

SECOND AMENDMENT TO MASTER GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO MASTER GROUND LEASE AGREEMENT (this “**Second Amendment**”) is made and entered into as of March 9, 2022 (“**Effective Date**”), by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called “**County**” or “**County of Orange**”) and DANA POINT HARBOR PARTNERS DRYSTACK, LLC, a California limited liability company (hereinafter called “**Lessee**”). County and Lessee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

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

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

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

AGREEMENTS:

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

1. **Lot Line Adjustment.** The following is hereby inserted as Section 1.1.175, “Lot Line Adjustment”:

“1.1.175 **LOT LINE ADJUSTMENT**”. The County and Lessee acknowledge that Lessee is processing a lot line adjustment, parcel map or similar subdivision to align the legal descriptions of the various legal parcels within the Property (the “Lot Line Adjustment”). In addition, subject to the limitations contained herein, Lessee shall have the right to consolidate or re-allocate the management of the parking areas on the Property, in whole or in part.

County, in its proprietary and not governmental capacity, hereby acknowledges and agrees to reasonably cooperate with Lessee, at no cost or expense to County, in processing and recording the Lot Line Adjustment including, without limitation, signing any applications and documentation for the Lot Line Adjustment within ten (10) business days of Lessee’s request. Lessee shall have the right, but not the obligation, to record the Lot Line Adjustment against the Property upon approval. County shall have the right to approve any conditions of approval imposed on the Property in connection with the processing of the Lot Line Adjustment, which consent shall not be unreasonably withheld

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

2. Quarterly Reporting. The following is hereby inserted as Section 1.1.176, “Quarterly Reporting:”

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

The Quarterly Report will include information on operations for Drystack Improvements for the quarter (leases/licenses, revenues and expenditures, etc.), as well as updates on revitalization efforts and any additional information the Chief Real Estate Officer may require. The Quarterly Report will be submitted to the Chief Real Estate Officer prior to the end of the months of April, July, October and January via email in a single consolidated document.”

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

“For the avoidance of doubt, and by way of example, Lessee’s responsibilities under this Section 10.1 shall include, without limitation, the obligation to maintain, repair, operate and (subject to the limitations set forth below) replace each of the following (the location of each of which is identified on Exhibit H attached hereto unless otherwise specified elsewhere in this Lease): (a) boat pump-out replacement, services and similar activities; (b) seawall (provided, however, that Lessee’s replacement obligation for the seawall shall be limited to replacing specific segments or portions thereof on as-needed basis, subject to and in compliance with all Applicable Laws, because the same has been, for example, damaged beyond repair or is beyond its useful life, and such replacement obligation shall not require Lessee to perform the wholesale replacement of the entire seawall, unless Lessee’s negligence, willful acts or failure to address

replacement or repair of a segment causes the need for wholesale replacement or to replace the entire seawall in connection with any catastrophic events or casualty, and provided further that with respect to that portion of the seawall that is located outside the boundaries of the Property and Lessee shall have no obligation to repair or restore any damage to the seawall to the extent the same is caused by: (i) the actions of the County, its agents, employees, tenants or contractors working at the direction of the County or its tenants (other than Lessee or its Affiliates), or (ii) third parties that are not agents, employees, tenants of Lessee or its Affiliates, or contractors working at the direction of the Lessee or its Affiliates); (c) buoys & navigational aids within the harbor; (d) derelict vessel abatement anywhere within the Harbor; (e) fishing pier, (f) streets, roadways (other than Dana Drive and Island Way, which will be maintained by County) and sidewalks within the Property; (g) shelters, restrooms and park-scape within the parks located within the Property designated on Exhibit A-2; (h) the surface and landscaping on the Bridge Structure; (i) all trees and parking lots within the Property boundaries; and (j) the dredging of that portion of the harbor designated on Exhibit A-3, portions of which lie outside the Property; including conducting annual bathymetric surveys (which shall be provided to the County once completed) to establish dredging schedules needed to maintain or increase the depth and width of navigation channels, anchorages, or berthing areas to ensure year-round access and refuge, maintain the safe passage of vessels, including coordination with the U.S. Army Corps of Engineers (“Army Corps”), as needed, provided this responsibility shall in no way affect or supplant any responsibility that the Army Corps may have for dredging, to the extent such responsibility exists.”

4. **Sublease Approvals.** Section 12.1.3 is hereby amended to increase the approval threshold in the first sentence thereof from 7,500 rentable square feet of interior space in the Improvements to 10,000 rentable square feet of interior space in the Improvements.

5. **Termination of Tolling Amendment.** The Tolling Amendment to Master Ground Lease Agreement dated April 21, 2020, by and between the County and Lessee shall be terminated upon execution of the Second Amendment to the Master Ground Lease. The dates and deadlines in the Master Ground Lease are hereby amended to coincide with the termination of the Tolling Amendment (with a day for day delay in the date from March 3, 2020 to the Effective Date of the Second Amendment to the Master Ground Lease), and may be memorialized at the request of either Party in a further amendment to this Lease to be executed by the Chief Real Estate Officer.

6. **No Other Amendments; This Amendment Governs and Controls.** Except as expressly modified by this Second Amendment, the Existing Ground Lease shall remain unmodified and in full force and effect and is hereby reinstated, ratified and affirmed. To the extent any of the provisions of this Second Amendment are inconsistent with any of the provisions set forth in the Existing Ground Lease, the provisions of this Second Amendment shall govern and control. Any reference to the “Agreement”, “hereunder”, “hereof”, “herein”, or

words of like import in the Existing Ground Lease and this Second Amendment shall mean and be a reference to the Existing Ground Lease as hereby amended, and the Existing Ground Lease and this Second Amendment shall be read and interpreted as if it was one agreement.

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

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

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

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

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

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


[Signatures appear on following pages]

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


LESSEE:

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


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

By: 
Its: MANAGER
Name: BRYAN WARD

By: Bellwether Financial Group, Inc.

By: 
Its: Manager
Name: Joseph Ueberroth

By: Olson Real Estate Group, Inc.

By: 
Its: President
Name: Robert D. Olson

COUNTY:

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



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

**APPROVED AS TO FORM:
COUNTY COUNSEL**

By: Michael A. Haubert

Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County of Orange,
ou=County Counsel,
email=michael.haubert@coo.ocgov.com, c=US
date: 2022.02.14 08:46:56 -0800