

k. Parking Management Plan

l. Transportation Demand Management Plan

m. Construction Management Parking Plans

n. DPH Shoreline Management Plan

o. Wave Uprush Analysis Revised 08272014

p. Wave Uprush Analysis

2. Coastal Development Permit – Updated Documents Amendment Application CDP 13-0018

A. OC DPH Revitalization Landside CDP Amendment

a. DPH Shoreline Management Plan Final

b. Launch Ramp Utilization Report

c. Updated Schedule

d. Wave Uprush Analysis Revised 08272014

B. OC DPH Revitalization Landside CDP Related Documents

a. Requirement Consistency Table – PC Reso Exhibit A

3. Dana Wharf Restroom

4. Land Use Plan Component

A. LUP Table of Contents

B. LUP Chapters 1-3

C. LUP Chapters 4-6

D. LUP Chapters 7-9

5. Planning Area 1 & 2 Components

6. Dry Boat Storage

A. Appendix D – DPH Dry Storage Building

B. Appendix D – DPH Dry Storage Deck

C. DPH Dry Storage Analysis

D. Sign Presentation

7. Story Pole Analysis Computer Images

III. Waterside Revitalization

1. Boat Launch Ramp

2. Boater Meetings

A. Dana Point Boater Meeting Presentations

a. Boater Meeting 1 – 9.26.06

b. Boater Meeting 2 – 10.24.06

c. Boater Meeting 3 – 11.28.06

d. Boater Meeting 4 – 12.19.06

e. Boater Meeting 5 – 1.9.07

f. Boater Meeting 6 – 1.30.07

g. Boater Survey 10.24.06

h. Boater Fact Sheet – 3-2007

i. Subsequent Environmental Impact Report 12.8.07

B. Community Meeting March 12, 2008

a. Alternatives Summary & QA Recap – 3.12.08

b. Community Presentation Meeting 03.13.08

3. Dredging Project

A. Bid Abstract Maintenance Dredging

B. Bid Summary Maintenance Dredging

C. COE Approved Permit

D. DPH Dredging Final Report

E. DPH Dredging Sampling & Analysis Plan

F. DPH Water Quality Certification

G. Maintenance Dredging Project Presentation

H. Coastal Development Permit

I. State Lands Lease

J. USACEP Public Notice

4. Previously Considered Alternatives

A. Channel Narrowing at Bridge

B. Channel Narrowing Buoy Test

C. Channel Test Photo Board

5. Subsequent Environmental Impact Report Nº 613

A. Planning Commission Meeting Cancellation Notice

B. Commission Memo

C. Initial Study

D. Notice of Preparation

E. Vol I Draft EIR

F. Vol II Cover

G. Vol II Appendix A

H. Vol II Appendix B

I. Vol II Appendix C

J. Vol II Appendix D

K. Vol II Appendix E

L. Vol II Appendix F

M. Vol III RTC Errata

IV. RFQ Resource Documents

1. As Built Plans 9.22.70
2. Boundary Survey
3. Original Marina Plans
4. Tidelands Trust Grant Documents
5. Dana Point Marina Conditions Survey Vol I and II (2001,2005)
6. Dana Point Marina Master Plan, Physical Conditions Assessment Report (June 2002)
7. Dana Point Marina Redevelopment Bulkhead Structural Evaluation
8. Title Report March 30, 2012
9. Commercial Core Project – Coastal Development Permit CDP 13-0018
10. Commercial Core Project – CDP Application
11. Part 1 – Site Plan & Architectural Plans
11. Part 2 – Civil Engineering
11. Part 3 – Landscape Plans
11. Part 4 – Project Schedule & Phasing
11. Part 5 – Master Sign Program

11. Part 6 – DPH Commercial Core Renderings

11. Part 7 DPH View Analysis

11. Part 8 – DPH Story Pole Analysis

12. Commercial Core Project Technical Studies, Reports and Information

13. DPH Revitalization Plan and District Regulations (Local Coastal Program)

14. Final Environmental Impact Report (FEIR) 591 – DPH Revitalization Project

15. FEIR 291 Addendum September 2011

16. SEIR 613 – DPH Marina Improvement Project (Waterside)

17. DPH Leased Property Financials (2005-2015)

18. 12 Guiding Principles

19. Merchants and DP Boaters Association Recommendations for the RFQ RFP

20. Commercial Core Project – Estimated Tenant Improvement Fees

21. Dana Point Harbor Boat Slip Wait List

22. DPH Demographics Profile 2015

23. DPH Tenant Criteria Manual

V. RFP Exhibits and Addenda

Exhibit 1 - Project Areas

Exhibit 2 - Operating Agreements, Operator Managed Tenant Leases and Direct County Tenant Leases Exhibit 3 – Submittal Response Checklist

Exhibit 4 – Child Support Enforcement Requirements Exhibit 5 – Proposer Profile

Exhibit 6 – Option Agreement

Exhibit 7 – Master Ground Lease Agreement

Addendum 1.0 RFP SUPPLEMENTAL INFORMATION

- Dana Point Harbor Annual Rent Roll and Fiscal Year 2015/16 Percentage Rent

- East Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- West Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Vintage Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Marina Inn Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17

Addendum 2.0 RFP SUPPLEMENTAL INFORMATION

Actuals for FY 2011/12, FY 2012/13, FY 2013/14, FY 2014/15, and FY 2015/16 and Budget for FY 2016/17

- East Marina Financial Information
- West Marina Financial Information
- Vintage Financial Information
- Marina Inn Financial Information Addendum 3.0 RFP Schedule Update Addendum 2.0 RFP Questions

VI. Dana Point Harbor CAD File

EXHIBIT M

REQUIRED LEASE PROVISIONS

[To be finalized during Option Period and added prior to execution of Lease]

EXHIBIT C

Conceptual Plan

[Attached hereto]

BURNHAM | WARD PROPERTIES

R.D.OLSON DEVELOPMENT

BELLWETHER FINANCIAL GROUP

DANA POINT HARBOR REVITALIZATION

REQUEST FOR PROPOSAL: DANA POINT HARBOR PARTNERS, LLC

DANA POINT HARBOR OVERALL SITE PLAN

EXHIBIT D

Budget

[Attached hereto]

Dana Point Harbor - Master Development
Development Budget Summary

MASTER DEVELOPMENT	
Development Costs	**TOTAL**
Land/Acquisition Costs	$13,066,360
Financing/Legal Fees	14,651,445
Consulting Costs	10,096,989
Fees/Permits/Reimbursables	4,423,659
Construction Costs	255,457,783
FF&E	10,665,155
Pre-Opening Costs	4,637,955
Contingency	5,831,366
Total Cost	**$318,830,712**

Development Costs	Marina	Commercial Core	Affordable Hotel	Boutique Hotel
Land/Acquisition Costs	$4,491,665	$3,704,317	$1,133,734	$3,736,644
Financing/Legal Fees	4,575,423	5,431,277	1,552,974	3,091,771
Consulting Costs	2,178,773	1,258,037	1,885,419	4,774,760
Fees/Permits/Reimbursables	1,514,594	599,065	1,050,000	1,260,000
Construction Costs	92,706,791	78,659,084	17,916,129	66,175,780
FF&E			3,470,450	7,194,705
Pre-Opening Costs	1,307,264	1,038,691	437,000	1,855,000
Contingency	2,164,140	352,751	776,384	2,538,090
Total Cost	**$108,938,650**	**$91,043,222**	**$28,222,091**	**$90,626,750**

EXHIBIT E

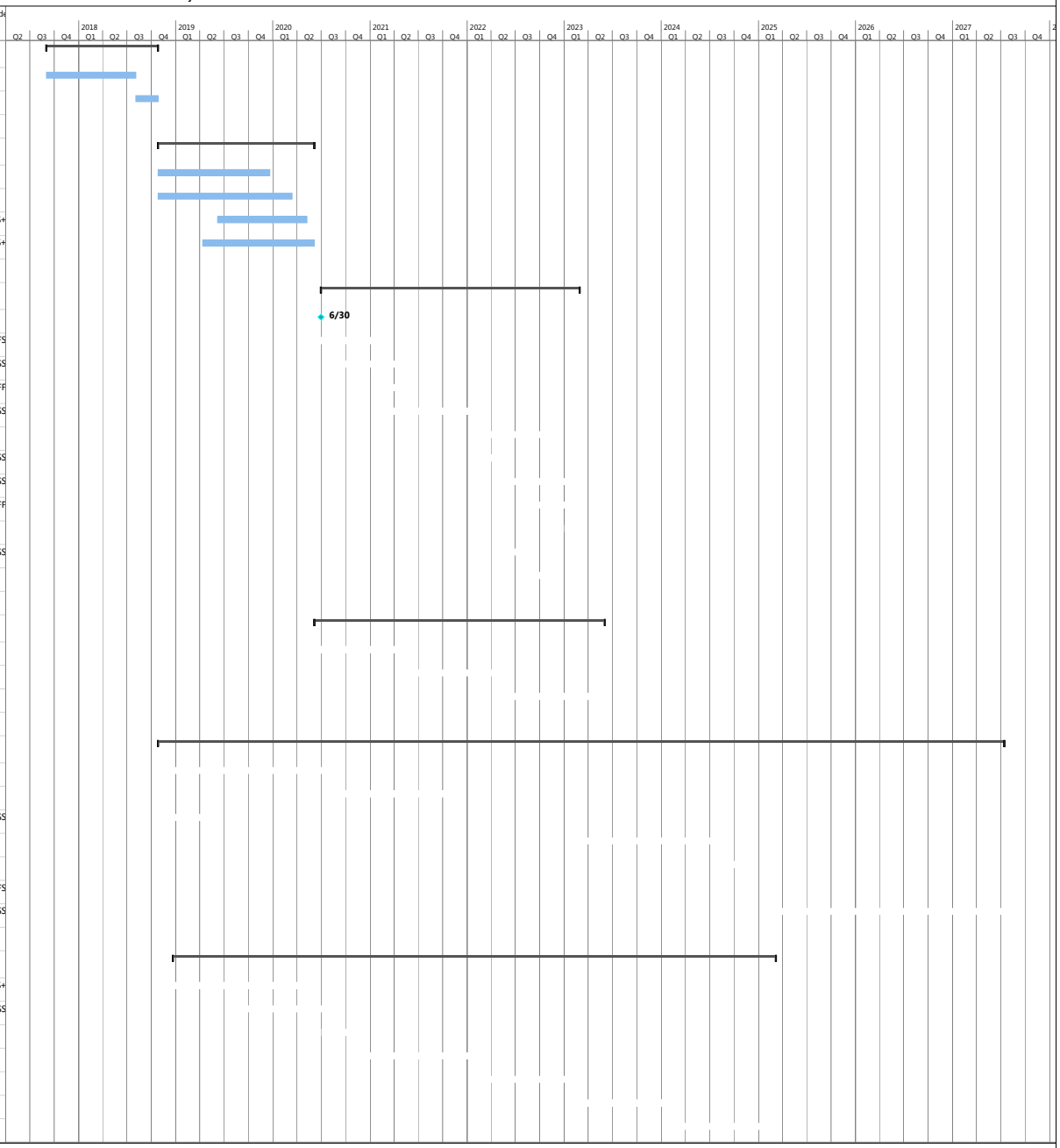
Construction Schedule

[Attached hereto]

Attachment B

Dana Point Harbor
Hotel, Marinas and Commerical Core
Project Schedule

ID	Task Name	Duration	Start	Finish	Predecessors
1	**GENERAL**	**300 days**	**Fri 9/1/17**	**Thu 10/25/18**	
2	A - Negotiate County Ground Lease Agreement	12 mons	Fri 9/1/17	Thu 8/2/18	
3	B - Option Period	3 mons	Fri 8/3/18	Thu 10/25/18	2
4					
5	**RETAIL/COMMERCIAL CORE ENTITLEMENT & DESIGN PHASE**	**420 days?**	**Fri 10/26/18**	**Thu 6/4/20**	
6	A - Commerical Core Entitlements & CDP Amendment	15 mons	Fri 10/26/18	Thu 12/19/19	3
7	B - Dry Storage Entitlements & CDP	18 mons	Fri 10/26/18	Thu 3/12/20	3
8	C - Commercial Core Construction Documents and Permits	12 mons	Fri 6/7/19	Thu 5/7/20	6SS+
9	D - Dry Storage Construction Documents & Permits	15 mons	Fri 4/12/19	Thu 6/4/20	7SS+
10					
11	**RETAIL/COMMERICAL CORE**	**695 days?**	**Tue 6/30/20**	**Mon 2/27/23**	
12	1 - Street, Intersections and Sewer Lift Station - completed by County	0 days	Tue 6/30/20	Tue 6/30/20	
13	2 - Parking Structure	7 mons	Wed 7/1/20	Tue 1/12/21	12FS
14	3 - Wharf Building Renovations - phased to allow access to docks	10 mons	Wed 7/29/20	Tue 5/4/21	13SS
15	3 - Wharf Parking Lot Renovations	4 mons	Wed 1/13/21	Tue 5/4/21	14FF
16	4A - Commercial Core Buildings 6 & 7	13 mons	Wed 1/13/21	Tue 1/11/22	15SS
17	4B - Commercial Core Buildings 8 & 9	10 mons	Wed 1/12/22	Tue 10/18/22	16
18	4B - Boater Parking Lot - East Basin	2 mons	Wed 3/9/22	Tue 5/3/22	17SS
19	4C - Commercial/Museum/Marine Services Buildings 10, 11, 12	174 days	Wed 5/4/22	Mon 1/2/23	17SS
20	4C - Day Boater Parking Lot Renovation	5 mons	Tue 8/16/22	Mon 1/2/23	19FF
21	4D - Day Boater Ramp Area & Parking Renovation	2 mons	Tue 1/3/23	Mon 2/27/23	20
22	4D - Golden Lantern Extension Relocation	4 mons	Wed 5/4/22	Tue 8/23/22	19SS
23	4E - East Commercial Core Surface Parking Lot Renovation	2 mons	Wed 8/24/22	Tue 10/18/22	22
24					
25	**BOAT DRY DOCK STORAGE**	**780 days**	**Fri 6/5/20**	**Thu 6/1/23**	
26	5A- Boat Dry Storage Racking System Installation Phase 1	13 mons	Fri 6/5/20	Thu 6/3/21	9
27	5B - Boat Dry Storage Racking System Installation Phase 2	13 mons	Fri 6/4/21	Thu 6/2/22	26
28	5C - Boat Dry Storage Racking System Installation Phase 3	13 mons	Fri 6/3/22	Thu 6/1/23	27
29					
30	**HOTEL**	**2273 days**	**Fri 10/26/18**	**Tue 7/13/27**	
31	A - Hotel Entitlements & Coastal Development Permit	24 mons	Fri 10/26/18	Thu 8/27/20	3
32	B - Hotel Construction Documents and Permits	16 mons	Fri 8/28/20	Thu 11/18/21	31
33	1a - Deferred Maintenance/Renovation of the Existing Hotel	6 mons	Fri 10/26/18	Thu 4/11/19	31SS
34	1 - Affordable Hotel Construction	18 mons	Wed 3/1/23	Tue 7/16/24	32
35	2 - Demolition Existing Hotel	5 mons	Wed 7/17/24	Tue 12/3/24	34
36	3 - Relocation of Existing Storm Drain	2 mons	Wed 1/29/25	Tue 3/25/25	35FS
37	4 - Boutique Hotel Construction	30 mons	Wed 3/26/25	Tue 7/13/27	34SS
38					
39	**MARINA/WET SLIPS**	**1620 days**	**Fri 12/21/18**	**Thu 3/6/25**	
40	A - LCPA, ACOE, RWQCB, & Coastal Development Permit	19 mons	Fri 12/21/18	Thu 6/4/20	3FS+
41	B - Construction Documents and Permits	12 mons	Fri 8/2/19	Thu 7/2/20	40SS
42	3C - Guest Slips and Commerical Slips (Sub phases 1 & 2)	6 mons	Fri 7/3/20	Thu 12/17/20	41
43	3D - West Cove Boat Slips (Sub phases 12,13 & 14)	16 mons	Fri 12/18/20	Thu 3/10/22	42
44	3E - East Cove Boat Slips (Sub phases 3, 4 & 5)	13 mons	Fri 3/11/22	Thu 3/9/23	43
45	3F - East Island Boat Slips (Sub phases 6, 7, 8 & 9)	13 mons	Fri 3/10/23	Thu 3/7/24	44
46	3G - West Island Boat Slips (Sub phases 10 & 11)	13 mons	Fri 3/8/24	Thu 3/6/25	45



Project: 2018.06.25 DPH Projec
Date: Fri 6/29/18

Task | Split | Milestone | Summary | Project Summary | Inactive Task | Inactive Milestone | Inactive Summary | Manual Task | Duration-only | Manual Summary Rollup | Manual Summary | Start-only | Finish-only | External Tasks | External Milestone | Deadline | Progress | Manual Progress

EXHIBIT F

Marketing Plan

[Attached hereto]

Exhibit "F"
Marketing Plan

Commercial Core

BWP will lead the marketing and leasing program for the Commercial Core. We are proposing a project size and tenant mix that is consistent with the County approved CDP totaling approximately 116,727 square feet plus the possibility of additional GLA for Public Benefit type uses(s). Approximately 30,000 square feet of the Commercial Core space is located on the area known as the wharf which includes existing buildings that are proposed to be refurbished. The balance of the project will be new construction located within the new Commercial Core between the wharf and hotel site. Also consistent with the County approved CDP, the merchandising plan will be predominantly food focused with 77,178 SF of restaurant space (66%), 31,949 square feet of Retail space (27.4%), 2,000 square feet of marine related retail (1.7%) and 5,600 square feet of office (4.8%).

In addition to our vast experience as developers of experiential retail spaces, we have assembled top PR, marketing and culinary experts to aid in the identification of the most exciting and innovative retailing and restaurant concepts for the new project. The project will be curated with a mix of retailing including stores, boutiques and various food focused concepts including a combination of full service and quick serve options. An emphasis will be placed on local independent chef driven concepts as well as regional and national brands. Care will be taken to ensure the retail experience remains quant and local and consistent with the personality of Dana Point and not be overly commercialized.

It is also our intent to provide an opportunity for all existing harbor merchants/tenants to remain in the project for the long term provided they are able to adapt to the new project design, project programing and proforma and can prove long term financial viability.

After initial lease up, the Commercial core shall be marketed utilizing multiple platforms including an interactive website for the grater project with links to each component project area. The project will be managed by a full- time marketing staff providing strong online presence, social media including Facebook, Twitter, Instagram as well as print media, all of which will focus on the greater project, project events and the tenants. We intend to provide programing for events for the greater project and especially the new Commercial Core. In addition to the long standing and traditional events Dana Point Harbor is known for, such as the Festival of Whales, Tall Ship Festival, Turkey Trot, Holiday Boat Parade and others, we intend to add a dense calendar of new events including, private parties, weekend farmers markets, charity and nonprofit events, food and wine events & festivals, music events, art shows, book signings, holiday events, cooking demonstrations etc. We will also be working closely with OC Parks and County staff to include other events as well. This type of sustainable active engagement will be essential to keep all the retail viable not just on weekends but all week long. The result is driving greater traffic to the retail center and harbor in general for the benefit of our retailers and restaurants which also means more revenue to the County.

An important part of our leasing and marketing strategy is to activate common areas with art, sculptures, historical artifacts, signage, graphics, interactive exhibits, etc. Our goal in creating this sense of place, is to pay homage to Dana Point's history especially its role innovating local surf culture including: surfing, surf equipment and apparel, sailing, boating, stand up paddle boarding and water sports in general. Our proposed vision is to include a surf museum (if approved), surf apparel stores and other exhibits geared toward celebrating the areas contribution to surf culture.

Marina

Primary competing harbors are Newport Beach and Huntington Beach. A market rate study revealed most marinas in the area are near or at capacity. The average slip rates in these competing harbors are well above current rates at Dana Point Harbor.

Strategic marketing plan for marina district:

- Accommodate existing boating base
- Accommodate boaters on waiting list
- Continue to promote Dana Point Harbor in local and regional publications
- Increase day boat traffic as well as transient visitors
- Partner with marinas, publications and yacht clubs up and down California's coast to increase visiting boaters

EXHIBIT G

Financial Plan

[Attached hereto]

"Exhibit G"

FINANCIAL PLAN

Lessee to assume operations of the overall marina as soon as practical and shall put into place the Financial plan to support existing operations and to prepare for funding the new construction. In terms of funding the required debt and equity for the new construction, we envision one of two scenarios occurring. On the debt side, each of the DPHP partners have long term and strong relationship with lenders willing to provide financing for each partner's specialty portion. These lenders are logical candidates to lend to the borrowers and for the product type they are most familiar with. However, because of our ownership structure, we will have the added advantage to cross collateralize that debt with income from the entire harbor. In this manner, we can push beyond the likely road blacks that others will encounter based on the lack of revue potential and development risk with the project as individual pieces. The second option is to identify a single lender familiar with the various product types and our partners that would lend on the entire project. In this case, it may also be that they become a lead lender and that the loan is syndicated with another lender(s). We have spoken to a number of lenders that are interested in this format based on the strength and sponsorship of our team.

A summary of our approach to each section of the Harbor is as follows:

Retail/Commercial Core:

We will stabilize and assume management/operations of the existing buildings including making whatever short term deferred maintenance improvements are necessary to keep all merchants operational during this transition period. Notwithstanding, because the existing buildings may be in need of deferred maintenance and because complete demolition of various portions of the project are planned, we must evaluate all existing buildings based on their condition and reserve the right to take portions of the project out of operation (especially those units that are currently vacant) if the existing conditions are determined to pose a health and safety risk to the operators or general public. We with then formulate our schedule for securing all necessary permits and approvals to undertake out redevelopment of the commercial core in accordance with our anticipated phasing program. Capital improvements for deferred maintenance will be funded from partner equity, operational cash flow or other short-term credit facilities available to our entity. Once approvals have been secured, funding for the overall construction will be facilitated and funded by combination of partner equity (i.e. cash, operational cash flow, third party non-voting equity, bridge financing, etc) and a construction loan.

Hotel:

As with the Retail/Commercial Core it is our intent to assume operations of the hotel at the earliest possible date. We anticipate having to invest approx. $500,000 immediately to cure deferred maintenance and to fund operational expenses necessary to bolster the hotel operation and stabilize cash flow. Once all approvals have been obtained, construction will be funded with combination of partner equity and a construction loan as described in Retail above.

Marina:

It is our intent to assume immediate operations. We anticipate having to perform normal and customary deferred maintenance and other upgrades to maintain operations. Notwithstanding, because the dock systems may be in need of deferred maintenance and because complete demolition of various portions of the project are planned, we must evaluate all existing systems based on their condition and reserve the right to take portions of the project out of operation (especially slips that are currently vacant) if the existing conditions are determined to pose a health and safety risk to the operators or general public. All of this initial capital improvement will be funded through operational cash flow, cash or credit facilities. We will immediately commence work on obtaining necessary approvals for eventual replacement of all dock systems in accordance with our overall plan. Once approvals have been obtained we will fund construction with partner equity as described in Retail above and a construction loan.

EXHIBIT H

Management Plan

[Attached hereto]

Exhibit " H"
Management Plan

DPHP will provide property and operation management at various levels for both the greater project as well as the individual component pieces all of which will require specialized expertise.

Master Project

It is the intent of DPHP to provide on-site management staff for the entire Harbor areas. Each project area, namely the Commercial Core, Hotel and Marina, will have experienced on-site property management staff that specialize in those specific product types. In addition, BWP shall engage a person who will support these individual specialty property managers and who will oversee the greater Harbor operations and activities on a day to day basis. This individual(s) will be an employee of and shall report directly to DPHP. Among this person's duties and responsibilities shall include:

- Management and enforcement of the overall Harbor Parking Management Plan
- Management oversight during all Harbor wide construction as it relates to temporary parking, signage and way-finding and circulation issues
- Specialty and safety related matters
- Management of the emergency response plan
- Management of the project engineering staff
- Management of all CC&R's and Rules & Regulations
- Management the parking attendant staff & valets
- Management of on- site transportation and shuttle services
- Oversight of greater project marketing, branding and PR team, and coordination between specialty project area marketing
- Management and coordination of all project wide events
- Management and coordination of all common areas including but not limited to: janitorial and trash collection, public utility and engineering contracts, signage maintenance and updating, park areas, customer complaints, day to day tenant needs (in coordination/support of specialty area managers), etc.

Each portion of the specialty areas shall provide for their own accounting. Every month that accounting shall be reconciled and complied into a report to the County by a single individual or an Accounting Firm appointed by DPHP that shall be responsible for creating the financial reports to the County, along with the calculation and payment of percentage rent.

The partners shall conduct monthly executive management meeting with both the Harbor Director and Financial contact/Accountant firm to ensure all matters and operations are running smoothly. Appointments of these positions will also provide the county single points of contact for all property management and financial related matters.

Commercial Core/Retail

The Commercial Core shall be professionally managed by Burnham-Ward Properties. The principals at BWP take an active role in understanding the day-to-day activities of its assets and work hand in hand with the property management staff to maximize tenant retention, property operations, continual

upgrades and project enhancements.

Methodology for Maintaining the Premises – Commercial Core

Plan for daily housekeeping, cleaning, trash disposal, litter removal and extermination

Housekeeping, cleaning, trash disposal, litter removal: We will be contracting with a licensed and insured maintenance company to perform daily janitorial service throughout the Project such as Performance Building Services, CAM Services or Lot Management. This shall include litter cleanup, trash removal, regular cleaning of common areas, and general policing of the parking lot. Contracts will also be established for regular trash pickup. A recycling program will be put in place and all businesses will be strongly encouraged to participate. The grounds will be treated on an as needed basis, but no less than monthly, by a professional pest control company. Services will include insect, rodent treatment, bee/wasp removal and other miscellaneous pests when needed.

Preventative Maintenance Program

Preventative Maintenance (HVAC and Roof maintenance): Retail tenants who occupy buildings where they are able to perform their own maintenance will be required to have preventative maintenance contracts established for all HVAC equipment. For multi-tenant buildings this will be contracted directly through building management. Annual roof inspections shall also be established which shall include general clean up, inspection of gutters, necessary repairs, and roof drains. Backflow prevention devices are also inspected annually by a licensed plumber. Additionally, the property will serve all storm drains per the established WQMP.

Grounds Maintenance Program

Landscape and grounds: A contract will be in place with a licensed and insured landscape maintenance company under the condition that a full time crew will be dedicated to the maintenance of the Dana Point Harbor project. Other grounds maintenance will include: regular sweeping of all parking lots, regular pressure washing / steam cleaning of all sidewalks and patio areas, and exterior window cleaning. We have longstanding relationships with multiple companies that provide these services throughout our portfolio and provide first class services.

Stormwater Water Quality Program

The existing Dana Point Harbor is currently considered as an impaired water body per the San Diego Regional Water Quality Board due to the presence of bacteria indicators and pathogens, metals and toxic organic compounds. The Commercial Core and hotel projects for Dana Point Harbor project will include new landscape areas, several large parking lot, a 2-level parking structure, boat day-use and dry storage areas (where possible boat maintenance may occur), and public gathering areas. These activities are similar to those that exist today. However, with the redevelopment of the commercial core and hotel area current water quality measures to address stormwater runoff must be implemented. The activities conducted within the proposed redevelopment area per the proposed land uses are expected to generate the following pollutants: suspended solid and sediments, nutrients (nitrogen and phosphorus), heavy metals, pathogens such as bacteria and viruses, pesticides, oil and grease, toxic organic compounds and trash debris.

Per the County's RFP requirements the project improvements will include Storm Water runoff water quality management LID solutions and Best Management Practices (BMP) to satisfy State, County, and City requirements. A Water Quality Management Concept Plan for the proposed commercial core and Hotel area is provided in this proposal. This Concept Plan identifies potential water quality solutions that will be investigated and implemented as part of the Commercial Core and Hotel area's Water Quality Management Plan (WQMP). The WQMP will be based on the final improvements for the harbor redevelopment and will be developed to insure compliance with the San Diego Regional Water Quality Board NPDES permits for the project area.

BMP Solutions to be considered during final design include infiltration and Biofiltration. Opportunities for rain harvesting and evapotranspiration are limited due to the Harbor's large parking requirements which limits landscaping surface area within the redevelopment areas. Per the South Orange County Hydromodification Management Plan (HMP) the harbor is exempt from the requirement to implement hydromodification control BMPs.

Potential non-structural BMPs may include:

- Educational training of harbor staff and commercial uses
- Street and parking lot sweeping on a regular bases (weekly)
- Common are landscape management programs
- Spill contingency management in dry-storage areas
- Training and implementation of good housekeeping practices in storage and loading docks areas
- Common area catch basin inspection
- Minimize any outdoor storage areas
- Design trash collection areas to reduce pollution introduction into stormwater (including installation of roofs over trash enclosures and adding sewer drains)
- Efficient irrigation systems and landscape design
- Restrictions on boat wash down areas
- Restriction of food preparation areas to provide waste water controls
  Potential structural BMPs to address water quality treatment for the storm water Design Capture Volume (DCV) may include:
- Construction of vegetated strips or swales, where possible
- Construction of pervious pavement solutions for underground stormwater detention and/or infiltration where feasible
- Installation of proprietary underground storage chambers for stormwater detention and/or infiltration where feasible
- Construction of biofiltration systems such as planter boxes and biofiltration swales or basins
- Installation of proprietary storm water treatment systems such as clarifiers and modular wetlands
- Install media filtration systems in areas where site conditions may not accommodate other solutions
- Installation of roof down drain filters
- Installation of trash rack on catch basin openings
- Provide pet waste stations throughout the redevelopment area

<u>Facilities Management Plan - Emergency situations and response</u>

All businesses shall be provided with an emergency preparedness booklet which would include procedures for various emergency situations (i.e. fire, earthquake, gas leak, electrical hazard, etc.). The booklet will include contacts and phone numbers for the following: Paramedic/Ambulance,

Local Police, OC Sheriff Harbor Patrol, Utility companies, Health and Public Health Services (Local hospital, Poison Control Center), and others, as appropriate. Signage shall also be posted throughout the project to make sure all harbor exit routes are clearly identified.

Furniture, fixtures, and equipment

Exterior furniture, trash receptacles, and fire extinguishers, will be placed throughout the project to create a pleasant and inviting, and safe atmosphere to visitors. This will be maintained and cleaned regularly. Fire extinguishers will be serviced annual and all other fixtures and receptacles will be replaced on an as needed basis.

Utilities, energy and plant management

Given that this project will be a new development, all building systems will be in compliance with the most up to date energy and sustainability requirements. This shall include but not be limited to HVAC equipment, plumbing fixtures, light fixtures, electrical equipment, landscape plant material, and irrigation. All items will be Title 24 compliant.

Environmental compliance and pollution prevention

All businesses will be provided with the Water Quality Management Plan (WQMP) in addition to information regarding recycling programs.

Plan for Funding Ongoing Maintenance and Future Capital Replacement and/or Renovations as well as Plan for structural maintenance, preventative and predictive maintenance, routine repairs and replacement

As part of the budgeting process, reserve accounts will be put in place. Property management will be very involved in meeting with vendors regularly to anticipate any large capital expenditures such as parking lot and sidewalk repairs and/or replacement, roof replacement, any potential structural issues, landscape and tree maintenance, etc.

Marina – Wet Slips

The Bellwether team's substantial experience in designing, rebuilding, and operating marinas allows us to offer a responsive, cost-effective, full service project approach to the Dana Point Harbor Marina. All team members are experts at understanding the needs of marina operators and recreational boaters, especially on the west coast of the United States and Mexico. The team at Bellwether take an active role in determining the standards and the day-to-day services and activities of the marina and actively manage the marina management companies to ensure an excellent customer experience.
Through successful completion of many rebuild projects, our approach has been fine-tuned to meet the specific needs of the marina. Tenants need to be taken into account, and the ongoing business must be maintained while minimizing interruption during the project. Done right, the marina can project its revenue stream and continue to provide quality services to its customers. Bellwether's project management of rebuilds includes the development of an efficient transition plan. The transition plan includes identification of impact on the marina's services and tenants with the primary goals being to keep tenant relocations to a minimum, to limit disruptions to daily operations and to keep water, power

and other services available at temporary locations.

Hotel

RD Olson Development is a seasoned hotel developer and owner with 20 years of experience as owners overseeing third party managers who operate R.D. Olson owned hotels day to day. During the entitlement and design process R.D. Olson Development will determine the most suitable hotel business plan strategy which will dictate branding decisions, interior design, etc.
The Dana Point Harbor hotels will be managed by institutional quality third party management companies with significant experience operating similar type hotels in similar markets. Leading up to opening of the hotels R.D. Olson Development will conduct a selection process to determine the right operator based upon what specific hospitality business plan had been chosen at commencement of construction. Once the hotel is opened and turned over to the management company, R.D. Olson continues to be highly involved day to day as lead owner and asset manager representing the interests of the investors in the hotel and ensuring acceptable property operation, guest satisfaction, management level hiring decisions, sales strategies, marketing strategies, financial decisions, etc. R.D. Olson has internal dedicated personnel that focus on the asset management aspect of the business with years of experience on the hotel management/ sales side of the industry.

EXHIBIT I

Form of Quitclaim Deed

[Attached hereto]

EXHIBIT I

Form of Quitclaim Deed

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

County of Orange
c/o CEO/Corporate Real Estate
333 W. Santa Ana Blvd, 3rd Floor
Santa Ana, CA 92702
Attn: Chief Real Estate Officer

Recording Fee Exempt
Per Govt. Code 27383

Facility:
Facility No.:
Parcel No.:
A.P. No.:
Location: City of Dana Point, CA 92629

THE UNDERSIGNED GRANTOR DECLARES THAT THIS IS A CONVEYANCE TO A GOVERNMENTAL ENTITY AND NO TRANSFER TAX IS DUE PER CAL. R&T CODE 11922

QUITCLAIM DEED

For valuable consideration, receipt and sufficiency of which is hereby acknowledged,

DANA POINT HARBOR PARTNERS, LLC
(hereinafter referred to as "GRANTOR"),

does hereby remise, release and forever Quitclaim to the

COUNTY OF ORANGE,
a political subdivision of the State of California
(hereinafter referred to as "COUNTY"),

all right, title and interest of GRANTOR under that certain Option Agreement entered into by GRANTOR and COUNTY dated _____, including without limitation, all of GRANTOR's right, title and interest in and to that certain real property located in the City of Dana Point, County of Orange, State of California, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

GRANTOR:

DANA POINT HARBOR PARTNERS, LLC,
a California limited liability company

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201_ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:_____ (seal)

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201_ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:_____ (seal)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within deed or grant to the County of Orange, political subdivision of the State of California, is hereby accepted by order of the Board of Supervisors of the County of Orange, and the County of Orange consents to recordation thereof by its duly authorized officer.

Dated: _____ By: _____
Chief Real Estate Officer

APPROVED AS TO FORM
County Counsel

By: _____
Deputy

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 201_ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature:_____ (seal)

Exhibit A to Quitclaim Deed
Legal Description

[to be attached]

EXHIBIT J

List of County Documents

[Attached hereto]

EXHIBIT J

List of County Documents

Source: www.ocdph.com/revitalization

I. Plan Information
   1. Artist Conceptual Drawings
   2. Plan Background
   3. Task Force Plan Priorities
   4. Implementation Plan
   5. Land Use Plan

II. Landside Revitalization
   1. Coastal Development Permit CDP 13-0018
      A. OC DPH Revitalization Landside CDP Application
         a. Revised Permit Application
         b. Updated Schedule
      B. OC DPH Revitalization Landside CDP Project Plans & Exhibits
         a. Site Plan & Architectural Plans
         b. Civil Engineering
         c. Landscape Plans
         d. Project Schedule & Phasing
         e. Master Sign Program
         f. DPH Commercial Core Renderings
         g. DPH View Analysis
         h. DPH Story Pole Analysis
      C. OC DPH Revitalization CDP Technical Studies
         a. Geotechnical Report
         b. Geotech Setback Zone
         c. Hydrology & Hydraulic Report – Boat Storage Parking Lot Interim Drainage Condition (Line D – Interim)
         c. Hydrology & Hydraulic Report – Dana Point Harbor Revitalization Project
         d. WQMP
         e. Arborist Report
         f. Nest Survey Report
         g. Tree Planting, Maintenance & Mitigation Monitoring
         h. Tree Mitigation Monitoring Report Field Evaluation Form
         i. Summary of Proposed Lighting & Design Elements
         j. Baseline
         k. Parking Management Plan
         l. Transportation Demand Management Plan
         m. Construction Management Parking Plans
         n. DPH Shoreline Management Plan
         o. Wave Uprush Analysis Revised 08272014
         p. Wave Uprush Analysis

2. Coastal Development Permit – Updated Documents Amendment Application CDP 13-0018
    A. OC DPH Revitalization Landside CDP Amendment
        a. DPH Shoreline Management Plan Final
        b. Launch Ramp Utilization Report
        c. Updated Schedule
        d. Wave Uprush Analysis Revised 08272014
    B. OC DPH Revitalization Landside CDP Related Documents
        a. Requirement Consistency Table – PC Reso Exhibit A
3. Dana Wharf Restroom
4. Land Use Plan Component
    A. LUP Table of Contents
    B. LUP Chapters 1-3
    C. LUP Chapters 4-6
    D. LUP Chapters 7-9
5. Planning Area 1 & 2 Components
6. Dry Boat Storage
    A. Appendix D – DPH Dry Storage Building
    B. Appendix D – DPH Dry Storage Deck
    C. DPH Dry Storage Analysis
    D. Sign Presentation
7. Story Pole Analysis Computer Images

III. Waterside Revitalization
1. Boat Launch Ramp
2. Boater Meetings
    A. Dana Point Boater Meeting Presentations
        a. Boater Meeting 1 – 9.26.06
        b. Boater Meeting 2 – 10.24.06
        c. Boater Meeting 3 – 11.28.06
        d. Boater Meeting 4 – 12.19.06
        e. Boater Meeting 5 – 1.9.07
        f. Boater Meeting 6 – 1.30.07
        g. Boater Survey 10.24.06
        h. Boater Fact Sheet – 3-2007
        i. Subsequent Environmental Impact Report 12.8.07
    B. Community Meeting March 12, 2008
        a. Alternatives Summary & QA Recap – 3.12.08
        b. Community Presentation Meeting 03.13.08
3. Dredging Project
    A. Bid Abstract Maintenance Dredging
    B. Bid Summary Maintenance Dredging
    C. COE Approved Permit
    D. DPH Dredging Final Report
    E. DPH Dredging Sampling & Analysis Plan
    F. DPH Water Quality Certification

G. Maintenance Dredging Project Presentation
H. Coastal Development Permit
I. State Lands Lease
J. USACEP Public Notice

4. Previously Considered Alternatives
   A. Channel Narrowing at Bridge
   B. Channel Narrowing Buoy Test
   C. Channel Test Photo Board
5. Subsequent Environmental Impact Report Nº 613
   A. Planning Commission Meeting Cancellation Notice
   B. Commission Memo
   C. Initial Study
   D. Notice of Preparation
   E. Vol I Draft EIR
   F. Vol II Cover
   G. Vol II Appendix A
   H. Vol II Appendix B
   I. Vol II Appendix C
   J. Vol II Appendix D
   K. Vol II Appendix E
   L. Vol II Appendix F
   M. Vol III RTC Errata

IV. RFQ Resource Documents
1. As Built Plans 9.22.70
2. Boundary Survey
3. Original Marina Plans
4. Tidelands Trust Grant Documents
5. Dana Point Marina Conditions Survey Vol I and II (2001,2005)
6. Dana Point Marina Master Plan, Physical Conditions Assessment Report (June 2002)
7. Dana Point Marina Redevelopment Bulkhead Structural Evaluation
8. Title Report March 30, 2012
9. Commercial Core Project – Coastal Development Permit CDP 13-0018
10. Commercial Core Project – CDP Application
11. Part 1 – Site Plan & Architectural Plans
11. Part 2 – Civil Engineering
11. Part 3 – Landscape Plans
11. Part 4 – Project Schedule & Phasing
11. Part 5 – Master Sign Program
11. Part 6 – DPH Commercial Core Renderings
11. Part 7 DPH View Analysis
11. Part 8 – DPH Story Pole Analysis
12. Commercial Core Project Technical Studies, Reports and Information
13. DPH Revitalization Plan and District Regulations (Local Coastal Program)
14. Final Environmental Impact Report (FEIR) 591 – DPH Revitalization Project

15. FEIR 291 Addendum September 2011
16. SEIR 613 – DPH Marina Improvement Project (Waterside)
17. DPH Leased Property Financials (2005-2015)
18. 12 Guiding Principles
19. Merchants and DP Boaters Association Recommendations for the RFQ RFP
20. Commercial Core Project – Estimated Tenant Improvement Fees
21. Dana Point Harbor Boat Slip Wait List
22. DPH Demographics Profile 2015
23. DPH Tenant Criteria Manual

V. RFP Exhibits and Addenda

Exhibit 1 - Project Areas

Exhibit 2 - Operating Agreements, Operator Managed Tenant Leases and Direct County Tenant Leases Exhibit 3 – Submittal Response Checklist

Exhibit 4 – Child Support Enforcement Requirements Exhibit 5 – Proposer Profile

Exhibit 6 – Option Agreement

Exhibit 7 – Master Ground Lease Agreement

Addendum 1.0 RFP SUPPLEMENTAL INFORMATION

- Dana Point Harbor Annual Rent Roll and Fiscal Year 2015/16 Percentage Rent
- East Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- West Marina Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Vintage Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17
- Marina Inn Financial Information - Actuals for FY 2015/16 and Budget for FY 2016/17

Addendum 2.0 RFP SUPPLEMENTAL INFORMATION

Actuals for FY 2011/12, FY 2012/13, FY 2013/14, FY 2014/15, and FY 2015/16 and Budget for FY 2016/17

- East Marina Financial Information
- West Marina Financial Information
- Vintage Financial Information
- Marina Inn Financial Information Addendum 3.0 RFP Schedule Update Addendum 2.0 RFP Questions

VI. Dana Point Harbor CAD File

EXHIBIT K

Agreement Authorizing Discussions

[Attached hereto]

AGREEMENT BETWEEN
DANA POINT HARBOR PARTNERS, LLC
AND
THE COUNTY OF ORANGE
TO AUTHORIZE DISCUSSIONS
WITH DANA POINT HARBOR OPERATORS

THIS AGREEMENT ("**Agreement**") is approved and entered into as of January 10, 2018 ("**Effective Date**"), by and between DANA POINT HARBOR PARTNERS, LLC ("**DPHP**") and the COUNTY OF ORANGE ("**County**"). DPHP and the County may be referred to individually as "**Party**" or collectively as "**Parties.**"

WHEREAS, County owns all the land and improvements located within Dana Point Harbor, in the City of Dana Point, California and depicted on **Exhibit 1** of the Request for Proposal identified herein (the "**Property**");

WHEREAS, County currently leases multiple locations within the Property to various tenants, and utilizes operating agreements ("**Operating Agreements**") with various operators formally known as Vintage Marina Partners, T.B.W. Company, Dana Point Marina Company, and Great Western Hotels (collectively "**Operators**") to operate and manage the Commercial Core, West Basin Marina, East Basin Marina and Dana Point Marina Inn (as identified in the Request for Proposal identified herein);

WHEREAS, County desires to lease the Property to a developer for the purpose of planning, designing, funding, constructing, renovating, marketing, operating, managing and maintaining the Property (the "**Project**");

WHEREAS, in response to a Request for Proposal (RFP No. 2016-03-16) issued by County to pre-qualified developers (the "**Request for Proposal**"), DPHP submitted a written proposal (the "**Proposal**") to be the developer of the Property and the County selected DPHP's Proposal as the best response to said Request for Proposal;

WHEREAS, the Parties are currently negotiating an Option ("**Option**") and Ground Lease ("**Ground Lease**") for the purposes of defining and carrying out the Project;

WHEREAS, DPHP desires, at DPHP's sole expense, to engage the Operators in discussions related to any business relationship DPHP may have with the Operators after the effective date of the Ground Lease;

WHEREAS, subject to the terms and conditions set forth below, County desires to authorize DPHP to enter into discussions with the Operators for the sole reason stated herein.

NOW THEREFORE, the Parties hereto agree as follows:

Section 1. Authorization for Discussions with Operators.

A. Permitted Activity. Subject to the terms and conditions of this Agreement, in exchange for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County grants DPHP the right to contact and engage any and all of the Operators in discussions related to any business relationship DPHP may have with the Operators after the effective date of the Ground Lease (the "**Permitted Activity**"). The County's authorization is limited to this sole purpose and shall not be deemed as authorization for DPHP's access to any records, communications, work product, or other business materials ("**County Materials**") between the County and the Operators. Access to any such County Materials may only be authorized under a separate written agreement between the County and DPHP. DPHP represents that this Agreement shall not be used for any purpose other than the Permitted Activity.

B. Scope of Discussions with Operators and Coordination with County. Prior to engaging in the Permitted Activity with an Operator, DPHP shall provide the County with twenty-four hours' prior written notice and shall only engage an Operator after coordinating with the County's representatives, identified as Shannon Levin and Zoila Finch, whose contact information is provided in Section 7 below, as to the County's availability to participate in the same. Any meetings between DPHP and an Operator shall only take place with a County representative present unless the County declines to be present at any such meeting. The County reserves the right to prohibit or restrict access to an Operator at any time to ensure the Operator and/or its operations are not unreasonably disturbed.

Section 2. Term. This Agreement shall commence on the Effective Date and shall remain in effect for ninety (90) days from the Effective Date or upon the effective date of the Ground Lease, whichever occurs first, in which latter case the terms of the Option and Ground Lease shall control with respect to the subject matter of this Agreement. However, this Agreement may be terminated by either Party at any time upon ten (10) days' written notice given to the other Party for any or no reason. Furthermore, the County may terminate this Agreement immediately upon written notice to DPHP if, in the County's sole discretion, (a) DPHP is in material breach of this Agreement, (b) there is an actual or potential threat to persons or property, (c) in the event that a natural disaster or emergency which makes it necessary for the County to use the Property for alternative purposes, or (d) should the Parties end their discussions and negotiations related to the Option and Ground Lease.

Section 3. Conditions of Use. Throughout the term of this Agreement, DPHP agrees to comply with the following Conditions of Use:

A. Applicable Law. DPHP shall ensure its activities under this Agreement are performed in accordance with all applicable federal, state or local statutes, ordinances, orders, governmental requirements, laws or regulations, and shall indemnify the County for any damages, violations or claims arising from its actions hereunder, as set forth in Section 4 below.

B. Third Party Agent. If DPHP hires any third party to perform any services associated with the Permitted Activity ("**Third Party**"), DPHP shall ensure the Third Party complies with all of the terms and conditions of this Agreement. Neither DPHP, nor any Third

Party, nor any of such Third Party's employees shall be considered officers, employees or agents of the County, and none of the same shall be entitled to benefits of any kind or nature normally provided employees of the County and/or to which County's employees are normally entitled. DPHP assumes the full responsibility for the acts and/or omissions of any Third Party as they relate to the services to be provided in connection with this Agreement. The County shall not be party to any agreement DPHP enters with any Third Party and DPHP shall be responsible, at DPHP's sole cost and expense, for any payment or compensation owed to any Third Party for work on the Property (including, without limitation, sums owed to any Third Party employee).

C. DPHP Discussions with Operators. Commencing on the Effective Date, the County and DPHP agree that while DPHP may enter into direct discussions during the term of this Agreement with any of the Operators related to any business relationship DPHP may have with the Operators after the effective date of the Ground Lease, no agreement between DPHP and any Operator shall be effective until, at the earliest, the effective date of the Ground Lease, and no such agreement shall be binding on the County under any circumstances, whether before or after the effective date of the Ground Lease.

Prior to any such discussion or negotiation with an Operator, DPHP shall provide a written statement to the Operator that includes the following language:

> "In connection with certain ongoing negotiations between the County of Orange ("County") and Dana Point Harbor Partners, LLC ("DPHP"), for DPHP's potential ground lease of the Dana Point Harbor, the County has authorized DPHP to communicate with [insert Operator name] as part of DPHP's due diligence investigations. Notwithstanding the foregoing, the County is in no way endorsing DPHP or any information provided by DPHP, nor is DPHP authorized to act on behalf of the County, or to bind the County in any way with respect to [insert Operator's name] and/or the County's agreement with [insert Operator's name], and any purported agreement between DPHP and [insert Operator's name] entered in contravention of the foregoing shall be void. Furthermore, neither the County nor DPHP guarantees that DPHP will assume responsibility for [insert Operator's name] agreement with the County. Any agreements which may occur between DPHP and [insert Operator's name] shall be between DPHP and [insert Operator's name] alone, and shall not be effective under any circumstances unless and until DPHP enters into a master ground lease with the County and the effective date thereunder has occurred, if at all."

Section 4. **Indemnification.** DPHP shall be solely responsible for, and County shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of the acts of DPHP, its agents, officers, employees, and/or invitees including any Third Party (collectively, the "**DPHP Parties**"), or resulting from DPHP's or the DPHP Parties' activities on the Property or from any cause whatsoever arising out of or in connection with this Agreement. DPHP shall indemnify and defend with counsel County, the Board of Supervisors, and each of their respective officers,

elected and appointed officials, representatives, agents, consultants, contractors, counsel, employees, volunteers, invitees, their successors and assigns and the Property (collectively, the "**County Parties**") against and will hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities (collectively, "**Losses**") that may be asserted or claimed arising out of or in connection with DPHP's activities on the Property under this Agreement whether or not there is concurrent passive negligence on the part of County or any of the County Parties, except to the extent that any Loss is caused by the sole negligence or willful misconduct of County, and in connection therewith:

A. Actions Filed. DPHP shall defend any action or actions filed in connection with any of said Losses, and will pay all costs and expenses, including attorneys' fees incurred by the County and/or any of the County Parties in connection therewith;

B. Judgments Rendered. DPHP shall promptly pay any judgment rendered against DPHP, the County and/or any of the County Parties relating to such Losses arising out of or in connection with the Permitted Activity, DPHP's use of and operations on the Property referred to herein, or otherwise in connection with this Agreement and agrees to save and hold County and the County Parties harmless therefrom; and

C. Costs and Expenses; Attorneys' Fees. In the event the County or any of the County Parties is made a party to any action or proceeding filed or prosecuted against DPHP for such damages or other Losses arising out of or in connection with the Permitted Activity, DPHP's use of and operations on the Property referred to herein, or otherwise in connection with this Agreement, DPHP agrees to pay the County's and/or the County Parties' reasonable and necessary costs and expenses incurred by them in such action or proceeding together with reasonable attorneys' fees. This Section 4 shall survive the termination or expiration of this Agreement.

Section 5. **Compliance with Law.** DPHP shall comply with all federal, state or local laws, ordinances, rules, and regulations applicable to the Property.

Section 6. **Costs.** DPHP shall be solely responsible for the payment of all costs incurred by DPHP as result of this Agreement.

Section 7. **Notices.** All notices required to be delivered under this Agreement to the other Party must be in writing and shall be effective (i) when personally delivered by the other Party or messenger or courier thereof; (ii) upon receipt by the other Party or refusal to accept delivery by the other Party of United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of an email, telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the Parties may hereafter designate by written notice to the other Parties hereto:

To County:

Shannon Levin
OCCR-OC Parks, OC Dana Point Harbor Manager
13042 Old Myford Rd.
Irvine, CA 92602
(949) 923-3796
Shannon.Levin@ocparks.com

Zoila Finch
Land Development
County Executive Office, Real Estate
Hall of Administration
333 W. Santa Ana Blvd., 1st Floor
Santa Ana, CA 92701
Office: (714) 834-3766, Mobile: (714) 227-8079
Zoila.Finch@ocgov.com

To DPHP:

Bryon Ward
Manager, DPHP
c/o Burnham Ward Properties
1100 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Office: (949) 760-9150, Mobile: (949) 422-7710
bward@burnham-ward.com

Joe Ueberroth
Manager, DPHP
c/o Bellwether Financial Group
201 Shipyard Way, Suite D
Newport Beach, CA 92663
Office: (949) 723-7702, Mobile: (949) 903-9147
jueberroth@bellingham-marine.com

Bob Olson
Manager, DPHP
c/o RD Olson Development
520 Newport Center Drive, Suite 600
Newport Beach, CA 92660
Office: (949) 271-1101, Mobile: (714) 321-2050
bob.olson@rdodevelopment.com

Section 8. **No Obligation to Lease.** For the avoidance of doubt, nothing in this Agreement shall be deemed to impose an obligation on the County to lease, or enter into the Option or Ground Lease to lease, the Property to DPHP, and nothing in this Agreement shall be deemed to impose an obligation on DPHP to lease, or enter into the Option or Ground Lease to lease, the Property from the County.

Section 9. **Legal Interpretation of Instrument.** This Agreement shall be governed by the laws of the State of California with venue in Orange County.

Section 10. **Attorneys' Fees.** If any legal action is necessary to enforce any of the terms or conditions of this Agreement, each Party shall bear their own attorneys' fees, except to the extent expressly set forth otherwise in this Agreement.

Section 11. **Entire Agreement; Amendment.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both Parties.

Section 12. **Successors, Assignment.** This Agreement shall be binding and inure to the benefits of the successors of the respective Parties. This Agreement may only be assigned upon the written consent of both Parties.

Section 13. **Recitals.** The Recitals are incorporated into this Agreement as though fully set forth herein.

Section 14. **Execution in Counterpart.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

Section 15. **Effective Date.** The term "Effective Date" shall have the meaning set forth in the preamble of this Agreement.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

County:

Scott D. May

By: SCOTT D. MAYER

DPHP:

By: Bryan Ward