

SECOND AMENDMENT TO MASTER GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO MASTER GROUND LEASE AGREEMENT (this “**Second Amendment**”) is made and entered into as of _____, 2022 (“**Effective Date**”), by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called “**County**” or “**County of Orange**”) and DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (hereinafter called “**Lessee**”). County and Lessee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

A. County and Lessee are parties to that certain agreement titled “MASTER GROUND LEASE AGREEMENT” dated as of October 29, 2018, as amended by that certain Tolling Amendment to Master Ground Lease Agreement dated April 21, 2020 (collectively, the “**Existing Ground Lease**”). All initially-capitalized terms not otherwise defined in this Second Amendment shall have the meanings set forth in the Existing Ground Lease unless the context clearly indicates otherwise.

B. Lessee has requested certain revisions to the Existing Ground Lease for financing purposes, particularly with respect to the Hotel Component and approval of subtenants.

C. As a result of the foregoing, County and Lessee mutually desire to amend the Existing Ground Lease upon the terms and conditions contained herein.

AGREEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Components. Section 1.1.51 is hereby deleted in its entirety and the following inserted in place thereof:

“1.1.51 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. County and Lessee acknowledge that Lessee is processing a lot line adjustment, parcel map or similar subdivision to align the legal descriptions of the various legal parcels within the Property with the areas of each Component (the “Lot Line Adjustment”). 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.

County, in its proprietary and not governmental capacity, hereby acknowledges and agrees to reasonably cooperate with Lessee, at no cost or expense to County, in processing and recording the Lot Line Adjustment including, without limitation, signing

any applications and documentation for the Lot Line Adjustment within ten (10) business days of Lessee's request. Lessee shall have the right, but not the obligation, to record the Lot Line Adjustment against the Property upon approval. County shall have the right to approve any conditions of approval imposed on the Property in connection with the processing of the Lot Line Adjustment, which consent shall not be unreasonably withheld and Lessee at its sole cost and expense shall cause such conditions of approval to be satisfied (except in the event that the conditions have a material adverse effect on the Property, in which case County may approve or reject in its sole discretion). Lessee shall use commercially reasonable efforts to prevent any conditions of approval from being imposed on the Property as a result of the Lot Line Adjustment that would have a material adverse effect on the Property. Lessee shall pay all costs, expenses, and fees associated with the preparation, processing and approval of the Lot Line Adjustment. Any and all costs related to Lot Line Adjustment conditions or any impacts on the Property will be the sole responsibility and cost of the Lessee. Lessee shall keep County apprised of any conditions of approval relating to the Lot Line Adjustment and any changes required by the City to the configuration of the Components, if any. Lessee shall also have the right to modify the configuration of the Components if approved by County, which approval shall not be unreasonably withheld, conditioned or delayed.'

2. Section 1.1.168. Section 1.1.168 is hereby deleted in its entirety and the following inserted in place thereof:

“1.1.168 REQUIRED CONSTRUCTION COMMENCEMENT DATE” means (a) with respect to the Hotel, March 1, 2026 for the Affordable Hotel, and, if built, March 1, 2028 for the Boutique Hotel, (b) with respect to the Commercial Core, January 1, 2021, and (c) with respect to the Marina, January 1, 2022.’

3. Section 1.1.169. Section 1.1.169 is hereby deleted in its entirety and the following inserted in place thereof:

“1.1.169 REQUIRED CONSTRUCTION COMPLETION DATE” means (a) with respect to the Hotel, July 30, 2030 for the Affordable Hotel, and, if built, July 30, 2030 for the Boutique Hotel, (b) with respect to the Commercial Core, December 31, 2024, and (c) with respect to the Marina, December 31, 2027.’

4. Section 1.1.170. Section 1.1.170 is hereby deleted in its entirety and the following inserted in place thereof:

“1.1.170 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, Ninety Million Dollars (\$90,000,000.00) in the event two (2) hotels are developed or the Hotel shall be repaired and maintained in accordance with Section 5.3.5, (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).’

5. Quarterly Reporting. The following is hereby inserted as Section 1.2.6, “Quarterly Reporting:”

“1.2.6. Quarterly Reporting. Lessee will submit to the County a quarterly written report beginning no later than April 30, 2022, for the previous quarter, January-March, 2022, and continuing through the term of the Lease, as more fully outlined below (“**Quarterly Report**”).

The Quarterly Report will include information on operations for all three components of the Harbor for the quarter (leases/licenses, revenues and expenditures, etc.), as well as updates on revitalization efforts (schedules, entitlements, substantial compliance, permitting, construction, etc.) for the commercial core, marina and hotel(s), as well as any additional information the Chief Real Estate Officer may require. The Quarterly Report will be submitted to the Chief Real Estate Officer prior to the end of the months of April, July, October and January via email in a single consolidated document.”

6. Schedule of Redevelopment Work. The following is hereby added as Section 5.3.5:

“5.3.5. Lessee shall continue to use commercially reasonable and diligent efforts to process the entitlements for the proposed Hotels contemplated in the current plan for the Redevelopment Work. Notwithstanding the foregoing, in the event Lessee is unable to either procure entitlements for the proposed Hotels contemplated in the plan for the Redevelopment Work on commercially reasonable terms or procure financing for the Hotel Component on commercially reasonable terms, despite Lessee's commercially reasonable and diligent efforts to do so, the failure to (a) commence the Redevelopment Work on the Affordable Hotel, if built, or the Boutique Hotel no later than the applicable Required Construction Commencement Date for such Component, (b) achieve each Interim Milestone on the Affordable Hotel, if built, or the Boutique Hotel by the applicable Interim Milestone Date set forth for the same in the Construction Schedule for such Component, or (c) achieve the CO Date for the Affordable Hotel, if built, or the Boutique Hotel no later than the applicable Required Construction Completion Date for such Component shall not constitute a default of the Existing Ground Lease.”

7. Alternative for the Hotel Component. The following is hereby inserted as Section 5.3.6:

“5.3.6. In the event Lessee is unable to either procure entitlements on commercially reasonable terms or is unable to procure reasonable financing for the proposed Hotels contemplated in the current plan for the Redevelopment Work by the date which is twelve (12) months before the Required Construction Commencement Date for the Affordable Hotel or in the event Lessee is unable to procure financing for the Hotel Component on commercially reasonable terms within six (6) months of the vesting of “Final Entitlements” for the Affordable

Hotel, Lessee shall commence a repair and maintenance program of the Hotel including interior, exterior, lobby, guest rooms and common areas to the extent exempt from Coastal Commission approval or approved by the Coastal Commission on commercially reasonable terms (“**Alternative Hotel Component**”). The initial phase shall be a minimum of \$8,000,000 and shall include replacing all guest room furniture and public area furniture and carpet; repainting the interior and exterior of the Affordable Hotel; replacing existing wallpaper, window coverings, plumbing fixtures older than five (5) years, decorative light fixtures older than five (5) years, the lobby front desk, all interior hard surfaces as needed (tile, stone, counter tops, etc.), kitchen equipment older than five (5) years, public hard surface flooring older than five (5) years, and exterior awnings; updating landscaping, pool fencing if needed, and roofing if needed; and replacing or repairing pool equipment and accessories and existing exterior windows and doors (the “**Initial Repair**”). Thereafter, Lessee shall conduct a repair program as follows (each a “**Subsequent Hotel Repair**”): Six (6) years following the “Initial Repair” and every six (6) years thereafter, Lessee shall replace all soft goods including window coverings, wall paper and carpet and shall paint the interior as needed. Twelve (12) years following the “Initial Repair” and every twelve (12) years thereafter, Lessee shall replace and/or refurbish all guest room case goods, public area case goods, and decorative light fixtures where needed and shall paint the exterior as needed. Eighteen (18) years following “Initial Repair” and every eighteen (18) years thereafter, Lessee shall replace or refurbish all interior hard surfaces (tile, stone, counter tops, etc.), HVAC systems, kitchen equipment, plumbing fixtures, and pool equipment and accessories and update the landscaping. All work performed to complete the Initial Repair and any Subsequent Hotel Repair(s) shall result in hotel accommodations that achieve a level commensurate with institutional grade hotel developments in the Southern California area. In the event Lessee institutes the foregoing repair and maintenance program of the Hotel (e.g. Initial Repair and any Subsequent Hotel Repair(s)), the scope of the Redevelopment Work and Subsequent Renovation shall be appropriately modified to conform with such program. For purposes of this paragraph, the entitlements shall be deemed final entitlements (the “**Final Entitlements**”) only when all time periods and statutes of limitations for filing or adopting any action, lawsuit, challenge, appeal, moratorium or referendum have expired without any action, lawsuit, challenge, appeal, moratorium or referendum having been filed or adopted have expired.”

8. Lessee’s Maintenance and Repair Obligations. The penultimate sentence of the first paragraph of Section 10.1 is hereby deleted in its entirety and the following inserted in place thereof:

“For the avoidance of doubt, and by way of example, Lessee’s responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace each of the following (the location of each of which is identified on **Exhibit H** attached hereto unless otherwise specified elsewhere in this Lease): (a) 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 or portions thereof on as-needed basis, subject to and in compliance with all Applicable Laws, because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall, unless Lessee's negligence, willful acts or failure to address replacement or repair of a segment causes the need for wholesale replacement or to replace the entire seawall in connection with any catastrophic events or casualty, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property and Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates), or (ii) third parties that are not agents, employees, tenants of Lessee or its Affiliates, or contractors working at the direction of the Lessee or its Affiliates); (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; including conducting annual bathymetric surveys (which shall be provided to the County once completed) to establish dredging schedules needed to maintain or increase the depth and width of navigation channels, anchorages, or berthing areas to ensure year-round access and refuge, maintain the safe passage of vessels, including coordination with the U.S. Army Corps of Engineers ("Army Corps"), as needed, provided this responsibility shall in no way affect or supplant any responsibility that the Army Corps may have for dredging, to the extent such responsibility exists."

9. Sublease Approvals. Section 12.1.3 is hereby amended to increase the approval threshold in the first sentence thereof from 7,500 rentable square feet of interior space in the Improvements to 10,000 rentable square feet of interior space in the Improvements and following is hereby added to the end of Section 12.1.3:

"Notwithstanding the foregoing, Lessee shall not be required to obtain County's approval of any Sublease or license of retail space in the ordinary course, with a full service, sit-down restaurant tenant which directly operates more than three (3) locations regardless of square footage. However, when such Sublease or license is entered into by Lessee, Lessee shall provide a copy to the County within thirty (30) calendar days."

10. Termination of Tolling Amendment. The Tolling Amendment to Master Ground Lease Agreement dated April 21, 2020, by and between the County and Lessee

shall be terminated upon execution of the Second Amendment to the Master Ground Lease. The dates and deadlines in the Master Ground Lease are hereby amended to coincide with the termination of the Tolling Amendment (with a day for day delay in the date from March 3, 2020 to the Effective Date of the Second Amendment to the Master Ground Lease), and may be memorialized at the request of either Party in a further amendment to this Lease to be executed by the Chief Real Estate Officer.

11. No Other Amendments; This Amendment Governs and Controls.

Except as expressly modified by this Second Amendment, the Existing Ground Lease shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Ground Lease, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement”, “hereunder”, “hereof”, “herein”, or words of like import in the Existing Ground Lease and this Second Amendment shall mean and be a reference to the Existing Ground Lease as hereby amended, and the Existing Ground Lease and this Second Amendment shall be read and interpreted as if it was one agreement.

12. Authority. Each Party represents to the other Party or Parties that the individual executing this Second Amendment on behalf of such Party has the capacity and authority to execute and deliver this Second Amendment on behalf of such Party, and that this Second Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

13. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of California.

14. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Second Amendment by facsimile or as a Portable Document Format (“PDF”) or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

15. Severability. If any provision of this Second Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Second Amendment shall nonetheless remain in full force and effect.

16. Execution. This Second Amendment may be executed and delivered via facsimile or PDF transmission (which may be used in lieu of the original signature pages for all purposes).

17. Successors and Assigns. This Second Amendment is binding upon and shall inure to the benefit of the successors and assigns of the Parties to this Second Amendment.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Lessee have executed this Second Amendment as of the day and year first above written.

LESSEE:

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

By: BURNHAM WARD PARTNERS, LLC, a California limited liability company

By: _____
Its: _____
Name: _____

By: Bellwether Financial Group, Inc.

By: _____
Its: _____
Name: _____

By: Olson Real Estate Group, Inc.

By: _____
Its: _____
Name: _____

COUNTY:

County of Orange, a political subdivision of
the State of California

Thomas A. Miller, Chief Real Estate Officer
Orange County, California

APPROVED AS TO FORM:
COUNTY COUNSEL

By: *Michael A. Haubert*

Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County of Orange,
ou=County Counsel,
email=michael.haubert@coco.ocgov.com, c=US
Date: 2022.02.14 08:47:35 -08'00'