

OPTION AGREEMENT

THIS OPTION AGREEMENT (“**Option Agreement**”) is made _____, 201__, (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called “**County**”) and _____, a _____ (hereinafter called “**Optionee**”). County and Optionee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

Recitals

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

B. County desires to lease the Property to a developer for the purpose of planning, designing, funding, constructing, renovating, marketing, operating, managing and maintaining the Property (the “**Project**”) for a period of fifty (50) years.

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

D. Optionee requires a period of time to complete due diligence investigations and inspections of the Property before agreeing to lease the Property from County and, therefore, County has agreed to grant to Optionee an option to lease the Property upon the terms and conditions set forth in that certain Master Ground Lease Agreement Dana Point Harbor attached hereto as **Exhibit B** and made a part hereof (the “**Lease**”).

NOW, THEREFORE the Parties agree as follows:

1. DEFINITIONS.

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

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

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

1.4. “**County**” means the County of Orange, a political subdivision of the State of California. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Property and not the County in its capacity as a land use or other governmental approval authority.

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

1.6. “**Property**” has the meaning set forth in the Recitals to this Option.

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

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

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

4. **OPTION PRICE**. As consideration for the Option, Optionee shall pay to County Thirty Thousand Dollars (\$30,000) (“**Option Price**”) on the Effective Date. The Option Price shall be paid to the County as consideration for the granting of the Option, shall be non-refundable to Optionee under any circumstances, and no portion of the Option Price shall be refunded or credited to rent payments under the Lease.

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

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

5.2. Optionee shall have submitted to the Chief Real Estate Officer a cashier’s check made payable to the “*County of Orange*” in the amount of Fifteen Thousand Dollars (\$15,000) (the “**Extension Fee**”).

The Extension Fee shall be consideration for the extension of the Option Term and, if the Chief Real Estate Officer exercises his discretion in favor of the extension of the Option Term in accordance with Section 5.1 above, the Extension Fee shall be non-refundable to Optionee under any circumstances, nor credited to rent payments under the Lease. Any extension of the Option Term beyond the Extended Option Term shall be subject to prior approval by the Board of Supervisors.

6. **DUE DILIGENCE; INDEMNIFICATION.**

6.1. Commencing upon the Effective Date and continuing for the duration of the Option Term and the Extended Option Term, if applicable, Optionee shall have the right to enter upon the Property to conduct such due diligence investigations and inspections of the Property as Optionee shall deem necessary in order to determine the viability of the Property and the Lease

for Optionee's intended purposes; provided that (i) Optionee provides the Chief Real Estate Office with reasonable advance written notice of the need for entry upon the Property to perform such investigations, (ii) Optionee abides by all conditions to such entry as may be specified by the Chief Real Estate Officer from time to time, (iii) Optionee shall not conduct any invasive testing on the Property without the Chief Real Estate Officer's prior written approval, and (iv) prior to entering upon the Property, Optionee and all of Optionee's consultants, members, directors, officers, employees, agents and representatives (collectively, "**Optionee Parties**") entering upon the Property for purpose of such due diligence shall provide County with a certificate of insurance evidencing that Optionee and each such Consultant has the insurance required under Section 12 below.

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

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

6.4. Optionee hereby releases and waives all claims and recourse against County, the County Parties and the Property, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Option Agreement except claims arising from the willful misconduct or concurrent active or sole gross negligence of County or any of the County Parties. Optionee hereby agrees to indemnify, defend (with counsel approved in writing by County), and hold harmless, County, the County Parties and the Property from and against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of Optionee's exercise of the rights under this Option Agreement, except for liability arising out of the willful misconduct or concurrent active or sole gross negligence of County or any of the County Parties including the

cost of defense of any lawsuit arising therefrom. If County, any County Party or the Property is named as codefendant in a lawsuit relating to the exercise of Optionee's rights under this Option Agreement, then Optionee shall represent County in such legal action unless County elects to engage counsel to represent County as codefendant in such legal action, in which event Optionee shall reimburse County for all its litigation costs, expenses, and attorneys' fees incurred in connection with the defense of such action. If judgment is entered against County or any County Parties and Optionee by a court of competent jurisdiction because of the concurrent active negligence of County and Optionee, County and Optionee agree that liability will be apportioned between them as determined by the court. Neither Party shall request a jury apportionment.

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

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

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

expenses which are presently unknown, unanticipated and unsuspected, and Optionee further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Optionee nevertheless hereby intends to release, discharge and acquit County and the County Parties from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, Optionee hereby expressly waives any and all rights and benefits conferred upon it by the provisions of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

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

Optionee Initials

8. OPTIONEE’S SUBMITTALS.

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

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

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

8.1.3. a construction mobilization and staging plan;

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

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

8.1.6. schematic floor plans indicating functional areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.6.2. a safety and security plan;

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

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

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

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

(ii) a preventative maintenance program;

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

(iv) a water quality management program;

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

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

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

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

8.7. Approval of Optionee's Submittals. Optionee acknowledges that County's acceptance of the Proposal shall not be deemed County's approval of all documents submitted by Optionee to County together with the Proposal including those submittals attached hereto as Exhibit C, D, E, F, G and H, respectively (collectively, the "**Proposal Submittals**"). During the Option Term and the Extended Option Term, if applicable, (i) County may require various changes to be made to the Proposal Submittals in order for the Project to be more in line with County's goals and objectives for the Project as stated in the Request for Proposal, in which event the Parties shall use good faith efforts to reach agreement on revisions to the Proposal

Submittals during the Option Term, or Extended Option Term, if applicable, and (ii) Optionee may propose changes to the Proposal Submittals, provided that such changes do not differ materially from the Proposal Submittals and any such changes shall be subject to the approval of the Chief Real Estate Officer. If Optionee makes changes to any of the Proposal Submittals pursuant to clause (i) or (ii) above, then Chief Real Estate Officer shall have _____ (___) days following receipt of any such changed Proposal Submittals within which to approve or disapprove such submission in writing, in his sole and absolute discretion. Failure of Chief Real Estate Officer to approve such revised Proposal Submittals (or any component thereof) in writing within said _____ (___) day period shall be deemed disapproval. Following any deemed disapproval of revised Proposal Submittals by Chief Real Estate Officer, County shall, within _____ (___) days after receipt of a written request from Optionee, disclose to Optionee in writing Chief Real Estate Officer's reasons for objecting the revised Proposal Submittals. Optionee hereby acknowledges that any approval by the County under this Section shall be deemed approval by the County solely in its proprietary capacity as owner of the Property and not in its governmental capacity. Accordingly, no approval, or consent given by County, or its officers, employees, or agents, acting in its governmental capacity, shall affect or limit Optionee's obligations under this Option Agreement or under the Lease, nor shall any approvals or consents given under this Option Agreement by County, as a Party hereto, or by the Chief Real Estate Officer as County's representative, be deemed confirmation that the applicable submittal complies with applicable governmental codes, laws, rules, and/or regulations, or be deemed a waiver of Optionee's obligation under the Lease to obtain all required governmental approvals and permits for the Project. Nothing herein shall be deemed a representation or covenant on the Part of the County that the Proposal Submittals will ultimately be approved by County officials acting in their governmental capacity or by any other governmental agency with jurisdiction over the Property and no approvals granted by the County under this Option Agreement shall give rise to any claim that County is estopped from rejecting, in its governmental capacity, any applications for approval of the Project subsequently submitted by Optionee to the County in its regulatory capacity.

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

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

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

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

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

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

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

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

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

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

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

12. INSURANCE.

12.1. General Requirements.

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

12.1.2. The Option shall automatically terminate upon the termination of any insurance coverage required to be carried by Optionee under this Option Agreement. If, within ten (10) business days after such termination, Optionee obtains and provides evidence that the required insurance coverage has been procured by Optionee, then this

Option Agreement may be reinstated at the sole and absolute discretion of Chief Real Estate Officer. Optionee shall pay County Seven Hundred Fifty Dollars (\$750.00) for processing the reinstatement of this Option Agreement.

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

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

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

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

12.2. Qualified Insurer. All policies of insurance required under this Option Agreement must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII

(Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

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

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

12.5. Required Endorsements.

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

- (i) an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County and County Parties as Additional Insureds;
- (ii) a primary non-contributing endorsement evidencing that the Optionee's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non-contributing; and

(iii) all insurance policies required by this Option Agreement shall waive all rights of subrogation against the County, Board of Supervisors, and the County Parties when acting within the scope of their appointment or employment.

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

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

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

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

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

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

13. ASSIGNMENT. Except as expressly set forth herein, Optionee shall not assign or transfer all or any portion of its rights or obligations under this Option Agreement or in the Property, whether by assignment, sublease, license agreement, concession agreement, management agreement, mortgage, deed of trust, pledge, encumbrance or any other agreement or instrument, as applicable, without the consent thereto by County, which may be granted or withheld in the County's sole and absolute discretion. In addition to the foregoing, no Controlling Interest in Optionee shall be assigned or transferred, whether by assignment, pledge, encumbrance or any other agreement or instrument, as applicable, without the consent thereto by the County, which may be granted or withheld in County's sole and absolute discretion. This Section shall apply to each permitted assignee of this Option Agreement, and each such assignee shall have the right to further assign this Option Agreement only in accordance with the

provisions of this Section. For purposes of this Section, "Controlling Interest" shall mean more than fifty percent (50%) of the voting interests of, or the possession of the right to vote or direct the vote of more than fifty percent (50%) of the voting interests in, Optionee.

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

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

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

To County:

To OPTIONEE:

Chief Real Estate Officer
County Executive Office
Hall of Administration
333 W. Santa Ana Blvd., 3rd 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., 4th Floor
Santa Ana, California 92701
Fax: (714) 834-2359

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

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

18. ORANGE COUNTY CHILD SUPPORT. If Optionee fails to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, then Optionee such failure shall be deemed a material breach of the Option Agreement. Failure to cure such breach within sixty (60) days following receipt of written notice from County shall constitute grounds for termination of the Option Agreement by County.

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

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

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

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

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

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Option Agreement the day and year first above written.

OPTIONEE

_____,
a _____

By:

By: _____
Name:
Title:

By: _____
Name:
Title:

COUNTY

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

Chair, Board of Supervisors
Orange County, California

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE CHAIR
OF THE BOARD OF SUPERVISORS
PER GC § 25103, RESO. 79-1535

ATTEST:

SUSAN NOVAK
Clerk of the Board of Supervisors
Orange County, California

RECOMMENDED FOR APPROVAL:

CEO/Corporate Real Estate

By: _____

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Deputy

EXHIBIT A

Depiction of Property

[to be attached]

EXHIBIT B

Form of Ground Lease

[to be attached]

EXHIBIT C
Conceptual Plan
[to be attached]

EXHIBIT D

Budget

[to be attached]

EXHIBIT E

Construction Schedule

[to be attached]

EXHIBIT F
Marketing Plan

[to be attached]

EXHIBIT G

Financial Plan

[to be attached]

EXHIBIT H
Management Plan

[to be attached]

EXHIBIT I

Form of Quitclaim Deed

[to be attached]