

**MASTER GROUND LEASE AGREEMENT**

**by and between**

**COUNTY OF ORANGE**

**and**

---

**Dated as of \_\_\_\_\_, \_\_\_\_\_**

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**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 \_\_\_\_\_, a \_\_\_\_\_ (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 \_\_\_\_\_, 2016 (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 “ACCOUNTING YEAR” shall have the meaning set forth in Section 15.7.

1.1.2 “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.

1.1.3 “ADJUSTMENT DATE” shall have the meaning set forth in Subsection 4.2.1(b).

1.1.4 “ADMINISTRATIVE CHARGE” shall have the meaning set forth in Subsection 4.2.4.

1.1.5 “AGGREGATE TRANSFER” shall have the meaning set forth in Subsection 4.3.1(a).

1.1.6 “ALTERATIONS” means, with respect to each Component, the construction of any alterations or modifications to the Improvements located on such Component, at any time during the Term, excluding the Redevelopment Work and Subsequent Renovation.

1.1.7 “ANTENNAE” shall have the meaning set forth in Subsection 3.2.2(d).

1.1.8 “ANNUAL MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.9 “ANNUAL RENT” shall have the meaning set forth in Subsection 4.1.3.

1.1.10 “APPLICABLE LAWS” shall have the meaning set forth in Subsection 1.2.1.

1.1.11 “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.

1.1.12 “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.

1.1.13 “APPROVED PROPOSAL SUBMITTALS” shall have the meaning set forth in Section 5.1.

1.1.14 “APPROVED SLIP LEASE” shall have the meaning set forth in Subsection 12.1.2.

- 1.1.15 “APPROVED STORAGE LEASE” shall have the meaning set forth in Subsection 12.1.2.
- 1.1.16 “AS-BUILT PLANS” shall have the meaning set forth in Subsection 5.8.7.
- 1.1.17 “ASSIGNMENT STANDARDS” shall have the meaning set forth in Section 12.2.
- 1.1.18 “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.
- 1.1.19 “AUDITOR-CONTROLLER” shall mean the Auditor-Controller of the County of Orange, California.
- 1.1.20 “AWARD” shall have the meaning set forth in Subsection 6.1.3.
- 1.1.21 “BASE VALUE” shall have the meaning set forth in Subsection 4.3.4(a)(1).
- 1.1.22 “BENEFICIAL INTEREST” shall have the meaning set forth in Subsection 4.3.1(b).
- 1.1.23 “BOARD” shall mean the Board of Supervisors for the County of Orange.
- 1.1.24 “BREAKWATER” shall have the meaning set forth in Subsection 3.2.2(f).
- 1.1.25 “BUSINESS DAY” shall have the meaning set forth in Section 16.4.
- 1.1.26 “CAD Files” shall have the meaning set forth in Subsection 5.8.7.
- 1.1.27 “CALCULATION NOTICE” shall have the meaning set forth in Subsection 4.3.3.
- 1.1.28 “CAPITAL IMPROVEMENT FUND” shall have the meaning set forth in Section 5.16.
- 1.1.29 “CDP” shall mean the Dana Point Harbor Revitalization, Commercial Core Project, Coastal Development Permit (CDP13-0018), as amended from time to time.
- 1.1.30 “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.

1.1.31 “CHANGE OF OWNERSHIP” shall have the meaning set forth in Subsection 4.3.1(c).

1.1.32 “CHANGE OF CONTROL” shall have the meaning set forth in Subsection 4.3.1(d).

1.1.33 “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.

1.1.34 “CITY” shall mean the City of Dana Point, California.

1.1.35 “CO DATE” means, (a) with respect to the Commercial Core, 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, the date of the issuance of a Certificate of Occupancy for the Hotel Improvements, and (c) with respect to the Marina, 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.

1.1.36 “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.

1.1.37 “COMMERCIAL CORE” 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 the Commercial Core Operating Agreement.

1.1.38 “COMMERCIAL CORE OPERATING AGREEMENT” means 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.

1.1.39 “COMMERCIAL CORE OPERATOR” shall have the meaning set forth in Subsection 1.1.37.

1.1.40 “COMPONENT” means each of three (3) portions of the Property including the Commercial Core, Hotel and Marina, the boundaries and location of which are identified on Exhibit A-2.

1.1.41 “CONDEMNATION” shall have the meaning set forth in Subsection 6.1.1.

1.1.42 “CONDEMNOR” shall have the meaning set forth in Subsection 6.1.4.

1.1.43 “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.

1.1.44 “COST” shall have the meaning set forth in Subsection 1.1.77(b)(14).

1.1.45 “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.

1.1.46 “COUNTY OPTION” shall have the meaning set forth in Subsection 12.2.4.

1.1.47 “COUNTY OPTION PRICE” shall have the meaning set forth in Subsection 12.2.4.

1.1.48 “COUNTY REMOVAL NOTICE” shall have the meaning set forth in Subsection 2.3.2.

1.1.49 “CREO OFFICE” shall mean the Office of the Chief Real Estate Officer, County Executive Office, Orange County.

1.1.50 “DATE OF TAKING” shall have the meaning set forth in Subsection 6.1.2.

1.1.51 “DEMOLITION AND REMOVAL REPORT” shall have the meaning set forth in Subsection 2.3.2.

1.1.52 “DEMOLITION SECURITY” shall have the meaning set forth in Subsection 2.3.2.

1.1.53 “DOCUMENTED TRANSACTION COSTS” shall have the meaning set forth in Subsection 4.3.4(a)(2).

1.1.54 “EAST BASIN” means that portion of the Marina currently operated by Dana Point Marina Company LLC (“**East Basin Operator**”) pursuant to the East Basin Operating Agreement.

1.1.55 “EAST BASIN OPERATING AGREEMENT” means that certain Operating Agreement for the operation of the East Basin entered into by and between County and East Basin Operator as of February 6, 2001.

1.1.56 “EFFECTIVE DATE” shall have the meaning set forth in the preamble to this Lease.

1.1.57 “ENCUMBRANCE” shall have the meaning set forth in Subsection 13.1.1.

1.1.58 “ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 13.1.1.

1.1.59 “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.

1.1.60 “EQUITY ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 13.1.1.

1.1.61 “EQUITY FORECLOSURE TRANSFEREE” shall have the meaning set forth in Subsection 13.2.1.

1.1.62 “ESTIMATED COSTS” shall have the meaning set forth in Subsection 13.3.2.

1.1.63 “EVENT OF DEFAULT” shall have the meaning set forth in Section 14.1.

1.1.64 “EXCESS PERCENTAGE RENT PAYMENT” shall have the meaning set forth in Subsection 4.2.4(c).

1.1.65 “EXCLUDED IMPROVEMENTS” shall have the meaning set forth in Subsection 1.2.3.

1.1.66 “EXCLUDED TRANSFERS” shall have the meaning set forth in Subsection 4.3.1(e).

1.1.67 “EXISTING EIR” shall have the meaning set forth in Subsection 5.5.7.

1.1.68 “EXTENDED TIME” shall have the meaning set forth in Section 16.8.

1.1.69 “FAIR MARKET RENTAL VALUE” shall have the meaning set forth in Subsection 4.2.3(a).

1.1.70 “FINAL PLANS AND SPECIFICATIONS” shall have the meaning set forth in Subsection 5.4.3.

1.1.71 “FINANCING EVENT” shall have the meaning set forth in Subsection 13.1.1.

1.1.72 “FIRST ADJUSTMENT DATE” shall have the meaning set forth in Subsection 4.2.1.

1.1.73 “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) an injunction or restraining order against the performance of the Redevelopment Work or Subsequent Renovation issued pursuant to a court action; provided that (i) the plaintiff seeking such injunction or restraining order is not County or the California Coastal Commission acting in its governmental capacity, Lessee, or any person or entity affiliated with 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, and (iii) regardless of whether Lessee is a named party in the action, Lessee shall diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

1.1.74 “FORECLOSURE TRANSFER” shall have the meaning set forth in Subsection 13.1.1.

1.1.75 “FORECLOSURE TRANSFEREE” shall have the meaning set forth in Subsection 13.2.1.

1.1.76 “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.

1.1.77 “GROSS RECEIPTS” shall mean, with respect to each Component, all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax reimbursements, fees and commissions made or earned by Lessee and all Sublessees (subject to the provisions of Subsection 4.2.2(c)), from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on such Component of the Property, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise, calculated in accordance with the accounting method described in the last 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 1.1.77(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);

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

(3) gift certificates;

(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; and

(10) 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, 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) goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes; provided, however, that the amounts excluded under this Subsection 1.1.77(b)(9) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;
- (10) receipts from vending machines used solely by employees of the business operation;
- (11) 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 1.1.77(b)(11) in connection with a particular business operation shall not exceed the actual charges for such matters;

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

(13) 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

(14) payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered 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. For the purpose of this subsection (14), 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 electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost. The terms and provisions of this Subsection 1.1.77(b)(14) shall also be applicable to other submetered utility charges, such as water and gas, to the extent that it is customary for Sublessees to be responsible for such other utility charges.

(c) Bad debt losses shall not be deducted or excluded from Gross Receipts.

(d) Chief Real Estate Officer, with the approval of Lessee, Auditor-Controller and County Counsel may further 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.

1.1.78 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Subsection 4.3.3.

1.1.79 "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.

1.1.80 “HOTEL” means the Component of the Property identified as such on **Exhibit A-2** including, without limitation, the hotel known as the “Dana Point Marina Inn” and associated amenities, and currently operated by Great Western Hotel Operator (“**Hotel Operator**”) pursuant to the Hotel Operating Agreement.

1.1.81 “HOTEL OPERATING AGREEMENT” means that certain Operating Agreement for the operation of the Hotel, entered into by and between the County and Hotel Operator, as of June 8, 2009.

1.1.82 “IMPROVEMENT COSTS” shall have the meaning set forth in Subsection 4.3.4(a)(1).

1.1.83 “IMPROVEMENT PROJECT” shall have the meaning set forth in Subsection 5.5.

1.1.84 “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.

1.1.85 “INCOME APPROACH” shall have the meaning set forth in Section 6.5.

1.1.86 “INITIAL CURE PERIOD” shall have the meaning set forth in Subsection 13.6.3(b).

1.1.87 “INSTITUTIONAL LENDER” shall have the meaning set forth in Subsection 13.3.1.

1.1.88 “INSURANCE RENEGOTIATION DATE” shall have the meaning set forth in Section 9.6.

1.1.89 “INTERIM MILESTONE(S)” shall have the meaning set forth in Subsection 5.3.2.

1.1.90 “INTERIM MILESTONE DATE” shall have the meaning set forth in Subsection 5.3.1.

1.1.91 “LANDSIDE IMPROVEMENTS” means all Improvements on the Property other than the Marina Improvements.

1.1.92 “LATE FEE” shall have the meaning set forth in Subsection 4.2.4.

1.1.93 “LCP” means the Dana Point Local Coastal Program Amendment 1-08, as amended from time to time.

1.1.94 “LEASE” shall have the meaning set forth in the preamble above.

1.1.95 “LEASE YEAR” shall have the meaning set forth in Section 2.1.

1.1.96 “LESSEE” shall have the meaning set forth in the preamble to this Lease.

1.1.97 “LESSEE SALE PRICE” shall have the meaning set forth in Subsection 12.2.4.

1.1.98 “LESSEE’S FINAL SUBMITTALS” shall have the meaning set forth in Subsection 5.4.3.

1.1.99 “MAJOR SUBLEASE” shall have the meaning set forth in Subsection 12.1.1.

1.1.100 “MAJOR SUBLESSEE” shall have the meaning set forth in Subsection 12.1.1.

1.1.101 “MARINA” means the Component of the Property described as such on the Site Plan and including the East Basin and West Basin.

1.1.102 “MARINA IMPROVEMENTS” shall mean all docks, gangways, anchorage slips, end-ties and related anchorage Improvements, all as depicted on Exhibit A-2.

1.1.103 “MATERIAL MODIFICATION” shall mean, with respect to each Component, a modification to the Redevelopment Work (or Alterations, as applicable) for such Component with respect to which any one of the following applies: (a) the total estimated cost of the modifications exceeds one percent (1%) of the previously approved budget for the Redevelopment Work for such Component; (b) the proposed modification is structural in nature; (c) the modification materially affects or is visible from the exterior of the Improvements; (d) the modification is not in compliance with the Permitted Uses under this Lease; or (e) the modification (i) changes the total interior square footage of the Improvements within such Component by more than two percent (2%), (ii) reduces the number of parking spaces within such Component, 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, (iii) with respect to the Hotel, reduces the number of guest rooms, or (iv) changes the size, configuration or number of anchorage slips or end-ties.

1.1.104 “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.

1.1.105 “MONTHLY MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.106 “NET AWARDS AND PAYMENTS” shall have the meaning set forth in Section 6.7.

1.1.107 “NET PROCEEDS SHARE” shall have the meaning set forth in Subsection 4.2.4.

1.1.108 “NET REFINANCING PROCEEDS” shall have the meaning set forth in Subsection 4.3.1(h).

1.1.109 “NET TRANSFER PROCEEDS” shall have the applicable meaning set forth in Subsection 4.3.3(c) or 4.3.4(b).

1.1.110 “NOTICE OF COMPLETION” shall have the meaning set forth in Subsection 5.8.7.

1.1.111 “OPERATING COVENANT EXCEPTIONS” shall have the meaning set forth in Section 3.3.

1.1.112 “OPTION” shall have the meaning set forth in the Recitals to this Lease.

1.1.113 “OPTION AGREEMENT” shall have the meaning set forth in the Recitals to this Lease.

1.1.114 “OWNERSHIP INTERESTS” shall have the meaning set forth in Subsection 13.1.1.

1.1.115 “PARTIAL TAKING” shall have the meaning set forth in Section 6.5.

1.1.116 “PAYMENT BOND” shall have the meaning set forth in Subsection 5.5.4(b).

1.1.117 “PERCENTAGE RENT” shall have the meaning set forth in Subsection 4.2.2.

1.1.118 “PERFORMANCE BOND” shall have the meaning set forth in Subsection 5.5.4(a).

1.1.119 “PERMITTED CAPITAL EXPENDITURES” shall have the meaning set forth in Section 5.16.

1.1.120 “PERMITTED USES” shall have the meaning set forth in Section 3.1.

1.1.121 “PORTION SUBJECT TO DEMOLITION” shall have the meaning set forth in Subsection 2.3.2.

1.1.122 “POST TERM REMOVAL PERIOD” shall have the meaning set forth in Subsection 2.3.2.

1.1.123 “PRIMARY COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.124 “PRIME RATE” shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or its 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.

1.1.125 “PROPERTY” shall have the meaning set forth in the recitals to this Lease.

1.1.126 “PROPOSED TRANSFER” shall have the meaning set forth in Subsection 12.2.4

1.1.127 “PURCHASE MONEY NOTE” shall have the meaning set forth in Subsection 4.3.2(d).

1.1.128 “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.

1.1.129 “RECOVERY PLAN NOTICE” shall have the meaning set forth in Subsection 5.7.3 of this Lease.

1.1.130 “REDEVELOPMENT WORK” shall have the meaning set forth in Section 5.1.

1.1.131 “RENEGOTIATION DATES” shall have the meaning set forth in Subsection 4.2.3.

1.1.132 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” means (a) with respect to the Hotel, \_\_\_\_\_, 20\_\_, (b) with respect to the Commercial Core, \_\_\_\_\_, 20\_\_, and (c) with respect to the Marina, \_\_\_\_\_, 20\_\_.



1.1.133 “REQUIRED CONSTRUCTION COMPLETION DATE” means (a) with respect to the Hotel, \_\_\_\_\_, 20\_\_, (b) with respect to the Commercial Core, \_\_\_\_\_, 20\_\_, and (c) with respect to the Marina, \_\_\_\_\_, 20\_\_.

1.1.134 “REQUIRED COST AMOUNT” means (a) with respect to the Hotel, \_\_\_\_\_ (\$ \_\_\_\_\_), (b) with respect to the Commercial Core, \_\_\_\_\_ (\$ \_\_\_\_\_), and (c) with respect to the Marina, \_\_\_\_\_ (\$ \_\_\_\_\_).

1.1.135 “SECURITY DEPOSIT” shall have the meaning set forth in Section 7.1.

1.1.136 “STATE” shall mean the State of California.

1.1.137 “SUBLEASE” shall have the meaning set forth in Subsection 12.1.1.

1.1.138 “SUBLESSEE” shall have the meaning set forth in Subsection 12.1.1.

1.1.139 “SUBSEQUENT RENOVATION” shall have the meaning set forth in Section 5.15.

1.1.140 “SUBSEQUENT RENOVATION FUND” shall have the meaning set forth in Subsection 5.15.3.

1.1.141 “SUBSEQUENT RENOVATION PLAN” shall have the meaning set forth in Section 5.15.

1.1.142 “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.

1.1.143 “TERM” shall have the meaning set forth in Section 2.1.

1.1.144 “TIDELANDS GRANT” shall have the meaning set forth in Subsection 1.2.2.

1.1.145 “TIME OF THE ESSENCE” shall have the meaning set forth in Section 17.3.

1.1.146 “UMBRELLA COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.147 “UNINSURED LOSS” shall have the meaning set forth in Section 10.4.

1.1.148 “UTILITY EASEMENT” shall have the meaning set forth in Subsection 1.2.4.

1.1.149 “WEST BASIN” means that portion of the Marina currently operated by T.B.W. Company, a California General Partnership (“**West Basin Operator**”) pursuant to the West Basin Operating Agreement.

1.1.150 “WEST BASIN OPERATING AGREEMENT” means that certain Operating Agreement for the operation of the West Basin entered into by and between County and West Basin Operator as of April 12, 2005.

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 prior 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 or otherwise referenced in this Lease 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 prior 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 footprint of any existing above-ground structure on the Property that was constructed in accordance with Article 5 below without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

1.2.5 Excluded Improvements. Notwithstanding anything to the contrary set forth in this Lease, the “Property” shall not include any sewer, storm drain or other improvements 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 fiftieth (50<sup>th</sup>) 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.

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. Unless Lessee is expressly directed by County in writing in accordance with this Section 2.3 to demolish and remove Improvements upon the expiration of the Term or earlier termination of this Lease, 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.

(a) No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert reasonably acceptable to the County that details and estimates the cost and time required for the removal of all Improvements on the Property at the expiration of the Term (the “**Demolition and Removal Report**”). County may elect to require Lessee at the end of the Term or any earlier termination of this Lease to remove, at the sole cost and expense of Lessee, all or any portion of the Improvements, whether constructed or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, such portion (“**Portion Subject to Demolition**”) of the Improvements designated by County for demolition must be able to be demolished separately from other portions of the then-

existing Improvements which County has designated to remain. Upon the expiration of the Term or earlier termination of this Lease, Lessee shall complete the required demolition and removal and shall restore and surrender to County possession of the Property in the following condition: (a) as to any portion of the Property upon which Improvements are required to be demolished, such portion of the Property shall be surrendered to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps, and free of all debris resulting from the demolition of Improvements; and (b) as to any portion of the Property upon which Improvements are not required to be demolished, the Property including such Improvements shall be surrendered to County in the condition in which the Property and Improvements are required to be maintained and repaired under this Lease.

(b) In the case of the termination of the Lease upon the expiration the Term, any election by County to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition must be made by County in writing to Lessee (“**County Removal Notice**”) by the later of (a) one (1) year following delivery by Lessee to County of the Demolition and Removal Report, or (b) five (5) years prior to the then-scheduled expiration date of the Term. If County elects to require Lessee to demolish and remove all of the Improvements or a Portion Subject to Demolition, Lessee shall complete such demolition and removal and otherwise comply with Lessee’s surrender obligations under this Section 2.3 on or before the expiration of the Term of the Lease; provided, however, (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 demolition and removal of the Improvements 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 Removal Period**”); and (ii) all of Lessee’s obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Property or to maintain and repair those Improvements required to be demolished) shall be applicable during the Post Term 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 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 Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Removal Period shall be paid by Lessee, in one lump sum prior to the commencement of the Post Term Removal Period.

(c) In the case of a termination of the Lease prior to the scheduled expiration date of the Term, any election by County to require Lessee to remove the Improvements or a Portion Subject to Termination must be made by County’s delivery of the County Removal Notice not later than sixty (60) days after the effective date of such termination, and if County elects to require Lessee to demolish and remove all or a portion of the Improvements on a termination of the Lease prior to the scheduled expiration of the Term, Lessee shall complete such demolition and removal and otherwise comply with Lessee’s surrender obligations under this Section 2.3 on or before the later of (a) ninety (90) days after the date on which this Lease terminated, or (b) if Lessee has submitted a

Demolition and Removal Report to County, that period after the date on which this Lease terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

(d) Upon receipt of a County Removal Notice, Lessee shall within ninety (90) days after receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form, and from an issuer, satisfactory to County ("**Demolition Security**"), and (ii) a schedule satisfactory to County for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "**Estimated Costs**"), adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Lessee delivers the Demolition Security. Thereafter, Lessee shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Lessee's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. Any failure by Lessee to deliver the Demolition Security in accordance with this Subsection 2.3.2 shall constitute an Event of Default. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Lease by written notice to Lessee of such revocation at any time not later than ninety (90) days prior to the scheduled expiration of the Term. If County revokes its prior County Removal Notice, then any Demolition Security previously delivered by Lessee to County shall be returned to Lessee within thirty (30) days following the date of such revocation. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security held by County shall be returned to Lessee.

(e) If County fails to elect to require Lessee to remove all of the Improvements on the Property in accordance with the terms of this Section 2.3 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall surrender to County possession of the Property and those Improvements not required to be removed by Lessee, in the condition in which such Improvements are required to be repaired and maintained under this Lease.

**2.3.3 County's Right to Remove Improvements.** If County elects to have Lessee demolish and remove any Improvements and Lessee fails to do so in accordance with this Lease, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements that Lessee is obligated to have demolished and removed, (a) County may use funds from the Demolition Security and any consideration received by County as a result of any sale of the demolished Improvements, to reimburse County for all Actual Costs incurred by County in connection with such demolition

and removal, and (b) Lessee shall pay to County, within thirty (30) days following Lessee's receipt of written notice from County including reasonable backup for the Actual Costs incurred by the County, the amount by which such Actual Costs exceed the sum of the Demolition Security and the consideration received by the County from any sale of demolished Improvements. County shall be under no obligation to Lessee to effectuate any such sale of demolished Improvements, or, in the case of a sale, to obtain any required level of compensation therefor.

2.3.4 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 Removal Period described in Subsection 2.3.2 above), 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

### 3. USE OF PROPERTY.

3.1 Specific Primary Use. The Commercial Core and the Improvements located thereon shall be used by Lessee solely for the operation and management of (a) retail and restaurant space; (b) the so-called "Embarcadero Marina" (which includes, without limitation, a boat ramp, dry boat storage, boat slips and boater related services); (c) parking associated with the foregoing; and (d) such other related and incidental uses as are specifically approved in writing by County from time to time. The Hotel and the Improvements thereon shall be used by Lessee solely for the operation and management of a hotel and related amenities including (i) restaurant and limited retail; (ii) parking associated with the foregoing; and (iii) such other related and incidental uses as are specifically approved in writing by County from time to time. The Marina and the Improvements located thereon shall be used by Lessee solely for the operation and management of (A) yacht club facilities; (B) boat repair facilities; (C) boat anchorage facilities; (D) boat charters; (E) boat rentals; (F) sailing lessons; (G) parking associated with the foregoing; and (H) such other related and incidental uses as are specifically approved in writing by County from time to time. 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 County, 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 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 18’ in diameter and is screened from general view.

(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 (the “**Breakwater**”). 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.

(g) Except for (i) a Permitted Boat Brokerage Business (as defined below), (ii) an Exempt Individual Boat Transaction (as defined below), or (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 categories (3) through (6) of Subsection 4.2.2(a) below, as applicable), 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.

3.3 Active Public Use. 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.

3.4 Days and Hours of Operation. All Improvements on the Property shall be open every day of the year for at least the Mandatory Operating Hours applicable to such Improvements as set forth on **Exhibit H** attached hereto, 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 only of such size, design, wording and color as shall have been specifically submitted to and approved in writing in advance by the Chief Real Estate Officer, whether pursuant to Article 5 of this Lease or otherwise. Chief Real Estate Officer may grant or withhold its approval of the matters described in this Section 3.5 in its sole and absolute discretion. Unapproved signs, banners, flags, etc., may be removed by Chief Real Estate Officer without prior notice to Lessee at Lessee’s sole cost and expense.

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.

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 and public park facilities in Orange County, and delivered in writing to Lessee.

#### 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. 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 each Component will be reduced during the 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. Lessee shall provide written notice to County of 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 day of the first month following the earlier of (i) the CO Date for such Component, or (ii) the Required Construction Completion Date for such Component (in each instance, the “**First Adjustment Date**”) and recurring every three (3) years thereafter until each Renegotiation Date, and then every three (3) years after the applicable Renegotiation Date throughout the Term (each an “**Adjustment Date**”), the Annual Minimum Rent for such Component shall be adjusted to the amount which equals the greater of the following two alternatives:

(1) Seventy-five percent (75%) of the average of the total Annual Rent payable by Lessee to County for such Component each year under Subsection 4.2.1(a) above during the three (3) year period immediately preceding the then-applicable Adjustment Date; or

(2) The Annual Minimum Rent in effect for the year immediately preceding the applicable Adjustment Date, as adjusted in proportion to any increases in the Consumer Price Index determined in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

A = Newly adjusted Minimum Annual Rent

B = The Minimum Annual Rent in effect for the year immediately preceding the applicable Adjustment Date

C = The Consumer Price Index for the fourth month prior to the applicable Adjustment Date

D = The Consumer Price Index for the fourth month prior to the immediately preceding Adjustment Date (which, for the First Adjustment Date, shall be the Effective Date as opposed to the Adjustment Date)

Notwithstanding the foregoing or anything in this Lease to the contrary, in no event shall the Annual Minimum Rent be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date. Furthermore, and for the avoidance of doubt, Annual Minimum Rent and Percentage Rent shall adjust on each Renegotiation Date in accordance with Subsection 4.2.3 below, rather than pursuant to this Subsection 4.2.1(b).

4.2.2 Percentage Rent. During the Term, Lessee shall pay to County, for each Component, 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) the Annual Minimum Rent payable by Lessee for such Component during such month.

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

(1) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and other water-side facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats;

(2) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the rental or other fees charged for (i) the use of dry stack storage, mast-up storage, trailer storage or 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, or (v) the sale of fuel or oil;

(3) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the rental or other fees charged for the lease, use or occupancy of space used for office (other than boat brokerage) or yacht club purposes;

(4) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the rental or other fees charges for 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;

(5) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the rental or other fees charged for the lease, use or occupancy of the boat repair shop;

(6) 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, [\_\_\_\_\_ PERCENT (\_\_\_%)] of the Gross Receipts received by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if Lessee (or an affiliate of Lessee or a subtenant) is the operator of such enterprise, or [\_\_\_\_\_ PERCENT (\_\_\_%)] of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(7) With respect to service enterprises, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, [\_\_\_\_\_ PERCENT (\_\_\_%)] of the Gross Receipts received by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if Lessee (or an affiliate of Lessee or such subtenant) is the operator of such enterprise, or [\_\_\_\_\_ PERCENT (\_\_\_%)] of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(8) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from 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;

(9) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under Subsection 4.2.2(a)(17) below; a “take-out food operation” shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(10) [\_\_\_\_\_ PERCENT (\_\_\_%)] of the Gross Receipts received by Lessee (or a subtenant) if Lessee (or a subtenant) is the operator of the enterprise, or [\_\_\_\_\_ PERCENT (\_\_\_%)] of any commissions or fees collected by Lessee (or an affiliate of Lessee or a subtenant) if a third party provider is the operator of the enterprise, 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;

(11) With respect to the installation or operation of coin-operated vending or service machines, [\_\_\_\_\_ PERCENT (\_\_\_%)] of the Gross Receipts received by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if Lessee (or an affiliate of Lessee or a subtenant) is the operator of such enterprise, or [\_\_\_\_\_ PERCENT (\_\_\_%)] of any commissions or fees

collected by Lessee (or an affiliate of Lessee or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(12) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from club dues, initiation fees, and assessments, except that separate assessments for capital improvements may be exempted;

(13) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the operation of excursion, sightseeing or tour boats, or any water taxi;

(14) [\_\_\_\_\_ PERCENT (\_\_\_%)] 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)(17) below with respect to the operation of the boat repair shop;

(15) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts of cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reportable under Subsection 4.2.2(a)(17) below;

(16) In the case where parking facilities are operated by:

a. a third party operator under a parking operation agreement with Lessee or a Sublessee, (i) [\_\_\_\_\_ PERCENT (\_\_\_%)] of the fee or other compensation paid by such third party operator to Lessee (or Sublessee) if the operator is entitled to receive parking revenue and is responsible for the payment of operating expenses; or (ii) [\_\_\_\_\_ PERCENT (\_\_\_%)] of the Gross Receipts from the operation of such parking if the operator collects such Gross Receipts on behalf of Lessee (or Sublessee) and Lessee (or Sublessee) is responsible for the payment of the operating expenses for such parking operation (which operating expenses include a fee or other compensation to the parking operator for the rendering of such parking services); and

b. Lessee or a Sublessee, [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from such parking. Notwithstanding the foregoing, Gross Receipts from the operation of parking facilities in connection with another use category under this Subsection 4.2.2(a) shall be considered Gross Receipts under such other use category if the percentage rate for such other use category results in a greater Percentage Rent payable with respect to such parking Gross Receipts.

(17) [\_\_\_\_\_ PERCENT (\_\_\_%)] of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses, but not specifically provided for elsewhere in this Subsection 4.2.2(a); and

(18) In addition to any other rights or remedies that County may have for the transaction of Unauthorized Boat Brokerage on the Property in violation of

this Lease, Lessee shall pay to County [\_\_\_\_\_ PERCENT (\_\_\_%)] of the sales price or aggregate rent for any boat or watercraft sold or leased in connection with Unauthorized Boat Brokerage at the Property.

(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 reported in the same percentage category as such transaction, sale or activity is reported.

(c) Sublessees in Business.

(1) Effect of Sublessees Doing Business. Rentals and fees for the businesses described in Subsections 4.2.2(a)(3) through 4.2.2(a)(5) shall include all common area maintenance payments, operating expense or real property tax reimbursements and other amounts paid by Sublessee under its lease for the space it occupies, subject to Subsection 1.1.77(b)(14) above. Subject to Subsection 1.1.77(b)(14) above, if a Sublessee directly pays any such costs or expenses 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 Subsections 4.2.2(a)(3) through 4.2.2(a)(5).

(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 Subsections 4.2.2(a)(3) through 4.2.2(a)(5), above, as applicable.

(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 approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease 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 approval of County or Chief Real Estate Officer, Lessee or Sublessee engages in a use that is not currently permitted under this Lease, then in addition to any remedies available to County under this Lease, Lessee or Sublessee, as applicable, shall pay to County [\_\_\_\_\_ PERCENT (\_\_%)] of Gross Receipts generated by such non-permitted use as Percentage Rent therefor.

(f) Other Activities Not Captured by Categories. If Chief Real Estate Officer or Lessee reasonably determines that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Chief Real Estate Officer shall establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.3 Renegotiation of Annual Minimum and Percentage Rents. Effective as of the first January 1 following the fifteenth (15<sup>th</sup>) anniversary of the Effective Date, and the January 1 following each subsequent fifteenth (15<sup>th</sup>) anniversary thereafter (each a “**Renegotiation Date**” and collectively, the “**Renegotiation Dates**”), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Property.

(a) Fair Market Rental Value. As used herein, “**Fair Market Rental Value**” shall mean, as of each Renegotiation Date, the fair market rent, including an annual minimum rent and percentage rent, with the percentage rent expressed as a percentage of Gross Receipts in accordance with Subsection 4.2.2, which the Property would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Property were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms’ length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

(b) No Reductions. Notwithstanding any contrary provision of this Lease, in connection with a readjustment of Annual Minimum Rent and Percentage Rent pursuant to this Subsection 4.2.3, (i) in no event shall the Annual Minimum Rent ever be reduced to an amount less than the Annual Minimum Rent in effect immediately prior to the Renegotiation Date, and (ii) in no event shall any individual Percentage Rent category (i.e., each of categories (1) through (18) in Subsection 4.2.2(a) above) ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2(a) above, and the requirement set forth in this sentence that no individual Percentage Rent category percentage shall be reduced below that set forth in Subsection 4.2.2(a) above shall have no effect on the determination of the Fair Market Rental Value for any other

Percentage Rent category in which the Fair Market Rental Value percentage might be greater than that set forth in Subsection 4.2.2(a).

(c) Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth, for each Component, Lessee's determination of the Fair Market Rental Value of such Component for (i) the Annual Minimum Rent, and (ii) the Gross Receipts percentage for Percentage Rent. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Property as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Property as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver notice of such disagreement within such thirty (30) day period, County shall be deemed to disagree with Lessee's determination of Fair Market Rental Value. If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for thirty (30) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have thirty (30) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such thirty (30) day period and County's notice to Lessee conspicuously stated in bold-faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such thirty (30) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

(d) Agreement on Fair Market Rental Value; Amendment. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in Subsection 4.2.3(c), County and Lessee shall have sixty (60) days from the end of the applicable response period (the "**Outside Agreement Date**") in which to attempt to agree upon the Fair Market Rental Value for the Property using their best good-faith efforts. If the Parties do so agree, they shall promptly execute an amendment to this Lease that documents the new Annual Minimum Rent and Percentage Rent so jointly determined, to be effective upon the Renegotiation Date. 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.

(e) Disagreement on Fair Market Rental Value; Arbitration. If, despite their best good-faith efforts, 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 Rental 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 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 rental values of comparable facilities or businesses within the County and, specifically, the Dana Point and neighboring beach-city sub-market, to appraise and determine the Fair Market Rental 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 Rental 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 Rental Value within twenty (20) days after their appointment taking into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.2.3(a) above. Each appraiser shall seal its respective determination after completion. After both determinations are completed, the resulting estimates of Fair Market Rental Value shall be opened simultaneously and compared. If, in the time provided, only one (1) appraiser shall submit a written determination of Fair Market Rental Value, the Fair Market Rental Value shall be the Fair Market Rental 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 Rental Value, 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 Rental Value, taking into account into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.2.3(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 Rental Value of one of the initial two (2) appraisers that the third appraiser determines is closest, on a dollar basis, to the Fair Market Rental Value determined by the third appraiser as of such applicable Renegotiation Date. Each Party may submit written material to the third appraiser, with a copy to the other Party, on the issue of Fair Market Rental Value. Such third appraiser shall provide

written notice to County and Lessee of its determination of Fair Market Rental Value, and such determination shall be binding upon County and Lessee.

(4) If the determination of the Fair Market Rental Value is delayed beyond the then applicable Renegotiation Date, Lessee shall pay Annual Minimum Rent and Percentage Rent based on County's estimate of Fair Market Rental Value until the determination of Fair Market Rental Value hereunder. Following such determination, if Fair Market Rental Value is determined to be other than as designated by County, there shall be an adjustment made to the next installment of Annual Minimum Rent due for the difference between the amount of Annual Minimum Rent Lessee has paid to County since the applicable Renegotiation Date and the amount that Lessee would have paid if the Annual Minimum Rent as adjusted pursuant to this subsection had been in effect as of the applicable Renegotiation Date.

(5) Each Party shall pay the fees and expenses of its own appraiser, and if a third appraiser is selected or necessary, the Party whose Fair Market Rental Value determinant is not chosen shall pay one hundred percent (100%) of the fees and expenses of the third appraiser.

(6) 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.

(f) Retroactivity of Fair Market Value Determination. In the event that, pursuant to Subsections 4.2.3(d) or 4.2.3(e) hereof, the Parties execute an amendment to this Lease setting forth the new Annual Minimum Rent and Percentage Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date. If such amendment is executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County the difference, if any, between (i) such Fair Market Rental Value for the Property, and (ii) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. County shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid at the following rates:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer-Tax Collector of Orange County during that period, computed by the Auditor-Controller; and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the Prime Rate in effect as of the date that is six (6) months after the Renegotiation Date, and such interest shall accrue for the period from the date that is six (6) months after the Renegotiation Date until the date of payment.

No late fee shall be payable under Subsection 4.2.4 with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.2.3(f) as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.2.3(f).

4.2.4 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 (1<sup>st</sup>) day of each calendar month during the Term.

(b) Percentage Rent; Reporting and Payment. On each January 15, April 15, July 15, and September 15 during the Term, Lessee shall, with respect to each Component, (i) deliver to the County a separate report summarizing the total Gross Receipts generated from operations on such Component during the preceding calendar month (including such reasonable backup as County may reasonably require from time to time) and the amount of Percentage Rent resulting therefrom, 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 4.2.4(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 Percentage Rent otherwise due under this Subsection 4.2.4 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: \_\_\_\_\_  
Account #: \_\_\_\_\_  
Lease Name: \_\_\_\_\_

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. In addition to any Late Fee, any unpaid rent due shall additionally 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 County approves such proposed Change of Ownership or Financing Event and such transaction is consummated, a Net Proceeds Share, subject to the remaining provisions of this Section 4.3. Changes of Ownership are subject to County approval as provided in Article 12 of this Lease, and Financing Events are not Changes of Ownership, but are subject to County approval as provided in Article 13 of this Lease. Notwithstanding anything herein to the contrary, Excluded Transfers shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge. 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 therein, shall apply to any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay Net Proceeds 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, (ii) the execution of a Major Sublease in the case of an Aggregate Transfer involving a Major Sublessee, or (iii) 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; and

(c) “**Change of Ownership**” shall mean (i) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in the leasehold estate create by this Lease, (ii) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) 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 fifty percent (50%) or more of the beneficial interests in Lessee or a Major Sublessee, and/or (iv) a Change of Control (as defined below) of Lessee or a Major Sublessee.

(d) “**Change of Control**” shall mean any transaction whereby the transferee acquires a beneficial interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than fifty percent (50%).

(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 or the date on which a Change of Ownership occurred as to the interest transferred, to any other 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, 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, (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, or (D) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

(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 resulting from a Condemnation by County; or

(7) any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.



(f) “**Gross Transfer Proceeds**” shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (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 value of the interests transferred; provided, if Lessee and County are unable to agree upon such fair value, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value).

(g) “**Net Proceeds Share**” shall mean the applicable amount determined pursuant to Subsection 4.3.3 of this Lease.

(h) “**Net Refinancing Proceeds**” shall mean the gross principal amount of any Financing Event after the Effective Date, minus (i) the amount used to pay off any previous debt secured by this Lease, and (ii) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, if the purpose of a Financing Event is to fund the acquisition cost (or a portion of the acquisition cost) of a Change of Ownership that is not an Excluded Transfer, then to the extent that the gross principal amount of the Financing Event does not exceed the gross sale or transfer price of such Change of Ownership, and if the Financing Event is consummated concurrently with the consummation of the Change of Ownership, there shall not be any separate Net Proceeds Share payable in connection with such Financing Event.

(i) “**Prior Financing Event Principal Balance**” shall mean an amount equal to (i) the original principal amount of a Financing Event consummated after the Effective Date but prior to the then-subject Financing Event, plus (ii) if such previous Financing Event was secondary financing, the original principal balance of any then-existing financing that was not repaid as part of such secondary financing; provided, however, if there were more than one such previous Financing Event after the Effective Date, then the calculation shall be performed for each such previous Financing Event after the Effective Date, and the higher or highest amount so determined shall be the Prior Financing Event Principal Balance.

#### 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 and Net 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 relative fair market values of the respective assets transferred. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value.

(b) Financing Events Involving Multiple Assets. For purposes of determining the Net Proceeds Share and Net Refinancing Proceeds 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 relative fair market values of the respective assets that secure the financing. If there is any dispute regarding such valuation, then the matter shall be resolved by arbitration in the manner prescribed in Subsection 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value.

(c) Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee or a Major Sublessee, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (i) the Effective Date, (ii) the date of the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease, a Major Sublease or a Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer, or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

(d) 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 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value.

#### 4.3.3 Determining Net Proceeds Share.

(a) Upon a Change of Ownership. In the event of a Change of Ownership, the "**Net Proceeds Share**" shall be the greater of the amounts calculated as follows in connection with such Change of Ownership: (i) the lesser of (A) the Net Transfer Proceeds from such Change of Ownership, or (B) five percent (5%) of the Gross Transfer Proceeds from such Change of Ownership; and (ii) twenty percent (20%) of the Net Transfer Proceeds from such Change of Ownership.

(b) Upon a Financing Event. With respect to a Financing Event, the "**Net Proceeds Share**" shall be an amount equal to twenty percent (20%) of the Net

Refinancing Proceeds from such Financing Event. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest.

(c) Limitations; No Duplication. Notwithstanding any contrary provision of this Subsection 4.3.3, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, there shall be no duplication of any amounts to be subtracted from Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), even if a particular amount qualifies for subtraction under more than one category.

#### 4.3.4 Determining Net Transfer Proceeds.

(a) Transaction by Original Lessee. In the case of a transfer by the original Lessee (but not a transfer by a successor or assignee of Lessee) constituting a Change of Ownership for which a Net Proceeds Share is payable, “**Net Transfer Proceeds**” shall mean the Gross Transfer Proceeds from the transfer, less the following costs with respect to the original Lessee (but not its successors or assignees):

(1) Base Value and Improvement Costs. The sum of (i) [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)], plus (ii) the amount of the “Option Price” and any “Extension Fee” paid by Lessee under the Option Agreement (as such terms are defined in the Option Agreement), plus (iii) the actual out-of-pocket costs paid by Lessee to third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (iv) the Actual Costs reimbursed by Lessee to County in connection with the negotiation and consummation of the Option Agreement and this Lease (the sum of the amounts in (i), (ii), (iii) and (iv) shall be referred to herein as the “**Base Value**”), plus (v) the final actual out-of-pocket design, engineering, permitting, entitlement and construction costs paid by Lessee to third parties in connection with (I) the Redevelopment Work, and (II) other physical capital Improvements or Alterations made to the Property by Lessee after the Effective Date in compliance with Article 5 of this Lease, in each case to the extent that such costs have been submitted to County within ninety (90) days after the completion of such Improvements, together with a written certification from Lessee and Lessee’s construction lender (to the extent that such construction lender exists and the construction lender has funded such costs) that such costs are accurate (the amounts described in this clause (v) are collectively referred to as “**Improvement Costs**”). If by the date that is ninety (90) days after the completion of the Redevelopment Work (or other Improvements) the final amount of the Improvement Costs relating thereto is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs to County (including a description of the costs in dispute and the amounts under dispute). Lessee shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any

final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute. Without limitation of the definition of Improvement Costs above, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid to unaffiliated third parties (except that Lessee shall be entitled to include, to the extent actually incurred, as a soft cost, construction management and/or development fees paid to an affiliate as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee's construction loan from an unaffiliated third party lender; provided, however, that in no event shall soft costs (including the construction period interest described above) exceed thirty-five percent (35%) of the hard costs;

(2) Transaction Costs. Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs), and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of Chief Real Estate Officer, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "**Documented Transaction Costs**"); and

(3) Financing. That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

(b) Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds received by the successor Lessee, minus the following costs with respect to such successor Lessee:

(1) The greatest of: (i) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor Lessee; (ii) the purchase price such successor Lessee paid to the original Lessee or such successor Lessee's seller for the interest acquired (or to the extent that such successor Lessee acquired its interest herein pursuant to an exchange of property or other non-monetary interests, then the fair market value of the property or other interests transferred by such successor Lessee as the consideration for such successor Lessee's acquisition of the interest hereunder acquired by such successor Lessee); and (iii) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold, and with respect to which County was paid a Net Proceeds Share;

(2) Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Property (but not duplicative of the principal amount of any Financing Event described in

Subsection 4.3.4(b)(1)(iii) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate lender (if any) and Lessee certification, as provided in Subsection 4.3.4(a)(1); and

(3) Documented Transaction Costs with respect to the transfer of the interest by the successor.

(c) 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 Net Proceeds Share), shall be disregarded in the computation of Net Transfer Proceeds.

(d) 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), as adjusted pursuant to the immediately following sentence. For purposes of the application of Subsections 4.3.4(a) and 4.3.4(b) to a Change of Ownership under this Subsection 4.3.4(d), in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the Base Value and Improvement Costs (or with respect to a transfer of a beneficial interest in a Lessee that is not the original Lessee, such cost shall in no event be deemed to be less than the pro rata share (i.e., the percentage of the entire beneficial interest in Lessee that is then being transferred) of the sum of Subsections 4.3.4(b)(1) and 4.3.4(b)(2) as of the respective date of the transfer of each interest in the aggregation pool)) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then-existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee or a Major Sublessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as applicable.

#### 4.3.5 Payment of Administrative Charge and Net Proceeds Share.

(a) Deposit Towards Administrative Charge. A deposit of Fifteen Thousand Dollars (\$15,000) toward the Administrative Charge shall be due and payable 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 Net Proceeds Share shall be due and payable in accordance with Subsection 4.3.5(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 Net Proceeds 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 Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) 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 Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. 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 Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, 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 Net Proceeds Share, and (ii) Lessee shall deposit the disputed portion of the Net Proceeds 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 Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferee and transferor.

(d) Timing for Payment. The Net Proceeds Share and the balance of the Administrative Charge not already deposited with the County in accordance with Subsection 4.3.5(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.

(1) Any Net Proceeds 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 Net Proceeds 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 Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds 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 Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds 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 Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds (or the value thereof) are received by Lessee, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease). In the event that the Administrative Charge or Net Proceeds 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 4.3.5(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 five percent (5%) 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 five percent (5%) 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 best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) 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 Approval Proposal Submittals attached to this Lease as **Exhibit B** (the “**Approved Proposal Submittals**”). Lessee shall perform the Redevelopment Work for each Component in accordance with (a) the Approved Proposal Submittals, Scope of Work, Construction Schedule and Construction Budget, 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, 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 Section 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 attached hereto as Exhibit . The Construction Schedule includes, with respect to each Component: (a) the Required Construction Commencement Date for such Component, (b) the CO Date for such Component, and (c) 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 Lessor reasonably agree are relevant to tracking the likelihood that the Redevelopment Work for such Component will be completed by the applicable CO Date for such Component. Lessee shall not make any Material Modification to the Construction Schedule without the prior written approval of Chief Real Estate Officer obtained in accordance with the procedure set forth above in this Subsection 5.3.2. Any changes to the Construction Schedule will be subject to the approval of Chief Real Estate Officer, in its sole and absolute discretion. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested revisions to the Construction Schedule within which to approve or disapprove such submission in writing. Failure of Chief Real Estate Officer to approve any such change in writing within said thirty (30) day period shall be deemed disapproval. Following any deemed disapproval of any change to the Construction Schedule by Chief Real Estate Officer, 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 the such change(s). Chief Real Estate Officer’s approval of 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 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 \_\_\_\_\_ (\_\_\_\_) 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. Failure of Chief Real Estate Officer to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Chief Real Estate Officer, Chief Real Estate Officer shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Chief Real Estate Officer's objections to the submission. Any subsequent Material Modification 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 Deliverables, the Approved Proposal Submittals, Construction Schedule and Construction Budget 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, Construction Schedule or Construction Budget. Lessee shall identify on all documents submitted with the Preliminary Plans to Chief Real Estate Officer, 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 Chief Real Estate Officer may disapprove said preliminary plans on the grounds that 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 Deliverables. Chief Real Estate Officer shall have thirty (30) days following receipt of Preliminary Plans for a Component or any subsequent change thereto, within which to approve or disapprove such Preliminary Plans in writing. Failure of Chief Real Estate Officer to approve such Preliminary Plans or any subsequent change thereto in writing within said thirty (30) day period shall be deemed disapproval. Following any deemed disapproval of the Construction Schedule or any subsequent change thereto by Chief Real Estate Officer, 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 such Preliminary Plans or subsequent changes thereto.

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 Chief Real Estate Officer, 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 Final Submittals 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 Final Submittals 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 Final Submittals do not meet the requirements for the Improvements set forth in this Article 5. Failure of Chief Real Estate Officer to approve Lessee's Final Submittals or any subsequent change thereto in writing within said thirty (30) day period shall be deemed disapproval. Following any deemed disapproval of Lessee's Final Submittals or any subsequent change thereto by Chief Real Estate Officer, 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 subsequent changes thereto. Chief Real Estate Officer's approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the previously approved Lessee's Final Submittals, or which contains new, different or additional specifications for the Improvements which were not expressly set forth in previously approved Lessee's Final Submittals and which do not meet the requirements for the Improvements set forth in this Article 5. No Material Modification shall be made to any previously approved Lessee's Final Submittals (the "**Final Plans and Specifications**") without the prior written approval of Chief Real Estate Officer.

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 Chief Real Estate Officer 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 all permits, licenses, clearances and other approvals from the applicable Governmental Authorities for 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:

(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.

5.5.5 Alternative Security. In lieu of providing the Payment Bond and Performance Bonds, Lessee may provide 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 his 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. In addition, Chief Real Estate Officer shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called “Subguard” insurance in such amount, on such terms and issued by such carrier as Chief Real Estate Officer may require in his 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 his reasonable discretion. Without limiting the generality of the foregoing, Lessee shall deliver to Chief Real Estate Officer, for his review and approval, copies of all notes, guaranties, partnership, shareholder and limited liability company agreements, 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 all the Redevelopment Work on all three Components.

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 Chief Real Estate Officer 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 Chief Real Estate Officer 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 CO Dates, subject to Force Majeure as set forth below. If Lessee is delayed in the commencement of construction or completion of the Redevelopment Work for a Component due to Force Majeure, then the Required Construction Commencement 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 5.17 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 Chief Real Estate Officer 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 Chief Real Estate Officer, 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 Chief Real Estate Officer'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 Chief Real Estate Officer'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 5.17 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 concurrent 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 Chief Real Estate Officer 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 such 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. Except as set forth in Section 5.11 below, Lessee shall not make any Alterations without the prior written approval of Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed. 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 Chief Real Estate Officer, 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. Notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approval of Chief Real Estate Officer for Alterations where all of the following conditions are satisfied: (a) the total cost of all Alterations in the twelve (12) month period immediately preceding the proposed Alterations, in the aggregate, is less than Fifty Thousand Dollars (\$50,000), which amount shall be adjusted annually to reflect any increases (but not decreases) in the ENR Index from and after the Effective Date; (b) none of the proposed construction activity is structural in nature; and (c) none of the proposed Alterations materially affect or will be visible from the exterior of the Improvements; provided, however, prior to commencing any Alterations where the approval of Chief Real Estate Officer is not required, 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.

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.

5.15.2 Subsequent Renovation Plan. Prior to the commencement of the Subsequent Renovation, Lessee shall submit to Chief Real Estate Officer 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. Failure of Chief Real Estate Officer to notify Lessee in writing of Chief Real Estate Officer's approval or disapproval of the Subsequent Renovation Plan shall be deemed Chief Real Estate Officer's disapproval of the Subsequent Renovation Plan. Upon Chief Real Estate Officer's 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 Component, commencing with the first January 15 that is at least five (5) 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. On or before each January 15 of the period during which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make an annual deposit to the Subsequent Renovation Fund in an amount equal to [\_\_\_\_\_ percent (\_\_\_%)] of total Gross Receipts for the previous Lease Year from the operation of the Improvements within the applicable Component. 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. On or before January 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 Chief Real Estate Officer 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 annual deposits to the Subsequent Renovation Fund, Lessee and Chief Real Estate Officer may mutually agree

upon substitute arrangements satisfactory to Chief Real Estate Officer 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. No funds shall be released from the Subsequent Renovation Fund to Lessee until the Subsequent Renovation of all the Improvements have been completed in accordance with Section 5.15 and paid for in full by Lessee, whereafter any remaining funds in the Subsequent Renovation Fund shall be released to Lessee. Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to Chief Real Estate Officer 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 Chief Real Estate Officer 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.

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.

5.16.1 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 (as defined below) for the Property. Deposits to the Capital Improvement Fund shall be segregated into the following three (3) sub-funds: (a) a sub-fund for the Commercial Core Improvements, (b) a sub-fund for the Hotel Improvements, and (c) 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 (as defined below) 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, Lessee shall make a monthly deposit to each sub-fund of the Capital Improvement Fund in the following amounts:

- (1) Commercial Core Sub-Fund: [\_\_\_% of Gross Receipts] derived from the Commercial Core for the immediately preceding month.
- (2) Hotel Sub-Fund: [\_\_\_% of Gross Receipts] derived from the Hotel for the immediately preceding month.
- (3) Marina Improvements Sub-Fund: (i) during the period between the Effective Date and the commencement of the Redevelopment Work for the Marina Improvements, [\_\_\_% of Gross Receipts] derived from the Marina Improvements for the immediately preceding month; (ii) for the five (5) year period from and after the date of the commencement of the Redevelopment Work for the Marina Improvements, [\_\_\_% of Gross Receipts] derived from the Marina Improvements for the immediately preceding month; and (iii) during the remainder of the Term of the Lease, [\_\_\_% 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 (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. 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 the Encumbrance Holder acknowledges that such amounts are subject to, and administered in accordance with, the requirements 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 Chief Real Estate Officer 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 sub-fund for the Landside Improvements until after the tenth (10<sup>th</sup>) anniversary of the CO Date for the applicable Component. Lessee may commence spending funds in the Capital Improvement Fund sub-fund for the Marina Improvements immediately after the Effective Date, except that no portion of such funds shall be used for the Redevelopment Work. In addition, 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 Chief Real Estate Officer 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 Chief Real Estate Officer 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 All amounts then existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than seven (7) years prior to the expiration of the Term of the Lease. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.16; provided, however, if County elects to require Lessee to remove the Improvements at the end of



the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with Subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.16 towards Lessee's obligations to fund the security requirements in Subsection 2.3.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Chief Real Estate Officer in Chief Real Estate Officer's reasonable discretion.

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.

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 Expedited Arbitration. Given the importance of completing the Redevelopment Work in accordance with the Work 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 5.17, 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 5.17. 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 5.17, 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 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value. 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 of, as applicable, to Lessee all sums held by County or third parties as the Capital Improvement Fund, the Subsequent Renovation Fund, the Security Deposit, and, upon completion by Lessee of its obligations under Section 2.3 of this Lease with respect to any portion of the Property not taken in the Condemnation, the remaining Demolition Security.

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 4.2.3(e) above for the resolution of disputes concerning Fair Market Rental Value. 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_), 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**"), and following the Final CO Date, such sum shall be reduced to \_\_\_\_\_ Dollars (\$\_\_\_\_\_). 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 concurrent active or sole gross negligence of any such County Indemnified Party (as defined below), 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, 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, 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, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, 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. 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 such 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 concurrent active or sole gross negligence of such 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, 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, 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), 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):

<u>Coverage</u>	<u>Minimum Limit(s)</u>
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 Chief Real Estate Officer 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 Chief Real Estate Officer 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 Chief Real Estate Officer. 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.

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 (each, an "**Insurance Renegotiation 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. Lessee shall maintain the Property, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Improvements), 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. Lessee shall maintain all Improvements on the Property (other than the Excluded Improvements) in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Chief Real Estate Officer and in compliance with all Applicable Laws. 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 as reasonably satisfactory to Chief Real Estate Officer. 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 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 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 Stormwater Drainage Program.

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

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

b. 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.

c. 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.

d. 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 do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any applicable permits.

e. 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 Stormwater Drainage. During the remaining Term of the Lease, Lessee shall comply with any reasonable water quality management requirements hereafter adopted by County and imposed on a non-discriminatory basis, including, without limitation, the following:

(1) Lessee and all of Lessee's sublessees, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (which, as used herein, shall include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

(2) The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“**NPDES**”) permits (“**Stormwater Permits**”) to the County of Orange, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge of urban runoff from areas within the County of Orange, 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 Stormwater Drainage System.

(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 Orange 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 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. Lessee agrees to maintain current copies of the BMP Fact Sheets on the Property throughout the Term of the Lease. 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 Chief Real Estate Officer for review and approval prior to implementation.

(6) Chief Real Estate Officer may enter the Property and/or review Lessee’s records at any reasonably 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 drainage system 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.

### 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 Chief Real Estate Officer within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Chief Real Estate Officer, 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 Chief Real Estate Officer 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 (3<sup>rd</sup>) 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 by 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 under penalty of perjury 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 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 No County Obligation to Make Repairs; Breakwater. 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 if and to the extent such funds are made available to Chief Real Estate Officer for such uses by County and its Board. 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 is in imminent danger of collapse or has collapsed, Chief Real Estate Officer shall promptly seek funding from the Board for repair or replacement as may be necessary to avoid or repair such collapse. If County is obligated to maintain or repair the Breakwater under the terms of a lease between the County and any other lessee in Dana Point Harbor, or if County in fact maintains or repairs the Breakwater for the benefit of any other lessee in Dana Point Harbor, County shall have the same obligation(s) with respect to the Breakwater protecting the Property. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Breakwater. Furthermore, nothing herein shall relieve Lessee from liability for any damage to the Breakwater 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 its 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 Mandatory CASp Disclosure. For purposes of California Civil Code Section 1938, County hereby discloses to Lessee, and Lessee hereby acknowledges, that the Property has not undergone inspection by a Certified Access Specialist (CASp).

## 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 the Marina, the Property Manager shall be an experienced, professional marina management firm. Each Property Manager, including any replacements thereof, shall be subject to Chief Real Estate's Officer's prior written approval, which approval may be granted or withheld in its sole discretion. Each Property Manager 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 expressly agrees that any notice herein required to be served upon Lessee may, at the option of County or Chief Real Estate Officer, be personally served upon the Property Manager and that such service shall have the same force and effect as service upon Lessee. If during the Term in the reasonable judgment of Chief Real Estate Officer the then current Property Manager is performing in an unsatisfactory manner, then at the request of Chief Real Estate Officer, Lessee shall replace such Property Manager with a

new management firm reasonably acceptable to Chief Real Estate Officer. If during the Term the then current Property Manager terminates its contract, then Lessee shall have the right to replace such Property Manager with another management firm approved by Chief Real Estate Officer, which approval shall not be unreasonably withheld.

11.3 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Chief Real Estate Officer a report which contains the following information with respect to every vessel (including floating homes) moored in the water at the Property: (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. In addition, Lessee shall require, and shall certify annually to Chief Real Estate Officer, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the immediately preceding certification (or in the case of the initial certification, from and after the Effective Date) have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days after such slip rental. Thereafter, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in Chief Real Estate Officer's sole discretion, 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.

11.4 Transient Docks. Lessee shall make available [\_\_\_\_\_ (\_\_\_)] twenty-five (25) feet slips in a location approved by Chief Real Estate Officer to be reserved for transient boat docking purposes at no charge to the boater. 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. The operation of the transient slips shall be subject to such procedures, rules and regulations as are reasonably acceptable to Chief Real Estate Officer. For purposes of Subsection 4.2.2(a)(1) of the Lease, commencing with the month following the month during which the substantial completion of the Marina Improvements portion of the Redevelopment Work occurs (but not later than the month following the month during which the Required Construction Completion Date occurs) and continuing during the remaining Term of the Lease, Lessee shall be deemed to have received imputed Gross Receipts for each such transient slip described in this Section 11.4 equal to fifty percent (50%) of the then-prevailing monthly market rental rate for a 25-foot slip located at the Property as if such transient slip had been leased by Lessee on a monthly basis at fifty percent (50%) of such then-prevailing market rate.

11.5 Child Support Enforcement.

11.5.1 At all times during the term of this Lease, Lessee shall comply with all County, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

11.5.2 In order for Lessee to comply with County requirements, Lessee shall deliver to Chief Real Estate Officer the required data and certifications, as shown in **Exhibit J** attached hereto, concurrent with the execution of this Lease by County.

11.5.3 Failure of Lessee to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within thirty (30) days after Lessee's receipt of written notice from County of such breach by Lessee shall constitute grounds for termination of this Lease.

#### 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 Section 11.7 below.

#### 11.7 Labor Code Compliance.

11.7.1 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, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the California Labor Code (Sections 1770, et seq.). These provisions may be applicable to improvements or modifications costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under Section 1720.2 of the Labor Code.

11.7.2 Pursuant to the provisions of Section 1773 of the California Labor Code, the Board has obtained the general prevailing rate of per diem wages and the general

prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations.

11.7.3 Lessee hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all construction or modifications to be completed within the Property, and Lessee herein agrees that Lessee shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where any such construction or modifications are performed.

11.7.4 When requested by Chief Real Estate Officer, Lessee shall require any contractor or subcontractor performing work on the Property to maintain certified payroll records for all workers assigned work on the Property and shall require said contractors or subcontractors to provide Chief Real Estate Officer with the applicable certified payroll records for all workers that will be assigned to work on the Property. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. At Chief Real Estate Officer's request, Lessee shall provide or cause Chief Real Estate Officer to be provided with bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

11.7.5 If Lessee neglects, fails, or refuses to provide said payroll records to Chief Real Estate Officer, such occurrence shall constitute an Event of Default under this Lease.

11.8 Public Contract Code Compliance. As applicable, 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 California Public Contracts Code Sections 22030 et seq.

11.9 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged 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. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease.

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 during the entire duration of its conduct of such activities. 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.

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.

## 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**".

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 2,500 rentable square feet of 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), is in the form of the standard retail lease hereafter submitted to and approved by County, and the term of such Sublease or license does not exceed three (3) years, 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 by County and the term of such Sublease or license does not exceed twelve (12) months (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 multiple slips) to a person or persons, as long as such Sublease or license agreement is in the form of the standard anchorage slip hereafter submitted to and approved by County and the term of such Sublease or license does not exceed twelve (12) months (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, or (b) pertains to more than 5,000 rentable square feet of space in the Improvements, County agrees, upon written request from Lessee, to execute and deliver a non-disturbance and attornment agreement using County’s standard form with such commercially reasonable revisions thereto as such Sublessee may request.

12.1.5 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of other comparable facilities or businesses within the County. 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 shall be based upon factors including, without limitation, those described in Exhibit C hereto, which is incorporated herein by this reference (“**Assignment Standards**”), and 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 therein (excluding an Approved Storage Lease or Approved Slip Lease, but including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Property), 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 avoidance of doubt, any actual assignment of Lessee’s interest in this Lease shall require County 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 more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; 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 Retail Buildings Completion Date, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the Retail Buildings Completion Date, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease. If County withholds its consent to an assignment or Major Sublease, 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 therein 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 process of law including proceedings under the Bankruptcy Act.

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 this 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 Subleases, 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.

(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 4.2.4).

(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) Nondisturbance. Upon the written request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground

lessor's estoppel certificate in favor of any Major Sublessee using County's standard form for the same with such commercially reasonable revisions thereto as such Major Sublessee may request.

(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 Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Property retained by Lessee. 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 Net Proceeds 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 herein, each and all of the provisions, agreements, terms, covenants, and conditions herein 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 its 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:

(a) **“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 (as defined below); 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.

(b) **“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.

(c) **“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.

(d) **“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, 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). Notwithstanding the foregoing, and for the avoidance of doubt, the Parties agree that it shall be reasonable for the County to withhold its consent to any Financing Event that will result in Lessee having a loan-to-value ratio or loan-to-cost ratio (as applicable) equal to or greater than eighty percent (80%) across all Components collectively, or for any particular Component, individually. Lessee shall submit to 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. 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 sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) to grant or withhold approval of the preliminary loan package. Chief Real Estate Officer shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) 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; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. 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 thirty (30) 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 Chief Real Estate Officer not later than seven (7) 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.

13.2 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.

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 (as defined below). 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 a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (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 as defined below) 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 Net Proceeds 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 Net Proceeds 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 Sections 5.1 or 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 and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, 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 Major Sublessee and Encumbrance Holder 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 or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. 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 Lender's 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 or Major Sublessee 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 or the

Major Sublessee 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. 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 or Major Sublessee.

(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, 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 Encumbrance(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 and the Capital Improvement 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 and/or Capital Improvement 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 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 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 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 thirty (30) days 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 Sections 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 best efforts to recover possession of the applicable space from the Sublessee and diligently proceeds to re-sublease such space to another Sublessee as soon as reasonably possible on terms acceptable to a prudent business person under then current market circumstances; provided, further, that, except as provided below, the applicable space must be (a) re-leased no later than one hundred eighty (180) days following the date that possession of such space was recovered from the Sublessee, and (b) re-opened for business to the public within sixty (60) days thereafter. Such sixty (60) day time period may be extended due to delays which are not the fault of Lessee, such as permit and tenant improvement construction delays. 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 (i) 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, and (ii) if the Sublessee's space is not re-subleased by the end of the one hundred eighty (180) day period set forth above in this Subsection 14.1.4 (the "**Re-sublease Date**") or not re-opened by the end of the sixty (60) day period set forth above in this Subsection 14.1.4 (as such period may be extended as provided above) (the "**Re-opening Date**"), then, solely for the purpose of determining the Annual Minimum Rent on an Adjustment Date (x) if the Sublessee's space is not re-subleased by the Re-sublease Date, for the period of time from sixty (60) days following the Re-sublease Date until such date that the subject portion of the Property is re-opened for business, Lessee's total Annual Rent shall be deemed to include imputed Percentage Rent for the space based upon an imputed Gross Receipts for the space equal to the actual Gross Receipts for the space during the one year period prior to the closure of such space (the "**Imputed Rent**"), or (y) if the Sublessee's space is re-subleased by the Re-sublease Date, but is not re-opened by the

Re-opening Date, for the period of time from the Re-opening Date until such date that the subject portion of the Property is actually re-opened for business, Lessee's total Annual Rent shall be deemed to include Imputed Rent; provided, however, notwithstanding the foregoing, Imputed Rent shall not be included in the calculation of Annual Minimum Rent on an Adjustment Date during the period of time that rent is being paid by Sublessees leasing 85% or more of the leaseable space of the Improvements, and, further, Imputed Rent shall only be included with respect to such portion of the leaseable space of the Improvements that would result in the combination of rent paid plus Imputed Rent being payable from 85% of the leaseable space of the Improvements.

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. On the giving of the notice, all of Lessee's rights in the Property and in all Improvements shall terminate. Promptly after notice of 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, or from Lessee's obligation to remove Improvements at County's election in accordance with Subsection 1.2.3. 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, Net Proceeds Shares and Net Refinancing Proceeds, 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) twice 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. 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 not exceed 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. Any and all claims or actions against County accruing hereunder shall be absolutely barred unless such action is commenced within six (6) 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, Net Proceeds Share, Net Refinancing Proceeds 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 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 accrual 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.

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 or computers 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. Beginning and ending cash register readings shall be made a matter of daily record.

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 Chief Real Estate Officer in advance of installation for his 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 fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the

preceding calendar month, together with its calculation of the amount payable to County under Subsections 4.1.3 through 4.3.1(e) inclusive, and shall accompany same with remittance of amount so shown to be due.

#### 15.4 Availability of Records for Inspector's Audit.

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 Orange 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, 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.

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 Orange 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 discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County's audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Subsection 4.2.4.

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 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 Gross Receipts. 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 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 is unable to issue an unqualified opinion as to Gross Receipts, 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 draftsman 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 in Subsection 2.3.2 with respect to any Post Term 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 Chief Real Estate Officer a designation of a natural person residing in the County of Orange, California, 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 Chief Real Estate Officer, 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 of Orange, California, 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: Chief Real Estate Officer  
County Executive Office  
Hall of Administration  
333 W. Santa Ana Blvd., 3<sup>rd</sup> Floor  
Santa Ana, California 92701  
Fax: (714) 834-6166

With a Copy to: Supervising Deputy County Counsel  
Office of County Counsel  
Hall of Administration  
333 W. Santa Ana Blvd., 4<sup>th</sup> Floor  
Santa Ana, California 92701  
Fax: (714) 834-2359

and to: Director  
OC Parks  
13042 Old Myford Road  
Irvine, California 92602  
Fax: (714) \_\_\_\_-\_\_\_\_

LESSEE: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

With a Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

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 with such commercially reasonable revisions thereto as Lessee may request. 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.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

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

APPROVED AS TO FORM:

Leon J. Page,  
County Counsel

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

APPROVED AS TO FORM:

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

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

**EXHIBIT A**

**A-1 LEGAL DESCRIPTION OF PROPERTY**

**A-2 DEPICTION OF PROPERTY**

[To be added]

**EXHIBIT B**

**APPROVED PROPOSAL SUBMITTALS**

[To be added]

## 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 of the building exterior\*

Walkways and driveway replacement\* (if asphalt, a minimum of resurfacing, not slurry seal)

Windows replacement\*

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

Elevators (replacement or addition)

HVAC replacement

Light fixtures replacement\* (interior and exterior)

Irrigation system\* (replacement or major addition)

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

**EXHIBIT E**

**ASSUMED CONTRACTS AND LEASES**

[To be added]

**EXHIBIT F**

**RENT SCHEDULE**

[To be added]

## 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. 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.
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 the Harbor;
- f. High degree of public service;

- g. Parking constraints and traffic circulation;
- h. Aesthetics associated with the character of the Harbor; and
- i. Compliance with the terms and conditions of this Lease.

8. Special Temporary Events. Any special or temporary event (for example, fair, trade show, art exhibit, swap meet, etc.) shall be subject to the prior written approval of the County, whether sponsored or promoted by Lessee, or by any third party. At least sixty (60) days prior to the event, Lessee shall submit to the County an event plan which shall include the proposed use, operations guidelines, requirements for any facilities to be placed on the Property and a proposed fee schedule for any individual(s) or organization(s) that may be selling goods and/or services during the event. Individuals or organizations selling goods or services may be subject to payment of mandatory fees to County at the discretion of the County.

9. Filming. No filming or use of the Property for commercial filming purposes shall be allowed without the prior consent of the County, and without payment of any fees that may exist at the time in accordance with the County filming policy and permitting process.

10. 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.

11. 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 standards as may be required by the County.

12. 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.

13. Water/Dock Area.

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 (less than 6 inches).  
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 and corner bumper 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.
- f) Marine Grade Materials:
  - i) All gussets should be a minimum 3/4" MOO Plywood coated with appropriate non- skid material.
  - ii) All receptacles should be the standard marine grade.
  - iii) All dock side fasteners should be stainless steel or hot dip galvanized.
  - iv) All concrete dock repairs should substitute light weight aggregate for gravel or rock in the concrete mix.
  - v) Replacement walers or other dock side lumber must always be pressure treated at acceptable standard industry specifications for the specific type of use/application and exposure of the materials.

**EXHIBIT H**

**MANDATORY HOURS OF OPERATION**

[To be added]

## **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/IndustrialCommercialBusinessesActivities.aspx> (which website may change from time to time):

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

**EXHIBIT J**

**CHILD SUPPORT ENFORCEMENT CERTIFICATION REQUIREMENTS**

- A. In the case of a COUNTY doing business as an individual, his/her name, date of birth, the last four digits of the Social Security number, and residence address:

Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last Four Digits of Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

- B. In the case of a COUNTY doing business in a form other than as an individual, the name, date of birth, the last four digits of the Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the leased Property:

Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last Four Digits of Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last Four Digits of Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Last Four Digits of Social Security No: \_\_\_\_\_  
Residence Address: \_\_\_\_\_

(Attach additional sheets if necessary)

*I certify that \_\_\_\_\_ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease agreement with the County of Orange dated \_\_\_\_\_. I understand that failure to comply shall constitute a material breach of the Lease and that failure to cure such breach within sixty (60) calendar days of notice from the County of Orange shall constitute grounds for termination of the Lease agreement without cost to the County.*

\_\_\_\_\_  
Authorized Signature                      Print Name                      Title                      Date