

MONARCH BAY CLUB

LEASE AGREEMENT

MONARCH BAY ASSOCIATION

a California non-profit corporation,

as Landlord,

and

MONROE MBR, LLC,

a Delaware limited liability company

as Tenant.

March 22, 2018

TABLE OF CONTENTS

ARTICLE 1 PREMISES, MONARCH BAY PROPERTY AND ACCESS ROAD..... 1

1.1 Premises..... 1

1.2 Monarch Bay Residents..... 2

1.3 Access Road 2

ARTICLE 2 LEASE TERM AND OPTIONS TO EXTEND 2

2.1 Lease Term 2

2.1.1 Lease Execution Fee..... 2

2.2 Quitclaim Deed..... 3

2.3 Option to Extend..... 3

2.4 Extension Fee 3

2.5 Operating Standards 3

2.5.1 Operating Standard; Generally 3

ARTICLE 3 RENT 5

3.1 Base Rent..... 5

3.1.1 Payment of Base Rent..... 5

3.1.2 Base Rent Adjustments..... 6

3.2 Annual Resort Access Fee..... 6

3.3 Nonresident and Special Membership Fees..... 6

3.4 Additional Rent..... 6

3.5 Books and Records; Financial Statements..... 6

ARTICLE 4 MANAGEMENT 8

4.1 General Club Management..... 8

4.2 Operations Committee..... 8

4.3 Financial Matters 8

ARTICLE 5 USE OF PREMISES..... 9

5.1 Permitted Use; Private Beach Club 9

5.2 Club Operations..... 9

5.2.1 Authorized Users; No Cash Transactions..... 9

5.2.2 Equal Availability of Facilities..... 9

5.2.3 Limitations on Club Operations..... 10

5.2.4 Restrictions on Use..... 11

5.3 Members of the Club 11

5.3.1 Resident Members 11

5.3.1 Resident Members 11

5.3.2 Nonresident Members..... 12

5.3.3 Special Members 12

5.3.4 Hotel Occupant Members 12

5.3.5 Owner of Tenant or the Club..... 12

5.4 Parties and Club Events..... 13

5.4.1 Small Member Parties..... 13

5.4.2 Large Resident Member Parties..... 13

5.4.3 Annual Club Events..... 13

5.4.4 Special Club Events..... 13

TABLE OF CONTENTS

5.4.5	Hotel Occupant Events	13
5.4.6	Party or Event Hours	14
5.4.7	Tents	14
5.4.8	Number of Parties and Club Events.....	14
5.4.9	Preferred Dining Reservations for Resident Members.....	14
5.5	Access to Club	14
5.5.1	Resident Members, Landlord Member and Legacy Member	14
5.5.2	Nonresident Members.....	15
5.5.3	Hotel Trams; Special Members and Hotel Occupant Members	15
5.5.4	Van Access	16
5.6	Membership Administration.....	16
5.7	Prohibited Uses.....	18
ARTICLE 6 TAXES, SERVICES AND UTILITIES		18
6.1	Taxes.....	18
6.2	Timing of Payment of Taxes	19
6.3	Installment Payment	19
6.4	Proration of Taxes	19
6.5	Landlord's Right to Cure	19
6.6	Utilities	19
6.7	Creation of Liens by Tenant	19
6.8	Contesting Taxes and Liens.....	20
6.9	Interruption of Use.....	20
ARTICLE 7 REPAIRS		20
ARTICLE 8 ADDITIONS AND ALTERATIONS		21
8.1	Additions; Alterations.....	21
8.2	Manner of Construction.....	22
8.2.1	Conditions to Alterations.....	22
8.3	Payment for Improvements	22
8.4	Construction Insurance.....	22
8.5	Landlord's Property	22
8.6	Communications and Computer Lines	23
8.6.1	Telecommunications and Video Equipment.....	23
ARTICLE 9 COVENANT AGAINST LIENS		23
ARTICLE 10 INDEMNIFICATION AND INSURANCE.....		24
10.1	Indemnification and Waiver	24
10.2	Tenant's Compliance With Fire and Casualty Insurance.....	24
10.3	Tenant's Insurance	24
10.4	Form of Policies.....	25
10.5	Additional Insurance Obligations.....	25
ARTICLE 11 DAMAGE AND DESTRUCTION		26
11.1	Repair of Damage to Premises	26

TABLE OF CONTENTS

11.2 Limitations and Exceptions 26

ARTICLE 12 NONWAIVER..... 26

ARTICLE 13 CONDEMNATION..... 27

ARTICLE 14 ASSIGNMENT AND SUBLETTING 27

14.1 Transfers 27

14.2 Landlord's Consent 28

14.3 Resort Transfer Fee 29

14.4 Effect of Transfer..... 29

14.5 Occurrence of Default 30

ARTICLE 15 SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE
FIXTURES 30

15.1 Surrender of Premises..... 30

15.2 Removal of Tenant Property by Tenant 30

ARTICLE 16 HOLDING OVER 31

ARTICLE 17 ESTOPPEL CERTIFICATES 31

ARTICLE 18 SUBORDINATION 32

ARTICLE 19 DEFAULTS; REMEDIES..... 32

19.1 Events of Default..... 32

19.2 Remedies Upon Default..... 33

19.2.1 Termination of Lease..... 33

19.2.2 Continuation of Lease..... 34

19.2.3 Equitable Relief 34

19.3 Special Remedies..... 34

19.4 Efforts to Relet..... 36

19.5 Landlord Default..... 37

19.5.1 General..... 37

19.6 Compliance and Lease..... 37

ARTICLE 20 COVENANT OF QUIET ENJOYMENT 37

ARTICLE 21 ARBITRATION 37

21.1 Arbitration of Disputes 37

21.2 Qualification of Arbitrators 37

21.3 Venue..... 38

21.4 Demand..... 38

21.5 Provisional Remedies 38

21.6 Powers and Duties of Arbitrators 38

21.7 Discovery..... 38

21.8 Costs and Fees of Arbitrator 38

TABLE OF CONTENTS

21.9 Attorneys' Fees 38

21.10 Notice..... 38

ARTICLE 22 SIGNS 39

22.1 Signage 39

ARTICLE 23 COMPLIANCE WITH LAW 39

23.1 Applicable Laws 39

23.2 Hazardous Materials 40

23.3 Warranties; Notice of Release and Investigation 40

23.4 Indemnification..... 40

23.5 Remediation Obligations; Tenant's Rights on Cleanup by Landlord 40

23.6 Definition of "Hazardous Material" 41

ARTICLE 24 LATE CHARGES 41

ARTICLE 25 LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT 42

25.1 Landlord's Cure 42

25.2 Tenant's Reimbursement 42

ARTICLE 26 ENTRY BY LANDLORD 42

ARTICLE 27 PARKING; BEACH MAINTENANCE; LIFEGUARDS..... 43

27.1 Parking..... 43

27.2 Beach Maintenance..... 43

27.3 Beach Lifeguard 43

ARTICLE 28 MISCELLANEOUS PROVISIONS 43

28.1 Terms; Captions..... 43

28.2 Binding Effect..... 43

28.3 Transfer of Landlord's Interest 43

28.4 Landlord's Title..... 44

28.5 Relationship of Parties..... 44

28.6 Application of Payments 44

28.7 Time of Essence..... 44

28.8 Partial Invalidity 44

28.9 Exculpation..... 44

28.10 Entire Agreement..... 44

28.11 Force Majeur..... 44

28.12 No Warranty 45

28.13 Waiver of Redemption by Tenant 45

28.14 Notices 45

28.15 Authority..... 45

28.16 Attorneys' Fees 45

28.17 Governing Law 45

28.18 Brokers..... 46

28.19 Independent Covenants..... 46

TABLE OF CONTENTS

28.20	Counterparts.....	46
28.21	No Violation	46
28.22	No Discrimination	46
28.23	CASp	46

EXHIBIT A LEGAL DESCRIPTION ATTACHED

EXHIBIT B MAP OF PREMISES

EXHIBIT C MAP OF ACCESS ROAD

EXHIBIT D MONARCH BAY CLUB RULES AND REGULATIONS

EXHIBIT E LEGACY MEMBERSHIP RULES

EXHIBIT F SITE MAP OF HOTEL TRAM PATH

EXHIBIT G MONARCH BAY CLUB FORM OF TENANT'S ESTOPPEL CERTIFICATE

SUMMARY OF BASIC LEASE INFORMATION

<u>TERMS OF LEASE</u>	<u>DESCRIPTION</u>
1. Date:	March 22, 2018
2. Premises (Article 1):	
2.1 Building:	Monarch Bay Club Dana Point
2.2 Premises:	A portion of the real property situated in that section of the County of Orange, State of California, commonly known as "Monarch Bay" and more particularly described in <u>Exhibit "A"</u> attached hereto, as depicted on the map attached hereto as <u>Exhibit "B"</u> together with the building and related improvements known as the "Monarch Bay Club" and all other improvements located therein.
3. Lease Term (Article 2):	
3.2 Lease Commencement Date:	June 30, 2020
3.3 Lease Expiration Date:	June 29, 2025
3.4 Options:	Two 5 year options.
3.5 Extension Fees:	\$1,000,000 per each extension (including the first Option Term) payable \$1,000,000 on execution of this Lease and upon exercise of each option, if applicable.
4. Rent (Article 3):	
4.1 Base Rent:	Annually Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) payable in quarterly installments.
4.2 Annual Adjustments:	Two percent (2%) per annum

- | | | |
|-----|--|---|
| 4.3 | Annual Resort Access Fee: | Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) subject to annual adjustments of 2% per annum. |
| 4.4 | Annual Share of Membership Fee: | Thirty percent (30%) of annual Monarch Bay Club portion of the initiation and annual membership fees for all Nonresident Members and Special Members. |
| 5. | Permitted Use: | The operation of a private beach club named the "Monarch Bay Club" operated in accordance with the "Operating Standards" (as defined below) only. |
| 6. | Security Deposit: | None |
| 7. | Access: | See Section 5.5. |
| 8. | Reserves: | See Section 4.3.2. |
| 9. | Reciprocal Use of Hotel Amenities, Spa and Golf Course for Landlord: | |
| 9.1 | Spa and Fitness Membership | Initiation fee waived; 25% discount on annual fees. |
| 9.2 | Golf Membership | Initiation fee waived; annual fees on "Crown Club" membership or equivalent waived. |
| 9.3 | Resort Executive Membership (Pool) | Initiation fee waived; 10% discount on annual fees. |
| 9.4 | Hotel Restaurants | 20% discount on all food and beverages (including alcohol). |
| 10. | Maximum Outside Membership: | 200 Nonresident Members with parking privileges; 55 "Special" Members with no parking privileges, 1 Landlord Member; 1 Legacy Group Membership. |
| 11. | Food/Beverage Discounts to Monarch Bay Residents: | See <u>Section 5.6.2.3</u> . |
| 12. | Lease Assignment Fee: | On first transfer or sale of the Hotel or the Resort Property (as defined below) the sum of Three Million and 00/100 Dollars (\$3,000,000.00) shall be paid to Landlord; on any subsequent sale or transfer of the Hotel or the Resort Property, Tenant |

shall pay One Million and 00/100 Dollars (\$1,000,000.00) to Landlord, provided the same occurs prior to June 29, 2030 and unless the Tenant has not exercised an Extension Option as provided in Section 2.3.

13. Address of Tenant:

Monroe MBR
100 St. Paul Street, Suite 800
Denver, CO 80206
Attention: Chief Operating Officer

With a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attention: Nicole R. Ament
Email: nament@bhfs.com

14. Address of Landlord:

Monarch Bay Association
c/o Progressive Community Management
27405 Puerta Real, Suite 300
Mission Viejo, CA 92691
Attention: Lisa Klasky, Principal
Fax No.: (949) 582-7796
Email: lisak@progressivecm.com

with a copy to:

Davis Law, A Professional Corporation
580 Broadway, Suite 204
Laguna Beach, CA 92651
Attention: Thomas P. Davis
Fax No.: (949) 376-3875
Email: tom@tpdavislaw.com

MONARCH BAY CLUB

LEASE AGREEMENT

This Lease Agreement (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), is made by and between Monarch Bay Association, a California non-profit corporation ("**Landlord**"), and Monroe MBR, LLC, a Delaware limited liability company ("**Tenant**").

RECITALS

A. Tenant is the owner of the Monarch Beach Resort & Spa located at One Monarch Beach Resort, Dana Point, California (however flagged from time to time, the "**Hotel**") and related property and facilities (the "**Resort Property**") and it or predecessor tenant, Monarch Bay Club, a California non-profit corporation, an entity related to Tenant, possessed the Premises and operated the private beach club and related facilities on the Premises pursuant to the terms of a Restated and Amended Sublease dated January 1, 2003 (the "**Sublease**"). The Sublease expires on June 29, 2020.

B. The Monarch Bay Club (the "**Club**") was created under a land lease to serve the residents of the Monarch Bay Community and its allowed outside guests. In 2003, the Landlord permitted the overnight guests of the now named Monarch Beach Resort & Spa to enter onto the property of the Monarch Bay Association, for the first time, as allowed guests. Occupants of the Hotel, outside members of the Monarch Bay Club and employees of the Hotel are guests of the Association and its members and are permitted access to the property temporarily under this Lease. They are required to conduct themselves as guests in all matters and otherwise may be denied access.

C. Effective June 30, 2020, this Lease supersedes and replaces in its entirety the Sublease and all prior agreements between Landlord, Tenant and their principals regarding the use and lease of the Premises.

D. Landlord and Tenant acknowledge that Tenant's use of the Premises as a private beach club is a legal non-conforming use, and that this Lease is not intended to nor shall it be deemed to permit any change or intensification of the currently existing use whatsoever.

ARTICLE 1

PREMISES, MONARCH BAY PROPERTY AND ACCESS ROAD

1.1 **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "**Premises**"). The outline of the Premises is set forth in **Exhibit B** attached hereto. The parties hereto agree that the lease of the Premises is conditioned upon and subject to the terms, covenants and conditions set forth herein, including the Monarch Bay Association Covenants, Conditions and Restrictions, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of **Exhibit B** is to show the approximate location of the Premises and such Exhibit is not meant to

constitute an agreement, representation or warranty as to the area of the "Building" (as defined below), or the specific location of the "Access Road" (as defined in Section 1.3 below). Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. The Premises include a building and related improvements operated as a private beach club located on the beach in the City of Dana Point, California (collectively, the "**Building**"). Tenant acknowledges that Tenant's predecessor constructed the Building and that the Building and Premises have been continuously operated and occupied since August 1, 1965 pursuant to the Sublease and a predecessor sublease. Neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Access Road, except as set forth in Section 1.3, below. Landlord has made no representation or warranty with respect to the suitability of any of the foregoing for the conduct of Tenant's business. The continuing possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good and sanitary order, condition and repair.

1.2 **Monarch Bay Residents.** The Premises are located within the common area of a residential neighborhood in Dana Point, California known as Monarch Bay (the "**Monarch Bay Property**"). The common area is owned or leased by Landlord. There are 214 residential lots in Monarch Bay. The owner or land sub-leaseholder of each of the Monarch Bay lots shall hereinafter be referred to as a "**Monarch Bay Resident**" or collectively as "**Monarch Bay Residents.**"

1.3 **Access Road.** Tenant shall have the non-exclusive and limited right to use the Access Road (as defined below) in common with the Monarch Bay Residents, for the Lease Term as defined below and subject to the limitations set forth in this Lease. The term "**Access Road**" shall mean the portion of Beach Club Drive from the entrance at Pacific Coast Highway to the Club parking area of the Premises, as depicted on **Exhibit C** attached hereto. The manner in which the Access Road is maintained and operated shall be at the sole discretion of Landlord, provided that Landlord shall maintain and operate the same in a good condition consistent with the other roads in the Monarch Bay Property, and the use thereof shall be subject to such reasonable rules, regulations and restrictions not inconsistent with Tenant's rights under this Lease as Landlord may from time to time adopt. Landlord reserves the absolute right to close temporarily, make alterations or additions to, or change the location of elements of the Access Road, provided, that but for the provisions of Section 28.11 or in the case of an emergent situation, no closures shall occur from Memorial Day through the last day of the Labor Day Weekend, on any weekend, or on any holiday, and provided, further, that but for emergent situations or temporary closures of one (1) day or less, at least one (1) lane of paved access shall remain open for ingress to and egress from the Premises.

ARTICLE 2

LEASE TERM AND OPTIONS TO EXTEND

2.1 **Lease Term.** The term of this Lease (the "**Lease Term**") commences on June 30, 2020 (the "**Lease Commencement Date**"), and shall terminate on June 29, 2025 (the "**Lease Expiration Date**") unless this Lease is sooner terminated or is extended as hereinafter provided.

2.1.1 **Lease Execution Fee.** Upon execution of this Lease by Landlord and Tenant, Tenant shall pay to Landlord the sum of \$1,000,000.

2.2 **Quitclaim Deed.** Upon the Lease Expiration Date, or the earlier termination of this Lease according to its terms, or, if applicable, upon the expiration of any Option Term as defined below, Tenant shall deliver to Landlord a quitclaim deed originally executed by Tenant and notarized, which quitclaim deed releases any and all right, title and interest of Tenant in and to the Premises and any improvements thereon effective as of the Lease Expiration Date, the expiration of an Option Term, as defined below, or such earlier termination date.

2.3 **Option to Extend.** Subject to the payment of the Extension Fee provided for in Section 2.4, below, Landlord hereby grants to the original Tenant named under this Lease or any assignee of Tenant's entire interest under this Lease permitted by Landlord under Article 14 of this Lease (the "**Permitted Assignee**") two (2) successive options (each an "**Extension Option**") to extend the Lease Term each for a period of five (5) years (each, an "**Option Term**"). Each Extension Option must be exercised, if at all, by written notice ("**Option Notice**") together with payment of the Extension Fee provided for in Section 2.4, below, delivered by Tenant to Landlord not less than one (1) year prior to the end of the initial Lease Term or Option Term, if applicable (each, an "**Option Notice Date**"), but not more than eighteen (18) months prior to the end of the initial Lease Term or Option Term, if applicable. The Extension Option shall, at Landlord's election, become null and void and of no further force and effect if Tenant is in material or monetary default under this Lease beyond any applicable period of time to cure such default at the time Tenant attempts to exercise such Extension Option or, following such exercise, prior to the commencement of the applicable Option Term. The Extension Option is personal to the original Tenant named under this Lease or a Permitted Assignee and may not be exercised by any person or entity other than such original Tenant or Permitted Assignee. Provided Tenant has properly and timely exercised the Extension Option, the Lease Term shall be extended for the period specified above, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect except that Base Rent and the Annual Resort Access Fee (as defined in Article 3 below) payable by Tenant during each Option Term shall be adjusted as set forth in Sections 3.1.2 and 3.2, below.

2.4 **Extension Fee.** The fee for each Extension Option shall be One Million and 00/100 Dollars (\$1,000,000.00).

2.5 **Operating Standards.** For the purpose of this Lease, the Operating Standards are set forth herein below.

2.5.1 **Operating Standards; Generally.** During the Lease Term, or Option Term if applicable, Landlord irrevocably authorizes and instructs Tenant, and Tenant accepts the duty and responsibility, which may be delegated to the "Manager" (as defined below), to cause the Club to be operated, serviced, maintained and refurbished (a) in a manner consistent with the requirements and limitations set forth in this Lease, (b) in accordance with standards, policies, and programs which are prevailing in effect from time to time that are applicable to the operation of a professionally managed private non-equity beach clubs, and (c) in a manner reasonably calculated to: (i) protect and preserve the assets and property that comprise the Club; and (ii) maintain a professional operation of the Club, and at all times and maintain a reputation of the Club which is equal to or better than the reputation of the Club as of the date of this Lease (the standards described in clauses (a) through (c) above being referred to collectively as the "**Operating Standards**"). Without limiting the generality of the foregoing, but subject to the limitations on Tenant's authority set forth in this Lease, Tenant shall have the exclusive

authority and duty during the Term or Option Term if applicable, to direct, supervise, manage, and operate the Club on a day-to-day basis, as Tenant deems necessary or advisable for the proper operation and maintenance of the Club in accordance with the Operating Standards, and specifically to:

2.5.1.1 determine and implement all personnel policies and practices relating to the Club, including: (i) policies and practices relating to terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans and other employee benefits, discipline, dismissal, and replacement; and (ii) policies and practices relating to the exercise by Tenant and any Club personnel of rights under the National Labor Relations Act or any applicable labor laws in relation to the Club;

2.5.1.2 recruit, hire, relocate, pay, supervise, and dismiss all Club personnel;

2.5.1.3 supervise and maintain complete books and records consistent with the terms of Section 3.5 of this Lease;

2.5.1.4 at the request of Landlord, negotiate, administer and execute licenses and concession agreements for the Club, and obtain any licenses and permits necessary or desirable for the operation of the Club, including without limitation a liquor license;

2.5.1.5 keep the Club and the FF&E in good operating order in accordance with Section 7 of this Lease; provided, that, Landlord shall have the right to hire an outside consultant to independently inspect the Club and the FF&E not more than once each operating year, the cost of which shall be borne by Landlord;

2.5.1.6 supervise and coordinate the construction and installation of any renovations, improvements, repairs, or replacements of a capital nature to the Club that may be implemented from time to time in accordance with Section 8 of this Lease;

2.5.1.7 negotiate, enter into, and administer service contracts and licenses required in the ordinary course of business in operating the Club which Tenant deems advisable in accordance with Section 7 of this Lease;

2.5.1.8 supervise and purchase, or arrange for the purchase of, all inventories, provisions, consumable supplies, and operating supplies that are necessary and proper to maintain and operate the Club, and to use the same in the management and operation of the Club (subject to the provisions of this Lease);

2.5.1.9 establish entertainment and amusement policies (including pricing) to be approved by Landlord in accordance with Section 5.2 of this Lease;

2.5.1.10 establish food and beverage policies (including pricing);

2.5.1.11 cooperate with Landlord and any actual or prospective purchaser, lessee, mortgagee, or other lender in connection with any proposed sale, lease, or financing of or relating to the Club; provided, however, that Landlord shall reimburse Tenant for reasonable out-of-pocket expenses, in an amount not to exceed \$10,000 in the aggregate, reasonably incurred in connection with such cooperation when such expense is not otherwise paid or reimbursed under this Lease;

2.5.1.12 appoint counsel, defend, and control any and all legal actions or proceedings involving claims: (i) in which Tenant is a named party; (ii) which relate to legal actions or proceedings involving the Club; (iii) which relate to policies, procedures or business practices of Tenant or its affiliates, but excluding legal actions or proceedings pertaining to property related claims not involving the operation of the Club (e.g., zoning disputes, structural defects, and title disputes). Notwithstanding the foregoing, if Landlord is also a named party in such legal actions or proceedings, Landlord, at its sole cost and expense, shall have the right to appoint separate counsel to defend its interests;

2.5.1.13 subject to the terms and conditions of this Lease, do or cause to be done all such acts and things in or about the Club that are within Tenant's control as Tenant, and that Tenant, in good faith and exercising prudent commercial judgment, shall reasonably believe to be necessary to comply with all Applicable Laws and approvals and the terms of all insurance policies, and, as directed by Landlord, to discharge any lien, encumbrance, or charge on or with respect to the Club and the operation thereof in accordance with Section 6.7 of this Lease;

2.5.1.14 collect on behalf of Landlord and account for and remit to governmental authorities all applicable excise, sales, occupancy, and use taxes or similar governmental charges collected by the Club directly from patrons or guests, or as part of the sales price of any goods, services, or displays, such as gross receipts, admission, or similar or equivalent taxes, duties, levies or charges in accordance with Article 6 of this Lease;

2.5.1.15 in addition to the specific reporting requirements set forth in this Lease, cause the senior personnel of the Club to keep Landlord or Landlord's designees informed and advised on a regular basis of: (i) all material financial and other matters concerning the Club and the operation, use, condition and maintenance thereof; and (ii) all major policy matters and procedures affecting the conduct of the business of the Club;

2.5.1.16 collect all charges, rent, and other amounts due from guests, lessees, and concessionaires of the Club and deposit those funds pursuant to this Lease; and

2.5.1.17 perform such other tasks as are customary and usual in the operation of a beach club of a class and standing consistent with the Club.

ARTICLE 3

RENT

3.1 Base Rent.

3.1.1 **Payment of Base Rent.** Commencing on July 1, 2020, Tenant shall pay, without prior notice or demand, to Landlord, or at Landlord's option to such other person or entity and at such other place as Landlord may from time to time designate in writing, by a check in United States currency, base rent ("**Base Rent**") as set forth in Section 4.1 of the Summary, payable in equal quarterly installments, in advance on or before the first day of each and every calendar quarter during the Lease Term or then existing Option Term, if applicable, without any set-off or deduction whatsoever. If any payment of Base Rent is for a period which is shorter than one calendar quarter, the Base Rent for any fractional quarter shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar quarter or to the end of the Lease Term or then existing Option Term, if applicable, at a rate per day which is equal to 1/365 of the applicable annual Base

Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

3.1.2 **Base Rent Adjustments.** Commencing on January 1, 2022 and thereafter on January 1st each year of the Lease Term, or existing Option Term, if applicable, the Base Rent shall be increased in an amount equal to two percent (2%) per year.

3.2 **Annual Resort Access Fee.** In addition to Base Rent, Tenant shall pay an annual resort access fee (“**Annual Resort Access Fee**”) of \$250,000 per year which shall be paid on July 1 of each year commencing in 2020 of the Lease Term or Option Term, if applicable. Commencing on January 1, 2022 and thereafter on January 1st each year of the Lease Term, or existing Option Term, if applicable, the Annual Resort Access Fee shall be increased in an amount equal to two percent (2%) per year.

3.3 **Nonresident and Special Membership Fees.** In addition to Base Rent and the Annual Resort Access Fee, Tenant shall pay to Landlord a sum equal to thirty percent (30%) of the Club portion of annual fees (including initiation fees and annual fees but excluding purchases of food and beverages) paid by Nonresident Members and Special Members of the Club (as defined below) (“**Membership Fees**”). The amount payable under this provision shall be paid by Tenant to Landlord quarterly in the same manner as set forth in Section 3.1.1. Nonresident and Special Memberships shall be sold separately and not bundled with any other Hotel offerings.

3.4 **Additional Rent.** The Annual Resort Access Fee and Membership Fees and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, hereinafter collectively are referred to as the “**Additional Rent,**” and the Base Rent and the Additional Rent are herein collectively referred to as “**Rent.**”

3.5 **Books and Records; Financial Statements.**

3.5.1 Tenant shall keep full and adequate books of account and other records (“**Books and Records**”) as are necessary to reflect all fees, costs and the results of the operation of the Club on an accrual basis, all substantially in accordance with GAAP. Except for such Books and Records as Tenant may elect to keep at its parent company corporate office or other suitable location, Tenant shall keep the Books and Records at the Hotel and make them available to Landlord and its representatives at all reasonable times for examination, audit, inspection and transcription.

3.5.2 All Books and Records including, without limitation, books of accounts, front office records, but excluding personnel files and payroll records, shall at all times be the property of Landlord; provided, however, that member information shall also be the property of Manager, as defined below, and may be used by Manager for any of its business purposes so long as such information is not used in a manner which would violate any term of this Lease. Upon termination of this Lease, all Books and Records, except for personnel files and payroll records, shall be turned over to Landlord to ensure the orderly continuation of the operation of the Club, on the condition that the Books and Records shall thereafter be available to Tenant and its representatives at all reasonable times by appointment for inspection, audit, examination and transcription. Prior to destroying the Books and Records, Landlord shall notify Tenant and provide Tenant the opportunity to obtain the records from Landlord at Tenant’s expense.

3.5.3 **Financial Statements.** Tenant shall deliver to Landlord, quarterly during the Lease Term or Option Term if applicable, the "Financial Statements." For the purpose of this Lease, "Financial Statements" shall mean financial statements consisting, at a minimum, of a balance sheet, a statement of earnings and retained earnings, and a statement of cash flows. Such Financial Statements shall include all financial information reasonably requested by Landlord, including but not limited to:

1. A statement of income and expenses, showing income separately for membership dues, food and beverage sales and other income, and further delineating income received from Resident Members, Nonresident Members, Special Members and Hotel Occupant Members, including reasonable data on the number of such members generating the revenue;
2. A balance sheet showing assets, liabilities and reserves;
3. A summary of all parties held at the Club, the sponsoring Member, and the approximate number of persons in attendance at each;
4. Statements of income; and
5. Names and addresses of Nonresident and Special Members and the number of Hotel Occupant Members visiting the Club during such calendar year and other such information as Landlord from time to time reasonably may request.

3.5.4 **Landlord's Audit Right.** Upon reasonable advance written notice to the Manager, as defined below, of the Club but not more than once per year, Tenant shall accord to Landlord and its accountants, attorneys and agents, the right to enter upon any part of the Club at all reasonable times during the Lease Term, or Option Term if applicable, for the purpose of examining or inspecting the same or examining and making extracts of the financial books and records of the Club or for any other purpose which Landlord, in its discretion, shall deem necessary or advisable, but same shall be done without material disruption to the operation and business of the Club. In addition, Tenant agrees that it shall meet Landlord, and/or representatives of Landlord, from time to time at the request of Landlord to discuss any of the matters set forth in any of the financial or other reports delivered pursuant to this Section or otherwise to discuss matter pertaining to the operation of the Club. Such meetings shall be conducted between Landlord and the Manager, as defined below, or other relevant members of the senior executive personnel of the Club. Notwithstanding the foregoing, if, at any given time, any amounts due to Landlord under this Lease have been understated in any Financial Statement, then Tenant shall pay to Landlord any deficiency immediately. If such deficiency is greater than four percent (4%) Tenant shall pay to Landlord any and all reasonable costs incurred by Landlord in connection with such audit.

ARTICLE 4

MANAGEMENT

4.1 **General Club Management.** The Club and the operations of Tenant pursuant to this Lease shall be managed by Tenant, which may delegate such management in whole or in part to an employee or third party manager (the "**Manager**"). The Manager shall manage and operate the Club for the benefit of its Members in a manner consistent with this Lease, the Operating Standards and the Rules and Regulations of the Monarch Bay Club ("**Club Rules**"). A true and correct copy of the current Club Rules are attached hereto as "**Exhibit D**" and incorporated herein by this reference. The Club Rules may be amended by written agreement between Landlord and Tenant and/or as provided for therein.

4.2 **Operations Committee.** To assure open communication between the Members and the Tenant and/or Manager, an operations committee (the "**Operations Committee**") shall be established by Landlord and Tenant immediately following the execution of this Lease. The Operations Committee shall consist of not more than three (3) representatives of Landlord and not more than three (3) representatives of Tenant. The Operations Committee shall not have any authority to modify the provisions of this Lease or to govern the actions of Landlord or Tenant. Although its role will be advisory in nature, Tenant shall consider in good faith all recommendations made by the Operations Committee. The Operations Committee shall:

4.2.1 Establish its own procedural rules, including selection of representatives of the Landlord and Tenant, provisions for attendance and presentation of comments by Resident Members of the Club and minutes of meetings available to Resident Members;

4.2.2 Meet regularly at least once every other month at the Club (or another location mutually agreeable to its members), and specifically whenever requested by a member of the Operations Committee at least seven (7) days in advance of the requested meeting (or such shorter time upon which the Committee's members among themselves agree);

4.2.3 Solicit input from each of its members about Club matters of concern and/or interest to each member's constituents, including, but not limited to menu selections at the Club, parking and security provisions, hours of operation; and proposed use of the Club for Hotel functions. In this regard, the Resident Members' representatives will specifically be consulted if any material change from the approved casual dining concept is contemplated, which material change must be approved by the Landlord; and

4.2.4 Present written complaints and/or recommendations as it determines to Club management for changes in, addition to or deletions of Club programs or operations.

4.3 **Financial Matters.**

4.3.1 During the term of this Lease and, if applicable, any and all Option Terms, Tenant shall operate the Club as a private, non-equity membership beach club consistent with this Lease.

4.3.2 Tenant, after paying or making provisions for the payment of all operating expenses and liabilities, shall establish the following reserves:

4.3.2.1 A reserve for repairs, replacements and capital improvements in the following percentages of net revenue of the Club from any and all sources, including membership fees and dues and food and beverage sales: 2% in 2020, 3% in 2021 and 4% thereafter, provided that issues of safety and emergent issues shall be excepted; and

4.3.2.2 An operating reserve in the amount of one year's operating expenses for the Club (based upon the average operating expenses for the years preceding the establishment of the reserve) to provide funds for operations in the event of unexpected or unavoidable loss of income from Club operations.

4.3.2.3 At the expiration of the term of this Lease and, if applicable, any and all Option Terms, all unspent reserves shall be retained by Tenant.

ARTICLE 5

USE OF PREMISES

5.1 Permitted Use; Private Beach Club.

5.1.1 Tenant shall use the Premises solely for the Permitted Use set forth in Section 5 of the Summary (i.e., as a private beach club named the "Monarch Bay Club") and in accordance with the Operating Standards, subject to the restrictions and limitations set forth in this Article 5 and elsewhere in this Lease, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

5.1.2 Landlord and Tenant acknowledge that the Permitted Use is for a private beach club only, and Tenant agrees that it shall not take or permit any actions whatsoever which would impair or jeopardize the status of the beach club operated on the Premises (the "Club") as a private club. No activities for the general public shall be conducted on the Premises. The Club dining and bar facilities, lawn and beach are not and shall not be open to the public. The Club shall be operated as a private club solely for the benefit of the Members and their permitted guests.

5.2 Club Operations.

5.2.1 Authorized Users; No Cash Transactions. The Club shall be available only to Members and their authorized guests as further set forth in Section 5.3 below. The Club shall not permit cash purchases of food, beverages or other Club services or amenities, and shall bill all such purchases to the applicable Member accounts.

5.2.2 Equal Availability of Facilities. The Club shall be available on a non-discriminatory, first-come, first-served basis to all Members (as defined in Section 5.3), including Hotel Occupant Members (as defined in Section 5.3), including but not limited to events

contemplated by Sections 5.4.3 and 5.4.4 below. There shall be no segregated dining room, lawn, beach or other areas for Hotel Occupant Members or any other Member group.

5.2.3 Limitations on Club Operations. The Club shall be open for business seven (7) days a week; provided however, that Tenant may elect to close the Club or limit hours of operation on New Year's Day, Christmas Day and Thanksgiving Day.

5.2.3.1 Hours. Hours of restaurant operation in the Club shall commence no earlier than 10:00 a.m. and shall cease no later than midnight, Sundays through Thursdays, and 1:00 a.m., Fridays and Saturdays. The minimum hours of restaurant service shall be as follows:

BAY CLUB

Lunch	Mon-Sat	11:30 a.m. – 2:30 p.m.
	Sun	Brunch 10:30 a.m. – 2:30 p.m.
Dinner	Mon-Thur	5:00 p.m. – 9:00 p.m.
	Fri -Sat	5:00 p.m. – 9:30 p.m.
Bar All-Day Bar Lounge Menu	Sun-Thur	11:30 a.m. – 9:00 p.m.
	Fri – Sat	11:30 a.m. – 9:30 p.m.

These hours may be amended only by written consent of the Landlord.

5.2.3.2 Deliveries. Vendor deliveries and pickups shall commence no earlier than 8:00 a.m. Mondays through Fridays only, and shall cease no later than 5:00 p.m. on any day. There shall be no vendor deliveries or pickups on weekends or national holidays.

5.2.3.3 Tent Installation and Clean-up. The installation and removal of tents for permitted parties at the Premises (as further set forth in Section 5.4 below) and the clean-up of the Club from permitted parties or other operations shall not commence before 9:00 a.m. on any day and shall cease by 11:00 p.m. on any day.

5.2.3.4 Sound Amplification. The use of amplifiers or other amplification devices, including without limitation stereos, DVD and CD players, radios, boom boxes, amplified musical instruments and the like, outside of the Building shall not commence before 11:30 a.m. on any day and shall cease by 8:30 p.m. Sundays through Thursdays and 10:00 p.m. Fridays, Saturdays and holidays. All amplifiers and amplification devices shall at all times be directed away from the adjoining neighborhood residences.

5.2.3.5 Closures. Tenant may close the restaurant and bar at the Club for repairs or capital improvements, provided that reasonably anticipated repairs and capital improvements shall not be scheduled from Memorial Day through Labor Day and shall not interfere with previously scheduled Member Parties (as defined in Section 5.4 below) (collectively the "**Blackout Dates**"); provided, however, that if such repairs were scheduled appropriately not to conflict with the Blackout Dates, and for unforeseen circumstances not in the control of Tenant such

activities do coincide with Blackout Dates, Landlord and Tenant shall work together reasonably to resolve the issue. Tenant may temporarily close the restaurant and bar or temporarily restrict access to the beach in response to a court order or the order or recommendation of any public health agency.

5.2.4 Restrictions on Use. This Lease is subject to and conditioned upon the restrictions as to memberships and use set forth in Sections 5.3 and 5.4 of this Article 5, each of which is a material term and an integral part of this Lease without which Landlord would not agree to enter into this Lease.

5.3 Members of the Club. Tenant shall permit only authorized users to use the Club and shall enforce the Club Rules ("Exhibit D") in a manner reasonably satisfactory to Landlord, including limitations on the time of use of the Club facilities. The authorized users of the Club shall consist solely of Members of the Club, properly admitted in accordance with one of the following categories and in current good status with Tenant ("**Members**"), and their permitted guests. Tenant may admit only the following categories of Members:

5.3.1 Resident Members. Each Monarch Bay Resident (as defined in Section 1.2 above) shall automatically be considered a member of the Club ("**Resident Member**"). A Resident Member's membership shall include all resident members of the Monarch Bay Resident's household, including any children under the age of twenty-five (25) years, and also shall include any tenant of the Monarch Bay Resident's residence who leases or intends to lease the residence for a continuous period of at least six (6) months and all such resident members of that tenant's household (but excluding the Monarch Bay Resident and family members for periods in which the membership is extended to such tenant) (a "**Member Tenant**"). For purposes of calculation, each Monarch Bay Resident shall be counted as a single Resident Member, regardless of the number of persons listed on the Residential Sublease as subtenants or deed to the lot owned by the Monarch Bay Resident. A Resident Member may permit his or her guests to use the Club, the beach at the Club and all facilities at the Club at any time the Resident Member or Member Tenant is in attendance, subject to the restrictions contained in this Article 5.

5.3.1.1 Landlord Membership. Landlord may grant one (1) membership annually ("**Landlord Member**"). A Landlord Member shall have the same privileges as Resident Members, including the food and beverage discounts and hotel discounts provided for herein and shall not be obligated to pay any membership fees; provided, however, the Landlord Member shall not be entitled to host parties at the Club. Landlord may not sell or otherwise receive any consideration for Landlord Memberships. Landlord assumes all responsibility for the provision of such memberships and agrees that no claim by or membership provided hereunder shall in any way decrease the number of Nonresident Members or Special Members permitted under this Lease.

5.3.1.2 Legacy Membership. Landlord and Tenant hereby grant one Legacy Membership to the descendants of the Moulton family who shall have the same privileges and obligations of Resident Members and subject to the Club Rules. Attached hereto as **Exhibit E** and incorporated herein by this reference are the rules and regulations which shall govern the use of the Club by the beneficiaries of this Legacy Membership (the "**Legacy Membership Rules**"). The Legacy Membership shall be nontransferable except as provided in the Legacy Membership Rules.

5.3.2 Nonresident Members. Except as set forth in Sections 5.3.3, Tenant may sell up to, but in no event more than, 200 Nonresident Memberships to the Club, which shall not be conditioned upon residency within the Monarch Bay Property ("**Nonresident Members**"). In no event shall the number of Nonresident Members at any one time exceed 200. For purposes of calculation, the Nonresident Members shall name a primary member and shall include, within the same membership, all members of such primary member's immediate family residing in the same household with the primary member, including any children under the age of twenty-five (25) years. A Nonresident Member may permit his or her guests to use the Club, the beach at the Club and all facilities at the Club at any time the primary Nonresident Member or member residing in the same household is in attendance, subject to the restrictions contained in this Article 5. All Nonresident Members and their permitted guests shall access the Club only as provided in Section 5.5 below.

5.3.3 Special Members. In addition to the Nonresident Members, Tenant may sell up to, but no more than 55, special memberships ("**Special Members**"). The Special Members shall include, within the same membership, all members of such Special Member's immediate family residing in the same household, including any children under the age of twenty-five (25) years. A Special Member may permit his or her guests to use the Club, the beach at the Club and all facilities at the Club at any time the Special Member is in attendance, subject to the restrictions contained in this Article 5. All Special Members and their permitted guests shall access the Club only as provided in Section 5.5.3, below. Special Members shall not be entitled to host Member Parties except as provided in Section 5.3.3.1, below.

5.3.3.1 Special Member Parties. In the event that the number of Nonresident Memberships has reached the maximum number provided for in this Lease, Special Members may also host parties at the Club subject to the provisions of Section 5.4, below. This provision shall apply only for so long as the number of Nonresident Memberships remain at capacity.

5.3.4 Hotel Occupant Members. In addition to the Nonresident Members and Special Members, Tenant also may permit the use of the Club by registered overnight occupants of the Hotel (the "**Hotel Occupant Members**"). Such use and access to the Club shall be available to a Hotel Occupant Member only during his or her registered stay at the Hotel, and shall be in accordance with the terms and conditions set forth below. Hotel Occupant Members shall not be permitted to bring guests to the Club, except for a maximum of three (3) guests per Hotel Occupant Member after 5:00 p.m. All Hotel Occupant Members and their permitted guests shall access the Club only as provided in Section 5.5 below. Landlord and Tenant acknowledge and agree that the restrictions on access and use of the Club by the Hotel Occupant Members is intended to limit the number of Hotel Occupant Members utilizing the facilities of the Club from time to time, and that such limitation is a material term of this Lease.

5.3.5 Owner of Tenant or the Club. Tenant and Landlord acknowledge and agree that except as specifically and expressly provided in this Lease, none of Tenant or any person or entity affiliated with Tenant or its successors or assigns, shall have any right to use the Club or to any Memberships in the Club merely by virtue of such status as Tenant or owner or affiliate of Tenant. Tenant agrees that if a Tenant affiliate, or any officer, director, principal, employee or agent of a Tenant affiliate or their successors or assigns obtains a Membership in the Club in one of the foregoing membership categories, such Membership shall be held subject to all of the rights and restrictions on

memberships as set forth in this Lease, and shall not be used in such a manner as to attempt to circumvent the restrictions contained in and the intent of the parties to this Lease.

5.4 **Parties and Club Events.** Resident Members and Nonresident Members may host parties or other gatherings at the Club from time to time ("**Member Parties**"), and Tenant may host events at the Club from time to time ("**Club Events**"), subject to any rules and regulations imposed by Landlord and only in accordance with the restrictions set forth below and contained elsewhere in this Lease:

5.4.1 **Small Member Parties.** Any Resident Member or Nonresident Member, may host a party or gathering for his or her guests, provided that the total number of persons permitted at any such "**Small Member Party**" shall be between twenty (20) and a maximum of fifty (50), and the Member hosting the Small Member Party must be in attendance at all times during the Small Member Party. Parking and access to Small Member Parties shall be in accordance with all parking rules and regulations established by Tenant or Landlord and all access shall be in accordance with Section 5.5 below. Except as may be reasonably agreed to by Landlord and Tenant, and subject to availability and prior bookings, there is no limit on the number of Small Member Parties any Member may host at the Club.

5.4.2 **Large Resident Member Parties.** With Landlord's prior written consent and in accordance with the Club Rules, the provisions of Section 5.2 above, and any rules and regulations established by Landlord for such parties, any Resident Member may host a party or gathering with in excess of fifty (50) guests, but no more than two hundred fifty (250) guests (a "**Large Resident Member Party**"), provided the Resident Member hosting such a party remains in attendance at the party at all times. Except as may be imposed by Landlord but subject to availability and prior bookings, there is no limit on the number of Large Resident Member Parties any Resident Member may host at the Club.

5.4.3 **Annual Club Events.** Tenant may sponsor no more than four (4) parties at the Club for Members and their guests during each calendar year ("**Annual Club Events**"). The Annual Club Events shall be held on the following holidays (or over the weekend on which a holiday falls): New Year's, Memorial Day, July 4th and Labor Day. The maximum number of persons permitted at the Annual Club Events shall be two hundred fifty (250), and access shall be subject to the restrictions on access as set forth in Section 5.5 below.

5.4.4 **Special Club Events.** Tenant may sponsor special purpose gatherings organized by Tenant from time to time for Resident Members, Nonresident Members and Hotel Occupant Members ("**Special Club Events**"), limited to a maximum of fifty (50) persons, such as barbecues, wine tastings, special dinners or similar events. Access to Special Club Events shall be subject to the provisions relating to access as set forth in Section 5.5 below.

5.4.5 **Hotel Occupant Events.** Subject to availability and prior bookings, Tenant may sponsor a party or gathering organized by Tenant or the Hotel for Hotel Occupant Members ("**Hotel Occupant Events**"), limited to a maximum of fifty (50) persons provided that each attendee must be a Hotel Occupant Member, or, if the Hotel Occupant Event is a dinner, their permitted guests, and provided that Tenant shall provide Landlord notice of such Hotel Occupant Events and access shall

be subject to the restrictions on access set forth in Section 5.5 below. With Landlord's prior written consent and in accordance with the Club Rules, the provisions of Section 5.2 above, and any rules and regulations established by Landlord for such parties, Tenant may sponsor a Hotel Occupant Event with an excess of fifty (50) guests, but no more than one hundred (100) persons.

5.4.6 Party or Event Hours. Parties and events set forth in Sections 5.4.1 through 5.4.5 shall not commence prior to 9:00 a.m. the day of the party or event and shall end no later than 11 p.m. the same day.

5.4.7 Tents. Use of tents for parties and events of all types shall be permitted only upon issuance of a permit from the City of Dana Point, and a copy of such permit shall be delivered by Tenant (or in the event of a Large Resident Member party, by the sponsor) to Landlord prior to the date of the party or event. Installation and take down of tents shall only take place in accordance with Section 5.2 above.

5.4.8 Number of Parties and Club Events. There shall be no more than one Member Party, Club Event or Hotel Occupant Event conducted at any one time (and for this and all other definitional purposes, a Member Party or Club Event shall be deemed to include all parties or events of more than twenty (20) people). Tenant shall not allow more than an average of four (4), but never to exceed six (6) in any calendar month, Nonresident Small Member Parties, Special Club Events and/or Hotel Occupant Events per calendar month. Tenant further agrees that only an average of one (1) of the four (4) such events may take place at the Club during the "Impacted Hours" (as defined below) from June 1 through August 31 and an average of two (2) events may take place during the Impacted Hours from September 1 through May 31. Impacted Hours means Fridays after 5:00 p.m. and Saturdays and Sundays after 1:00 p.m.

5.4.9 Preferred Dining Reservations for Resident Members. Resident Members shall be entitled to preferred dining reservations (nonevents) reserved no more than one year and up to seven (7) days in advance. Reservations may not be transferred. Excessive no shows and/or cancellations within 24 hours may result in loss of preferred dining privileges for such Resident Members. Hotel guests may only make reservations (nonevents) within seven (7) days. The Club will cap the number of dinner reservations at 70% on any given night, reserving 30% of the restaurant for Resident Members only without reservations.

5.5 Access to Club. Members may access the Club and the Premises only as expressly permitted in this Section 5.5. Tenant shall cause the parking lot gate to be locked each night at 11:00 p.m. but may continue to allow controlled access through the parking lot gate as is reasonably necessary for the operation of the Club. The following restrictions apply to any and all uses of the Club by Members and their permitted guests, including day-to-day use by Members and attendance at any Member Parties and Club Events. The following restrictions on access are a material part of this Lease.

5.5.1 Resident Members, Landlord Member and Legacy Member. Resident, Landlord, Legacy Members and their permitted guests may access the Club through Beach Club Drive in the Monarch Bay Property, and may utilize the parking spaces available in the parking area of the Club at any time and from time to time, at no charge or expense to the Resident Members, Landlord Member or Legacy Member. Provided that such access is in accordance with any Club Rules for Large Resident

Member Parties, a Resident, Landlord or Legacy Member may arrange for transportation for the guests of such Members by mini-bus or other large capacity vehicle for 25 occupants or less from remote parking areas to the Club.

5.5.2 Nonresident Members. Nonresident Members shall be permitted to access the Club by passenger vehicular access through the guard gate at the Monarch Bay Property and Beach Club Drive, and only during the hours of operation of the Club as set forth in Section 5.2.3.1, provided that such Nonresident Member is properly identified as such to the guard at the guard gate and further provided that each Nonresident Member shall be permitted to park in the parking area serving the Club at no charge or expense.

5.5.2.1 Resident, Landlord, Legacy and Nonresident Members and their permitted guests shall park only in the parking area of the Club, in accordance with the restrictions set forth below. Nonresident Members and their guests shall not park on the streets of the Monarch Bay Property. Permitted guests of a Resident, Landlord, Legacy or Nonresident Members shall be permitted to park guest vehicles in the Club parking lot only as follows: No guest parking on weekends or holidays prior to 5:00 p.m. (and thereafter only if space permits); no more than one guest car per Resident, Landlord, Legacy or Nonresident Member on Fridays through Sundays or national holidays; and no more than two guest cars per Resident, Landlord, Legacy or Nonresident Member Mondays through Thursdays other than national holidays.

5.5.3 Hotel Trams; Special Members and Hotel Occupant Members. Special Members and Hotel Occupant Members and their permitted guests shall be permitted to access the Club solely via trams provided by the Hotel or Tenant on the tram path through the golf course adjacent to the Monarch Bay Property (such path is referred to herein as the "**Hotel Tram Path**" and is located as marked on the site plan attached as **Exhibit F**, and the trams using the Hotel Tram Path are referred to herein as the "**Hotel Trams**"). The Hotel Trams also shall be available to any Members for access from or to the Club or the Hotel. Special Members and Hotel Occupant Members may not access the Club by private automobile or by pedestrian access, except for handicapped Hotel guests who are unable to use the Hotel Trams ("**Handicapped Hotel Guests**"). Operation of the Hotel Trams shall be subject to the following:

5.5.3.1 The Hotel Trams shall not hold more than twelve (12) occupants at any one time and shall not make more than an average of eight (8) round trips to and from the Hotel to the Club per hour during daylight hours, and not more than an average of four (4) round trips to and from the Hotel to the Club during evening hours. No Hotel Tram shall be permitted to park or otherwise remain in the Club parking lot for more than fifteen (15) minutes on each round trip and no more than one (1) waiting Hotel Tram shall be parked in the parking lot in addition to one (1) waiting Hotel Tram staged out of sight in the delivery cul-de-sac. Neither the Hotel Trams nor the Hotel Tram Path shall be available for use by the general public on, or for access to any portion, of the Premises.

5.5.3.1.1 The Hotel Tram is only allowed to run during Hours of Operation of as set forth in Section 5.2.3.1.

5.5.3.2 Tenant shall use commercially reasonable efforts to ensure that the Hotel Trams are utilized only by Hotel Occupant Members and their permitted guests.

5.5.3.3 Except for Handicapped Hotel Guests, the Hotel Trams shall be the sole form of access to and from the Club for Hotel Occupant Members and their permitted guests for Member Parties, Club Events and Hotel Occupant Events.

5.5.3.4 Tenant or the Hotel shall keep an accurate and complete daily log of the Hotel Tram trips to and from the Club and of usage by the Hotel Occupant, Nonresident, Special and Resident Members, which shall be available for inspection by Landlord at the Club or the Hotel during reasonable business hours upon twenty-four (24) hours advance notice.

5.5.3.5 The gate on the tram path used by the Hotel Trams to access the Monarch Bay Property (the "**Tram Gate**") shall be kept locked at all times except as required for the immediate passage of a Hotel Tram.

5.5.3.6 Landlord shall only be entitled to block access to the Club parking lot or any other area of the Monarch Bay Property utilized by the Hotel Trams, as set forth in Section 19.3 below.

5.5.3.7 Landlord and Tenant acknowledge that the Hotel Trams may be limited also by regulations imposed by the City of Dana Point. Tenant agrees that if the City of Dana Point or other regulatory agency for any reason whatsoever permits increases in size, carrying capacity or amounts of permitted round trips by the Hotel Trams, any such changes shall not affect the limitations imposed by this Lease and any such variances hereto shall require the prior approval of Landlord, which may be granted or withheld in the sole and absolute discretion of Landlord.

5.5.4 Van Access. Tenant may permit transportation of Nonresident and Special Members and their permitted guests to the Club for the Annual Club Events by vehicles ("**Vans**") capable of carrying no more than twenty-four (24) occupants, which Vans shall be allowed through the guard gate at the Monarch Bay Property with advance notification to Landlord for each Annual Club Event. Any Vans exceeding such occupancy levels may be denied access through the guard gate to the Club. Any Vans must arrive at the Club no earlier than 10:00 a.m. and depart the Club no later than the closing hour for the Annual Club Event. Tenant shall use commercially reasonable efforts to ensure that the Vans are utilized only by Nonresident and Special Members and their permitted guests.

5.6 Membership Administration. Tenant shall manage the administration of the Club Memberships in accordance with the following:

5.6.1 Tenant and Landlord shall jointly, from time to time, adopt reasonable procedures for the identification of the various classifications of Members. Tenant shall issue to each Nonresident Member one decal of a design reasonably approved by Landlord. A Nonresident Member will be admitted at the guard gate of the Monarch Bay Property by display of either the approved decal or other reasonably acceptable identification. Tenant shall provide Landlord with an updated membership list for the Nonresident Members on the first day of every other month.

5.6.2 Resident, Landlord and Legacy Members shall receive the benefits of the foregoing membership, use and access restrictions on use of the Club, and in addition thereto, Tenant shall provide the following Club benefits to the Resident, Landlord Member and Legacy Members:

5.6.2.1 The Resident, Landlord and Legacy Members shall pay no membership fee.

5.6.2.2 Resident, Landlord and Legacy Members shall be entitled to free use of beach chairs, towels and umbrellas provided by Tenant at the Club, and shall be entitled to the use of any equipment or other amenities provided by Tenant to any other Members at the same cost as charged by Tenant to other Members.

5.6.2.3 Resident, Landlord and Legacy Members Use of Hotel Facilities. Tenant shall during the term of this Lease and any and all Option Terms provide the following discounts to Resident, Landlord and Legacy Members for the use of its facilities:

- (i) For spa and fitness memberships—waiver of the initiation fee and a 25% discount on annual fees;
- (ii) For golf memberships—waiver of initiation fee and waiver of annual fees to the current “Crown Club” or equal if the program changes;
- (iii) For Resort Executive Memberships (includes pool)—waiver of initiation fee and 10% discount on annual fees;
- (iv) For the six month off season (October 31- March 31) Resort Executive Membership or Wellness Membership – waiver of initiation fee and minimums and 75% discount on membership fees (not combinable with any other available offer);
- (v) For Hotel restaurants—20% discounts on all food and beverage purchases (including alcohol);and
- (vi) For the Club - Except as provided herein, during the peak season of April 1 and September 30, for a la carte dining parties of eight (8) or less the discount shall be fifty percent (50%) discount on all food and beverage (including alcohol) and fire pit use fees at the Club on Sundays through Thursdays and a thirty-five percent (35%) discount on all food and beverage (including alcohol) and fire pit use fees at the Club on Fridays and Saturdays. For the balance of the year between October 1 and March 31, for a la carte dining parties of eight (8) or less the discount shall be fifty (50%) on all food and beverage (including alcohol) and fire pit use fees at the Club every day. No minimum purchases shall be required by Resident, Landlord and Legacy Members. For a la carte dining for parties more than eight (8) but less than twenty (20) the discount shall be twenty-five percent (25%) on all food and beverage (including alcohol). Small Member Parties and Large Resident Member Parties shall receive a discount of twenty-five (25%) on food only.

- (vii) All of the discounts provided for herein shall be calculated using the lowest price offered to the Hotel guests on the date of the use of the Hotel facility by the Resident, Landlord or Legacy Member. Sales taxes and service charges shall be applied to the discounted price.

5.7 **Prohibited Uses.** Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use the Premises or any part thereof for any use or purpose contrary to the provisions of this Lease, the Club Rules, or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Premises including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as those terms are defined by applicable laws now or hereafter in effect. Tenant shall not do or permit anything to be done in or about the Premises outside of the ordinary course of conduct contemplated in this Article 5 which will in any way obstruct or interfere with the rights of the Monarch Bay Residents or other tenants or occupants of Monarch Bay Property, or injure or annoy them (including, without limitation, the use of unreasonably excessive lighting or noise) or use or allow the Premises to be used for any improper, or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises (e.g. renting motorized recreational equipment). Tenant shall comply with, and Tenant's rights and obligations under the Lease, including the Operating Standards, and Tenant's use of the Premises shall be subject and subordinate to, all recorded easements, covenants, conditions, and restrictions now affecting the Premises.

ARTICLE 6

TAXES, SERVICES AND UTILITIES

6.1 **Taxes.** "Taxes" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes, gross receipts or sales taxes, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appliances, furniture and other personal property used in connection with the Premises, or any portion thereof but excluding any income, franchise or gross receipts taxes payable by Landlord), which shall be paid or accrued because of or in connection with the ownership, leasing and operation of the Building and the Premises, or any portion thereof including the parking areas. Taxes shall include, without limitation:

- (i) any tax on the income from the operation of the Premises by Tenant, or any portion thereof;
- (ii) any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax;
- (iii) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises, including, without limitation, any business or gross income tax or excise tax with

respect to the receipt of membership dues and/or food and beverage sales, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(iv) any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and

(v) all of the real estate taxes and assessments imposed upon or with respect to the Premises.

6.2 **Timing of Payment of Taxes.** Subject to Tenant's right to pay Taxes in installments as provided below, all payments of Taxes to be made by Tenant pursuant to this Article shall be made before any fine, penalty, interest or costs may be added thereto for non-payment. Tenant shall furnish to Landlord, at least fifteen (15) days prior to the date when any Taxes payable by Tenant pursuant to this Lease would become delinquent, receipts or other appropriate evidence establishing the payment thereof.

6.3 **Installment Payment.** If by law any Tax is payable or, at the option of the taxpayer, may be paid in installments, Tenant may pay such Tax, together with any accrued interest on the unpaid balance of such Tax, in installments as they become due.

6.4 **Proration of Taxes.** All Taxes for the fiscal tax years in which the Term ends shall be prorated between Landlord and Tenant, except as to Section 6.1(i) which shall be Tenant's sole liability.

6.5 **Landlord's Right to Cure.** Subject to the provisions of Section 6.8 below (entitled "Contesting Taxes and Liens"), if Tenant, in violation of the provisions of this Lease, fails to pay and discharge any Tax, Landlord may (but shall not be obligated to) pay or discharge it, provided that Tenant shall have failed to pay such Tax within fifteen (15) days after notice from Landlord of Landlord's intention to pay the same. Any amount so paid by Landlord and the amount of all costs, expenses, interest and penalties connected therewith (including reasonable attorneys' fees) shall be payable by Tenant as Additional Rent and shall be reimbursed to Landlord by Tenant on demand, with interest thereon at the Interest Rate.

6.6 **Utilities.** Tenant shall be solely responsible for and shall pay all charges for water, gas, heat, electricity, sewage, trash collection, telephone service, communications and all other utilities delivered to the Premises. Tenant shall install, at Tenant's sole cost and expense, separate meters for any public utility servicing the Premises; and Tenant shall make payment when due directly to the utility company providing such service. Tenant shall be responsible for all maintenance, repair and replacement of any meters serving the Premises at its sole cost. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle Tenant to terminate this Lease or abate the Rent and other charges hereunder.

6.7 **Creation of Liens by Tenant.** Tenant shall not, directly or indirectly, create or knowingly permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any mortgage, lien, encumbrance or other charge on or pledge (each, a "Lien") on or of the

Premises, any improvements thereon or Tenant's interest in either of the same, or sums payable by Tenant under this Lease. Tenant shall promptly notify Landlord of any Lien which has been created on or has attached to the Premises, any improvements to the premises, Tenant's interest in either of the same, or sums payable by Tenant under this Lease, whether by act of Tenant or otherwise. The foregoing shall not apply to any Liens created by, at the direction of or resulting from work performed for "Landlord Parties" (defined below).

6.8 **Contesting Taxes and Liens.** Tenant shall have the right to contest the amount or validity of any Tax or Lien by appropriate legal proceedings, provided that Tenant protects Landlord, the Premises and all improvements on the Premises by adequate surety bond or other appropriate means reasonably satisfactory to Landlord. This right shall not be deemed or construed in any way as relieving or modifying Tenant's covenants to pay any such Tax or obligation imposed by a Lien at the time and in the manner provided in this Article. Landlord, upon written request and at Tenant's sole cost and expense, shall join in any such proceedings, if Tenant determines that it shall be necessary or appropriate for Landlord to do so in order for Tenant to properly prosecute such proceedings. Tenant hereby agrees to indemnify and defend Landlord from any costs, expenses, and liabilities (including, without limitation, reasonable attorneys' fees) arising from any such proceeding, unless the subject matter involves a Lien created by, at the direction of or resulting from work performed for any Landlord Parties.

6.9 **Interruption of Use.** Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Premises after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause beyond Landlord's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities set forth in this Article 6.

ARTICLE 7

REPAIRS

Tenant, at Tenant's own expense, shall keep the Premises, including all improvements, fixtures and furnishings therein, all systems and equipment, all structural portions of the Building, all exterior and interior walls, roof, foundation, and floors of the Building, all exterior portions of the Premises including all exterior improvements and other facilities presently existing or later constructed on the Premises and the parking areas serving the Premises, together with the cliffs bordering the Premises and adjacent residences and the Hotel Tram Path, in good order, repair and condition at all times during the Lease Term or, if applicable, any Option Term, provided that Tenant shall not be responsible for cliff erosion which is not on the Premises or other off-Premises conditions resulting

from any Force Majeure Event. Tenant shall provide lighting and security in such amounts and at such locations on the Premises and on the cliffs and path described above as Tenant reasonably determines is desirable for the operation of the Club at the Premises and the safety of the Members and their guests. In addition, subject to Article 11, Tenant, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, which approval shall not be withheld or delayed unreasonably, and within a reasonable period of time, promptly and adequately shall repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, except for damage caused by ordinary wear and tear; and provided that the foregoing shall in no way preclude or limit Tenant's right to seek contribution and/or damages from any potentially responsible party, and provided further, however, that at Landlord's option, if Tenant fails within a reasonable time to commence, and thereafter pursue diligently to completion such repairs, after providing written notice to Tenant, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for the same, with Interest from the date incurred until paid. Landlord may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, improvements or additions to the Premises or to any equipment located in or on the Premises as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect, except and only to the extent of damage or repairs necessitated by the gross negligence or willful misconduct of Landlord or the negligence or willful misconduct of any other Landlord Party or Resident Member.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 **Additions; Alterations.** Tenant shall make all improvements, alterations, additions and changes to the Premises or any facilities serving the Premises as required from time to time by law in connection with the use or operation of the Premises; provided that Tenant shall first obtain Landlord's written consent as set forth below, except for emergencies involving a threat to life, health or property ("**Emergencies**"). Except for Emergencies, Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "**Alterations**") without first (i) providing Landlord with a copy of all applications for permits within seventy two (72) hours of filing the same; and (ii) procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld or delayed by Landlord, provided it shall be deemed reasonable for Landlord to withhold its consent to any Alteration which adversely affects the structural portions of the Building or is visible from any Monarch Bay Resident premises. Notwithstanding the foregoing, Tenant shall be permitted to make Alterations to the Premises following five (5) business days' notice to Landlord, but without Landlord's prior consent, to the extent that such Alterations do not adversely affect the systems and equipment of the Building, exterior appearance of the Building, or structural aspects of the Building (the "**Cosmetic Alterations**").

8.2 **Manner of Construction.**

8.2.1 **Conditions to Alterations.** Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit issued by the City of Dana Point, if legally so required, all in conformance with Landlord's construction rules and regulations applicable to the Monarch Bay Property as made known to Tenant in writing from time to time. Prior to commencing to construct any Alteration, Tenant shall meet with Landlord to discuss Landlord's design parameters and code compliance issues. In performing the work of any such Alterations, and except as set forth in Section 5.2.3.5, Tenant shall have the work performed in such manner as not to obstruct access to the Premises or any portion thereof and so as not to obstruct or interfere with access to or use of any other portions of the Monarch Bay Property. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Orange, and Tenant shall deliver to Landlord a reproducible copy of the "as built" drawings of the Alterations (not including any Cosmetic Alterations), as well as all copies of permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements.** Tenant shall promptly pay all of its contractors, and Tenant shall obtain final lien releases and waivers in connection with such payment for work to contractors, provided Tenant may contest in good faith any contractor claim provided Tenant provides adequate security to protect the Premises from the imposition of any lien.

8.4 **Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide (if not previously provided) Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord reasonably may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, in connection with any Alteration (excluding Cosmetic Alterations), the anticipated cost in the aggregate of which shall exceed Two Hundred Fifty Thousand Dollars (\$250,000), Landlord, in its discretion, may require Tenant to obtain a lien and completion bond or some alternate form of security reasonably satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property.** All Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises from time to time shall be at the sole cost of Tenant and shall be and become the property of Landlord, except that Tenant may retain title to and may remove any furniture, furnishings or equipment not affixed to the Premises provided Tenant repairs any damage to the Premises and Building caused by such removal and returns the affected portion of the Premises to a building standard tenant improved condition. If Tenant fails to repair any damage caused by the removal and return the affected portion of the Premises to a building standard tenant improved condition, as aforesaid, Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby agrees to protect, defend, indemnify and hold Landlord harmless from any liability, cost, obligation, expense or claim of Lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment

in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

8.6 **Communications and Computer Lines.** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "Lines") in or serving the Premises, provided that (i) Tenant shall use only experienced and qualified contractors reasonably approved in writing by Landlord, and comply with all of the other provisions of this Lease, such Lines shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by a protective conduit generally used in the trade, (ii) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, and (iii) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws and applicable ordinances and building codes.

8.6.1 **Telecommunications and Video Equipment.** Tenant shall not have the right to install or use any telecommunications antennae or satellite dishes or video equipment on the roof or any other portion of the Building or the Premises, without Landlord's prior written consent.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant shall keep the Premises and the Monarch Bay Property free from any Liens arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of the same or in connection therewith. Except for Emergencies, Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove or provide adequate security for any such Lien by bond or otherwise within thirty (30) days after written notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such Lien without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable by Tenant upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Premises to any Liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a Lien upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord or Landlord Parties shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Premises and the Monarch Bay Property.

ARTICLE 10

INDEMNIFICATION AND INSURANCE

10.1 **Indemnification and Waiver.** Tenant, *vis-a-vis*, Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises) and agrees, for itself and its successors and assigns, that Landlord, Monarch Bay Land Association, their respective directors, officers, members, agents, servants, employees and independent contractors and their respective successors and assigns (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released and held harmless from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, except to the extent caused by the willful misconduct of Landlord or Landlord Parties. Tenant, for itself and its successors and assigns, shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause other than the willful misconduct of Landlord or the Landlord Parties. Neither Tenant's assumption of risk, nor the foregoing indemnity shall apply to the willful misconduct of any of the Landlord Parties. Should any Landlord Party be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises for which Tenant has indemnified Landlord Parties, Tenant shall pay to Landlord Parties its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as reasonable appraisers', accountants', experts' and attorneys' fees.

10.2 **Tenant's Compliance With Fire and Casualty Insurance.** Tenant, at Tenant's expense, shall comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for any insurance policies carried by Landlord on the Monarch Bay Property, then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements applicable to the Premises of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.3 **Tenant's Insurance.** Tenant shall maintain the following coverages in the following amounts:

10.3.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities (covering the performance by Tenant of its indemnity agreements) including a Broad Form endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease, and including liquor liability coverage, for limits of liability not less than:

Bodily Injury and Property Damage Liability	\$6,000,000 each occurrence \$10,000,000 annual aggregate
Personal Injury Liability	\$6,000,000 each occurrence \$10,000,000 annual aggregate

10.3.2 All Risks (including flood, earthquake and full law and ordinance coverage to the extent required by Tenant's senior secured lender) property insurance providing (i) full replacement cost (at increased cost of construction) and consequential loss coverage on the Building and improvements, furnishings and equipment, and (ii) business interruption insurance. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion, but specifically excluding terrorism coverage and providing business interruption coverage until the earlier of one (1) year or the restoration or reconstruction is complete and occupancy permitted.

10.3.3 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations.

10.3.4 To the extent not covered by the policy required by Section 10.3.1, auto liability including but not limited to the Hotel Trams and Vans with minimum limits as follows:

Bodily Injury Liability	\$6,000,000 Each Person \$10,000,000 Each Accident
Property Damage	\$2,000,000 Each Accident

10.3.5 Landlord and the Monarch Bay Land Association shall also be named as additional insured on Tenant's "umbrella" liability policy(ies).

10.4 **Form of Policies.** All policies of insurance required of Tenant under this Lease shall (i) name Landlord and the Monarch Bay Land Association, and any other party the Landlord reasonably specifies, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A+ in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord. Tenant shall deliver such policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord, at its option, may procure such policies for the account of Tenant, and the cost thereof shall be Additional Rent paid by Tenant to Landlord within twenty (20) days after delivery to Tenant of bills therefor.

10.5 **Additional Insurance Obligations.** Tenant shall carry and maintain during the entire Lease Term or Option Term, if applicable, at Tenant's sole cost and expense, increased amounts of

the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, based upon comparable insurance required by institutional lenders for similar private clubs, as may be reasonably requested by Landlord.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises.** Tenant promptly shall notify Landlord of any damage to the Premises resulting from fire or any other casualty ("Casualty Event"), and Tenant shall promptly and diligently restore the Building and other improvements on the Premises. Such restoration shall be to substantially the same condition of the Building and improvements prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Premises, and shall be in compliance with all applicable building codes and other laws governing such construction and with all provisions of this Lease including, without limitation, Article 8 hereof. In the event Tenant fails to restore the Premises within ninety (90) days following a Casualty Event (or fails to commence restoration and diligently pursue completion in the event such restoration cannot be reasonably completed within such time period), Landlord shall have the option to restore the Premises at Tenant's cost, including a reasonable coordination fee which shall be a percentage of the total cost of such repairs or restoration work.

11.2 **Limitations and Exceptions.** Tenant shall not be obligated to expend more out-of-pocket on the hard costs for the repair or reconstruction of the Building and improvements than \$100,000 in addition to insurance proceeds. Further, in the event of damage the cost of which to repair is reasonably expected to exceed \$250,000 and which occurs in the last year of the Lease Term (if the Option has not been exercised) or Option Term (if applicable), Tenant, by written notice to Landlord, may elect not to repair or restore, in which event Tenant shall assign all insurance proceeds to Landlord and, upon Landlord's receipt of such assignment, this Lease shall terminate.

ARTICLE 12

NONWAIVER

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in writing. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term, or Option Term if applicable, or of Tenant's right

of possession hereunder, or after the giving of any notice, shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of Rent shall not waive or affect any such notice, suit or judgment.

ARTICLE 13

CONDEMNATION

If the whole or any material part of the Premises shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to materially limit the use, or require the reconstruction or remodeling of any material part of the Premises or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord and Tenant each shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. The award or payment in connection therewith shall be equitably allocated to Landlord and Tenant's respective interest in the Premises, taking into account the remaining portion of the Lease Term or Option Term, if applicable, and Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term or Option Term, if applicable, pursuant to the terms of this Lease, and for moving expenses. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred eighty (180) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking. Landlord shall not settle or compromise any condemnation or similar action without Tenant's prior consent which will not be unreasonably withheld or delayed, and Tenant shall have the right, at its expense, to participate fully in all aspects of any such action and/or settlement.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 Transfers. Tenant, without the prior written consent of Landlord, shall not assign, mortgage, pledge, hypothecate, encumber, or permit any Lien to attach to, or otherwise transfer this Lease or any interest hereunder or permit any assignment, or other Transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees, contractors, Manager, agents, Members and permitted guests (all of the foregoing are hereinafter sometimes referred to collectively as

"**Transfer(s)**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Notwithstanding the foregoing, Tenant's sublease of the Premises to a wholly owned subsidiary of Tenant shall not constitute a Transfer if such subsidiary shall also be the tenant with respect to the Resort; provided, however that Tenant shall not be released from any liability under this Lease. If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days after the date of delivery of the Transfer Notice, (ii) all of the terms of the proposed Transfer, including the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, (iii) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit references and history of the proposed Transferee and any other information reasonably required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Premises, and (iv) an executed estoppel certificate from Tenant in the form attached hereto as **Exhibit G**. Any Transfer made without Landlord's prior written consent, at Landlord's option, shall be null, void and of no effect, and at Landlord's option, shall constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's reasonable review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord, in an amount not to exceed Ten Thousand Dollars (\$10,000) in the aggregate, for a Transfer in the ordinary course of business (for purposes hereof, a Transfer shall be deemed not to be in the "ordinary course of business" if Landlord is required to review documentation related to such Transfer on more than three (3) separate occasions).

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold or delay its consent to any proposed Transfer of the Premises to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the operation of the Premises; or

14.2.2 The Transferee intends to use the Premises for purposes which are not permitted under this Lease or in any way intensifies the use of the Premises; or

14.2.3 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested; or

14.2.4 The proposed Transfer is not a Transfer in connection with a transfer of the Hotel or the Resort Property; or

14.2.5 the Transferee is not a hotel/resort operator with a history of successful operations of resorts with similar services and amenities as the Hotel on the date of execution of this

Lease; or alternatively, does not have a contract in place with a management company with a history of successful operations of resorts with similar services and amenities as the Hotel on the date of execution of this Lease.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2, Tenant may enter into such Transfer upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any material changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, or (ii) which would cause the proposed Transfer to be more materially favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 14. Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

14.3 Resort Transfer Fee. If Tenant transfers its interest in this Lease in connection with a transfer of the Resort Property, as a condition thereto which the parties agree is reasonable, upon close of the Transfer, Tenant shall pay to Landlord a fee (the "**Resort Transfer Fee**") an amount equal to \$3,000,000. In the event that any subsequent Transfer in connection with a transfer of the Resort Property is made by a Tenant prior to June 29, 2030, each transferring Tenant shall pay Landlord the sum of \$1,000,000 upon close of the Transfer. Solely for the purpose of determining if a Resort Transfer Fee shall be due under this Section 14.3, the term "**Transfer**" shall also include (i) if Tenant is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners or members, or transfer of fifty percent (50%) or more of partnership or membership interests, within a twelve (12)-month period, or the dissolution of the partnership or membership without immediate reconstitution thereof, (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period, and (iii) any transfer of the ownership interests of the Hotel or the Resort Property. Notwithstanding the foregoing, if the Tenant fails to deliver to Landlord an Option Notice for either Extension Option by the Option Notice Date as provided in Section 2.3, above (*i.e.*, not less than one (1) year prior to the end of the initial Lease Term or Option Term, if applicable), and does not, in fact, exercise the applicable Extension Option, and thereafter during the remainder of the same Term only (either the initial Lease Term or the Option Term, if applicable) transfers its interest in the Resort Property, then Tenant shall not be obligated to pay a \$1,000,000 Resort Transfer Fee.

14.4 Effect of Transfer. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to

Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease.

14.5 **Occurrence of Default.** Any Transfer hereunder shall be subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as canceled and repossess the Premises by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in default under this Lease beyond any applicable grace period, Landlord hereby is irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assign in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether thereto or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 **Surrender of Premises.** No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term or Option Term, if applicable, shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in writing by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not of itself constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all leases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term or Option Term, if applicable, or upon any earlier termination of this Lease, Tenant, subject to the provisions of this Article 15, shall quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant, without expense to Landlord,

shall remove or cause to be removed from the Premises all debris and rubbish, and may remove such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises which are not affixed, and such similar articles of any other persons claiming under Tenant, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal. Landlord and Tenant acknowledge and agree that should Tenant not remove any such items or personal property, all such items and personal property shall be surrendered to Landlord as part of the Premises without cost or expense to Landlord.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term or Option Term, if applicable, or earlier termination thereof, without the express consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal to the product of (i) the Rent applicable during the last rental period of the Lease Term under this Lease, and (ii) a percentage equal to 200% during the first (2) months immediately following the Lease Expiration Date or earlier termination of the Lease Term or Option Term, if applicable, and 500% thereafter. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the Lease Expiration Date or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or Lease Expiration Date of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within ten (10) business days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of Exhibit G, attached hereto (or such other form as reasonably may be required by any prospective mortgagee or purchaser of the Premises or the Monarch Bay Property, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Premises or the Monarch Bay Property. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included

in the estoppel certificate are true and correct, without exception. Within ten (10) business days following a request in writing by Tenant, Landlord shall execute, acknowledge and deliver to Tenant a comparable estoppel certificate.

ARTICLE 18

SUBORDINATION

This Lease shall be subject and subordinate to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Premises or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, and provided in all events such mortgagee or secured party recognizes this Lease, Tenant's rights hereunder, and enters into a non-disturbance agreement reasonably acceptable to Tenant. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof, to attorney, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof, if so requested to do so by such purchaser or lienholder, and to recognize such purchaser or lienholder, provided such lienholder or purchaser shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the Rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant, within ten (10) days of request by Landlord, shall execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages or trust deeds. Except as provided above, Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

ARTICLE 19

DEFAULTS; REMEDIES

19.1 **Events of Default.** The occurrence of any of the following shall constitute an "event of default" under this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within five (5) business days after notice; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a

thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default and cured the same within a reasonable amount of time in Landlord's reasonable discretion; or

19.1.3 Any occurrence of a material breach by Tenant of Article 5 of this Lease (including a breach of the Operating Standards), or a recurrence of two (2) or more defaults under Article 5 within a ten (10) month period; or

19.1.4 Abandonment or vacation of all or a substantial portion of the Premises by Tenant and Tenant is otherwise in default under this Lease; or

19.1.5 The failure by Tenant to observe or perform according to the provisions of Articles 14 (Assignment and Subletting), 17 (Estoppel Certificates) or 18 (Subordination) of this Lease where such failure continues for more than ten (10) days after notice from Landlord, provided however, such notice shall be in addition to, and not in lieu of, the periods for performance set forth in such Articles of this Lease.

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

19.2 **Remedies Upon Default.** Upon the occurrence of any uncured "event of default" by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative below), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever except as expressly provided therein.

19.2.1 **Termination of Lease.** Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord, without prejudice to any other remedy which it may have for possession or arrearages in rent, may enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of the amount of any unpaid rent which has been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term or Option Term, if applicable, after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not

limited to, brokerage commissions and advertising expenses incurred, and any special concessions made to obtain a new tenant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 19.2.1 (i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 24 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the Interest Rate (defined below) at the time of award plus one percent (1%).

19.2.2 Continuation of Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Equitable Relief. Landlord shall at all times have the rights and remedies (which except as otherwise specifically set forth in this Lease shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1, and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 Special Remedies. Upon the failure of a party described below to conform to or enforce the restrictions and obligations contained in Article 5 of this Lease, Landlord shall have in addition to the remedies set forth in Section 19.2 (as limited by Section 19.1.3) the option to pursue any one or more of the following remedies as applicable to the non-conforming party each and all of which shall be cumulative and nonexclusive except as expressly provided herein.

19.3.1 In the event of a breach by any Nonresident Member, Special Member, Hotel Occupant Member or the permitted guests of any of the foregoing or Tenant or the operator of the Hotel, of the use and access restrictions set forth in Article 5 the following provisions shall apply:

(i) Tenant shall promptly advise Landlord of the breach and the nature thereof (unless Landlord sent notice of such breach to Tenant); and

(ii) Tenant shall promptly send written notice to the offending party (or Member, in the event of a guest violation) advising such party of the violation, and stating that, with respect to any Nonresident Member or Special Member any further violation may result in the suspension or termination of such parties' membership or, with respect to Hotel Occupant Members, a Lockout (as defined below); and

(iii) Upon the reoccurrence of any such breach by a Nonresident Member or Special Member (or their respective guests), Tenant shall suspend or terminate such membership, as Tenant may determine; or

(iv) Upon the first breach by Tenant or the operator of the Hotel, Landlord shall give the appropriate party written notice of such breach and the breaching party shall promptly commence a cure and a procedure to prevent reoccurrence.

(v) Upon the reoccurrence of a "material breach" of Article 5 by Tenant within any twelve (12) month period, upon written notice of same from Landlord, Tenant shall pay Landlord liquidated damages of \$10,000 within ten (10) days of Landlord's receipt (or delivery) of notice of violation(s). If Tenant does not pay such liquidated damages within such time period, Landlord may block access to the Monarch Bay Property at the Access Road guard gate or to the Premises by Hotel Trams (each, a "Lockout") by locking the gate across the Hotel Tram Path (the "Tram Path Gate") until such sum is paid. In the event Tenant in good faith disputes the breach, it shall nonetheless pay the sum but may provide written notice thereof to Landlord within five (5) business day's receipt of Landlord's notice, specifying the reason for its dispute. The parties shall meet within five (5) business days of Landlord's receipt of Tenant's notice to attempt to resolve the issue by mutual agreement. If they are unable to do so, the matter, upon the written request of either party, shall be referred to a single arbitrator in accordance with the rules and procedures of "JAMS" (defined below). Either party may present evidence to the arbitrator, but the proceeding shall be conducted on an expedited basis without discovery and the decision of the arbitrator shall be final and binding upon the parties.

(vi) If the arbitrator finds that Landlord's imposition of a Lockout was made in bad faith or without a colorable claim ("**Bad Faith**"), Landlord shall reimburse Tenant for any payment made pursuant to Section 19.3.1 (v) above and shall pay all of the costs of arbitration, including Tenant's legal fees, and liquidated damages of \$10,000 to Tenant, which liquidated damages shall increase by \$10,000 upon each successive finding by an arbitrator that the imposition of a Lockout was made in Bad Faith. A finding of "Bad Faith" also shall mean that no "material breach" occurred, as well a specific finding to such effect. If the arbitrator finds that the Lockout was not made by Landlord in Bad Faith, the amount of liquidated damages due to Landlord shall increase by \$10,000 upon each successive material breach of Article 5 by Tenant or the operator of the Hotel. As used in this Section 19.3.1, a "**material breach**" of Article 5 means a breach which results from intentional acts, or persistent conduct which violates Section 5 but does not include immaterial, isolated violations such as, without limitation, a party ending 11:05 p.m. on a Saturday, 51 guests at the Small Member Party, or a Tram operator permitting an unauthorized person to use the Tram. In such cases of immaterial isolated violations, Tenant shall not be in default hereunder provided that Tenant, Tenant or the Hotel operator notifies the offending person in writing of the violation and demands compliance (at the risk of job termination or Member termination if applicable) with the restrictions of Article 5. Anything in the previous sentence to the contrary notwithstanding, a continuing series of, or the frequent repetition of otherwise non-"material breaches" shall be a "material breach" and shall be subject to the provisions of Section 19.1.3 and 19.2 if applicable.

BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH DAMAGES BY REASON OF TENANT'S DEFAULT HEREUNDER OR LANDLORD'S BAD FAITH.

ACCORDINGLY, IT WOULD BE REASONABLE AT SUCH TIME TO AWARD "LIQUIDATED DAMAGES" EQUAL TO THE ABOVE REFERENCED AMOUNTS. LANDLORD AND TENANT ACKNOWLEDGE THAT THE APPLICABLE FOREGOING AMOUNTS OF LIQUIDATED DAMAGES ARE REASONABLE AS LIQUIDATED DAMAGES BUT ARE NOT THE EXCLUSIVE RELIEF, RIGHT OR REMEDY, AT LAW OR IN EQUITY. LANDLORD AND TENANT ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION 19.3.1 AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

Landlord's Initials: _____

Tenant's Initials: _____

19.3.2 Landlord and Tenant acknowledge that the Tram Path Gate is not located on the Premises but is instead located on adjacent property operated as the Monarch Beach Golf Links. Tenant, for itself and any successors and assigns of either party having control over such adjacent property, hereby grants to Landlord a nonexclusive license for ingress and egress over the portion of such property on which the Hotel Tram Path is located between the Premises and including the Tram Path Gate (the "**Path Area**"), for the term of this Lease. Landlord, at its sole risk, shall be entitled to use the Path Area at any times and from time to time for the sole purposes of (i) inspection of the Tram Path Gate for conformance by Tenant to the provisions of this Lease and the regulations imposed by the City of Dana Point regarding locking of the gate, and (ii) pursuant to subsection 19.3.1 above, locking the Tram Path Gate with a lock installed by Landlord or other reasonable locking method and stationing an agent at the Tram Path Gate to enforce a Lockout by Landlord.

19.3.3 If access to the Premises by the Hotel Trams is blocked by Landlord as permitted hereunder, Tenant shall not attempt to circumvent the blocked access by permitting access by the Hotel Trams by any other route to the Premises, including but not limited to the main gate at the Monarch Bay Property. During the duration of any Lockout, all Hotel Occupant Members whose sole permitted access is via the Hotel Trams shall be denied access to the Club and the Premises by Tenant, and shall not be permitted to access the Club by any other means, including without limitation pedestrian or vehicle access.

19.3.4 The provisions of this subsection 19.3.1 are integral to Landlord's agreement to enter into this Lease and permit the access by the Hotel Trams and Hotel Occupant Members to the Premises.

19.4 **Efforts to Relet.** No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall the same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder (except to the extent any reletting mitigates Landlord's damages), unless express written notice of such intention is sent by Landlord to Tenant.

19.5 **Landlord Default.**

19.5.1 **General.** Notwithstanding anything to the contrary set forth in this Lease, other than Article 17 and Section 19.3.1(vi), Landlord shall not be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease unless Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. Upon any such default by Landlord under this Lease, Tenant, except as otherwise specifically provided in this Lease to the contrary, may exercise any of its rights and remedies available at law or in equity.

19.6 **Compliance and Lease.** It shall not be a breach of the Lease if Tenant operates the Club in compliance with the Lease and a Resident Member or Landlord directly or indirectly contends that the operation of the Club in compliance with the Lease is in violation of Section 5.1 or otherwise constitutes a public use or renders the Club a public facility.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, or Option Term if applicable, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by Landlord or any persons lawfully claiming by or through Landlord.

ARTICLE 21

ARBITRATION

21.1 **Arbitration of Disputes.** Except as otherwise provided or modified by Section 19.3, any claim or dispute arising out of or relating to this Lease or the alleged breach of this Lease (other than a claim by Landlord for unlawful detainer) shall be settled by neutral binding arbitration before a panel of three arbitrators unless otherwise agreed by Landlord and Tenant, to be held in accordance with the rules and procedures of Judicial Arbitration and Mediation Services ("JAMS"). Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction over the dispute.

21.2 **Qualification of Arbitrators.** The arbitrators shall be selected for their particular expertise and experience in hotels, private clubs, real estate and/or leasing matters. No arbitrators shall have rendered services to or worked in any capacity for or have an ownership or equity interest in either Landlord or Tenant.

21.3 **Venue.** Hearings shall be held in Orange County or such other place as determined by mutual agreement of Landlord and Tenant.

21.4 **Demand.** Any demand for arbitration must be made in writing to the other party which writing shall identify with particularity the dispute and propose a resolution. Within ten (10) days following demand for arbitration, Landlord and Tenant shall meet and attempt in good faith to resolve the dispute. If within such ten (10) day period Landlord and Tenant are unable to reach a mutually acceptable resolution to the dispute, either Landlord or Tenant may commence arbitration by filing a written demand with JAMS in accordance with its then rules for arbitration and by providing a copy of such demand to the other party. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the dispute is barred by the applicable statute of limitations.

21.5 **Provisional Remedies.** Landlord and Tenant shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. Such application shall not waive a party's arbitration rights under this Lease.

21.6 **Powers and Duties of Arbitrators.** The arbitrators shall have the power to grant legal and equitable remedies and award damages that may be granted or awarded by a judge of the Superior Court of the State of California. The arbitrators shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award of the arbitrator shall be vacated or corrected for any such error or any other grounds specified in Code of Civil Procedure Section 1286.2 or Section 1286.6. The award of the arbitrator shall be mailed to the parties no later than thirty (30) calendar days after the close of the arbitration hearing unless Landlord and Tenant agree otherwise. If the thirtieth (30th) day is a Saturday, Sunday or holiday, then the time shall be extended to the next business day.

21.7 **Discovery.** The parties shall have the right to discovery in accordance with Code of Civil Procedure Sections 1283.05 and 1283.1 provided that the arbitrators' permission shall not be required to take a discovery deposition, but neither party shall be allowed to take more than three (3) depositions. Any discovery dispute shall be resolved by the arbitrators.

21.8 **Costs and Fees of Arbitrator.** The cost and fees of the arbitrators shall be shared equally by the parties, except as otherwise provided in Section 19.3.1(vi).

21.9 **Attorneys' Fees.** The prevailing party shall be awarded reasonable attorneys' fees, and all costs and expenses including expert costs, in accordance with Section 28.16 below.

21.10 **Notice.** BY INITIALING THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY MUTUAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE

SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

We have read and understood the foregoing and agree to submit disputes arising out of the matters included in the "Arbitration of Disputes" provision to neutral arbitration.

Landlord's Initials Tenant's Initials

ARTICLE 22

SIGNS

22.1 **Signage.** All signage of Tenant shall be subject to the advance written approval by Landlord, which shall not be unreasonably withheld. All signage shall conform to applicable laws and regulations of any governmental agencies having jurisdiction over the Premises and to all requirements for other signage in the Monarch Bay Property, and shall be reasonably unobtrusive in line with the location of such signage within a residential community. Signage in place as of the date of execution of this Lease hereby is approved.

ARTICLE 23

COMPLIANCE WITH LAW

23.1 **Applicable Laws.** Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated ("**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all such Applicable Laws which relate to (i) Tenant's use of the Premises, or (ii) the Building and other improvements at the Premises, or (iii) the Premises. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers or employees, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Premises as are required to comply with the governmental rules, regulations, requirements or standards described in this Article 23. The final unappealable judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of such governmental measures, shall be conclusive of that fact as between Landlord and Tenant.

23.2 **Hazardous Materials.** Tenant shall not cause or permit any Hazardous Material to be generated, brought into, used, stored, or disposed of in or about the Premises by Tenant or its agents, employees, contractors, subtenants, or any of the Members or other invitees, except for such substances that are required in the ordinary course of Tenant's business conducted on the Premises or are otherwise approved by Landlord. Tenant shall:

23.2.1 Use, store, and dispose of all such Hazardous Material in strict compliance with all applicable statutes, ordinances and regulations in effect during the Lease Term or Option Term, if applicable, that relate to public health and safety and protection of the environment ("**Environmental Laws**"), including those Environmental Laws identified in Section 23.6; and

23.2.2 Comply at all times during the Lease Term or Option Term, if applicable, with all Environmental Laws.

23.3 **Warranties; Notice of Release and Investigation.** Tenant acknowledges that Tenant or Tenant's predecessors have operated the Property since 1965, and warrants and represents to Landlord that, to the best of Tenant's knowledge, as of the date of this Lease, the Premises are in compliance with the terms of this Lease and with all Environmental Laws.

If, during the Lease Term (including any extensions), either Landlord or Tenant becomes aware of (i) any actual or threatened release of any Hazardous Material on, under, or about the Premises, or (ii) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Material on, under, or about the Premises, that party shall give the other party written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to the other party copies of any claims, notices of violation, reports, or other writings received by the party providing notice that concern the release or investigation.

23.4 **Indemnification.** Tenant, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, shall indemnify, defend, and hold harmless Landlord Parties with respect to all losses arising out of or resulting from the release of any Hazardous Material in or about the Premises, or the violation of any Environmental Law, by Tenant or Tenant's employees, agents, contractors, or invitees. This indemnification includes all losses, liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation. This indemnification shall survive the expiration or termination of this Lease. This indemnification does not extend to any matter arising from the acts or omissions of Landlord Parties or their invitees.

23.5 **Remediation Obligations; Tenant's Rights on Cleanup by Landlord.** If the presence of any Hazardous Material brought onto the Premises by either Tenant or Tenant's employees, agents, contractors, or invitees, results in contamination of the Premises, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises to the condition that existed before the introduction of such Hazardous Material. Tenant shall first obtain Landlord's approval of the proposed remedial action, which shall not be unreasonably withheld or delayed. This

provision does not limit or expand the indemnification obligations set forth in Section 23.4 above or in any way limit Tenant from seeking contribution or redress against any potentially responsible party.

23.6 **Definition of "Hazardous Material"**. As used herein, the term "**Hazardous Material**" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Building or Premises or the Monarch Bay Property. Hazardous Material includes:

23.6.1 Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Sections 9601-9675);

23.6.2 "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code Sections 6901-6992k);

23.6.3 Any pollutant, contaminant, or hazardous, dangerous or toxic chemical, material or substance, within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance or material, now or hereafter in effect);

23.6.4 Petroleum products;

23.6.5 Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code Sections 2011-2297g-4;

23.6.6 Asbestos in any form or condition; and

23.6.7 Polychlorinated biphenyls (PCBS) and substances or compounds containing PCBS.

ARTICLE 24

LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days after Tenant's receipt of written notice from Landlord that such amount is due, then Tenant shall pay to Landlord a late charge equal to ten percent (10%) of the overdue amount plus any reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within ten (10) days after the date they are due shall bear interest from the date when due until paid at a rate per annum (the "**Interest Rate**") equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other

comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus two (2) percentage points, and (ii) the highest rate permitted by applicable law.

ARTICLE 25

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

25.1 **Landlord's Cure**. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

25.2 **Tenant's Reimbursement**. Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 25.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all reasonable legal fees and other amounts so expended. Tenant's obligations under this Section 25.2 shall survive the expiration or sooner termination of the Lease Term or Option Term, if applicable.

ARTICLE 26

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to current or prospective mortgagees, or ground or underlying lessors or insurers; or (iii) post notices of nonresponsibility. Notwithstanding anything to the contrary contained in this Article 26, Landlord may enter the Premises at any time to (A) take possession due to any uncured "event of default" under this Lease subject to the limitations of and in the manner provided herein; and (B) perform any covenants of Tenant which Tenant fails to perform beyond any applicable cure period. Landlord may make any such entries without the abatement of Rent, except as otherwise provided in this Lease, and may take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby (other than to the extent caused by Landlord's gross negligence or willful misconduct in connection with an entry by or for Landlord into the Premises). For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Building and other improvements at the Premises.

ARTICLE 27

PARKING; BEACH MAINTENANCE; LIFEGUARDS

27.1 **Parking.** Tenant shall maintain the parking area of the Premises in good order and repair, including, without limitation, adequate lighting during the term of this Lease and Option Terms, if applicable, and shall permit the use of such parking spaces only as provided in this Lease.

27.2 **Beach Maintenance.** At its sole expense, Tenant shall maintain the beach area around the Premises pursuant to the terms of the Monarch Beach Management Plan issued by the California Coastal Commission in 2015, which includes the relocation of beach sand to direct the discharge from Salt Creek more directly to the ocean and the relocation of wrack from an area in front of the Premises at Salt Creek Beach. Should the California Coastal Commission permit for this work expire, Tenant, at its sole expense, will take all reasonable steps to reinstate such permit and perform the described work consistent with any new permit. Tenant agrees to consult with Landlord in connection with any new permit application and must obtain Landlord's written consent, not to be unreasonably withheld, to any new permit from the California Coastal Commission ("CCC"). Tenant's consultation with Landlord shall include providing Landlord with copies of all material communications to or from the CCC.

27.3 **Beach Lifeguard.** At a minimum, Tenant, at its sole expense, shall supply life guards for the beach in front of the Premises during the same hours as lifeguards are provided at the County Beach at Salt Creek.

ARTICLE 28

MISCELLANEOUS PROVISIONS

28.1 **Terms; Captions.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

28.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

28.3 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Monarch Bay Property and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all prospective liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer, provided such transferee

shall have fully assumed and agreed to be liable for all obligations of this Lease to be performed by Landlord, and Tenant shall attorn to such transferee.

28.4 **Landlord's Title.** Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. Landlord's title is and always shall be paramount to the title of Tenant.

28.5 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Landlord and Tenant other than that of landlord and tenant.

28.6 **Application of Payments.** During the continuance of an "event of default", Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

28.7 **Time of Essence.** Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

28.8 **Partial Invalidity.** If any term, provision or condition contained in this Lease, to any extent, shall be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

28.9 **Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's ownership of the Premises shall be limited solely and exclusively to an amount which is equal to the interest of Landlord in the Premises, provided nothing herein shall limit Landlord's liability under Section 19.3.1 (vi). No member, officer, employee or agent of Tenant or any affiliate shall have any personal liability to Landlord under this Lease. No resident, member, officer, director, employee or agent of Landlord or any affiliate shall have any personal liability to Tenant or any affiliate under this Lease.

28.10 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease, its Exhibits, the Restated and Amended Sublease dated January 1, 2003, which, as amended, is still in effect at the date of execution, and this Lease, constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

28.11 **Force Majeure.** An actual delay or stoppage resulting from fire, earthquake, explosion, flood, hurricane, the elements, acts of God or the public enemy, terrorism, war, invasion, insurrection, rebellion, riots, industry-wide labor strikes or lock-outs (which objectively preclude Landlord or Tenant from obtaining from any reasonable source, labor or substitute materials at a

reasonable cost necessary for performing its respective obligations hereunder), or governmental acts, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "**Force Majeure Event**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure Event, plus an additional reasonable period of time needed for the adjustment of insurance, if applicable.

28.12 **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

28.13 **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

28.14 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) delivered by a recognized overnight courier with verification of delivery requested, or (C) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant at the address set forth in the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth in the Summary, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the overnight courier delivery is made, or (iii) the date personal delivery is made (if made on a business day, otherwise on the next business day) or refused.

28.15 **Authority.** Landlord and Tenant hereby represent and warrant to the other that it is a duly formed and existing entity qualified to do business in California and has full right and authority to execute and deliver this Lease and that each person signing on its behalf is authorized to do so.

28.16 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit or initiate arbitration for the possession of the Premises, for the recovery of any sum due under this Lease, because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees and experts' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

28.17 **Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

28.18 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease.

28.19 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

28.20 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

28.21 **No Violation.** Tenant and Landlord hereby warrant and represent to each other that neither its execution of nor performance under this Lease shall cause such party to be in violation of any agreement, instrument, contract, law, rule or regulation by which such party is bound, and such party shall protect, defend, indemnify and hold the other harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from such party's breach of these warranties and representations.

28.22 **No Discrimination.** Tenant covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, age, race, color, religion, creed, national origin or ancestry, in the sale of memberships to the Club or in the operation of the Club.

28.23 **CASp.** For purposes of Section 1938 of the California Civil Code and to Landlord's actual knowledge, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the property being leased or rented pursuant to this Lease has not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp designated by Landlord, subject to Landlord's reasonable rules and requirements; (b) Tenant, at its sole cost and expense, shall be responsible for making any improvements or repairs within the Premises to correct violations of construction-related accessibility standards; and (c) if anything done by or for Tenant in its use or occupancy of the Premises shall require any improvements or repairs to the Building or Project (outside the Premises) to correct violations of construction-related accessibility standards, then Tenant shall

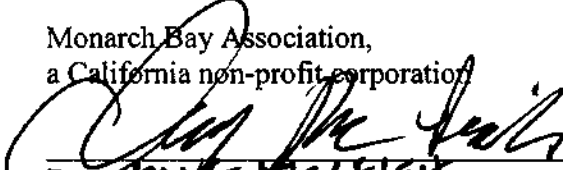
reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such improvements or repairs. The foregoing verification is included in this Lease solely for the purpose of complying with California Civil Code Section 1938 and shall not in any manner affect Landlord's and Tenant's respective responsibilities for compliance with construction-related accessibility standards as provided under this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

"Landlord":

Monarch Bay Association,
a California non-profit corporation

Dated: March 22, 2018


By: DOUG PFELEISH
Its: PRESIDENT

"Tenant":

MONROE MBR, LLC
a Delaware limited liability company

Dated: _____, 2018

By:
Its:

reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such improvements or repairs. The foregoing verification is included in this Lease solely for the purpose of complying with California Civil Code Section 1938 and shall not in any manner affect Landlord's and Tenant's respective responsibilities for compliance with construction-related accessibility standards as provided under this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

"Landlord":

Monarch Bay Association,
a California non-profit corporation

Dated: March 22, 2018


By: DOUG MIFFLIN
Its: PRESIDENT

"Tenant":

MONROE MBR, LLC
a Delaware limited liability company

Dated: _____, 2018

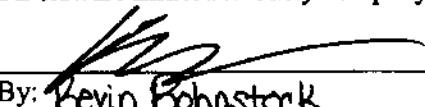

By: Kevin Fohnstock
Its: Vice President + Assistant Secretary

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

DESCRIPTION

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF PARCELS 1 AND 2, AS SHOWN ON A MAP FILED IN BOOK 79, PAGE 20 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, LYING WITHIN THE LAND DESCRIBED AS PARCELS A AND B IN THAT CERTAIN MEMORANDUM OF LEASE AS RECORDED JULY 1, 1960 IN BOOK 5311, PAGE 44 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY.

EXCEPTING FROM SAID PARCEL 1 THAT PORTION LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT THE NORTHWESTERLY LINE OF SAID PARCEL 1, SOUTH 27 DEG. 23' 45" WEST 120.00 FEET FROM THE MOST NORTHERLY CORNER THEREOF; THENCE EASTERLY ON A STRAIGHT LINE TO A POINT ON THE SOUTHEASTERLY LINE OF SAID PARCEL 1, DISTANT SOUTH 52 DEG. 55' 06" WEST 90.00 FEET FROM THE MOST EASTERLY CORNER THEREOF.

EXHIBIT B

MAP OF PREMISES

EXHIBIT B

MAP OF PREMISES

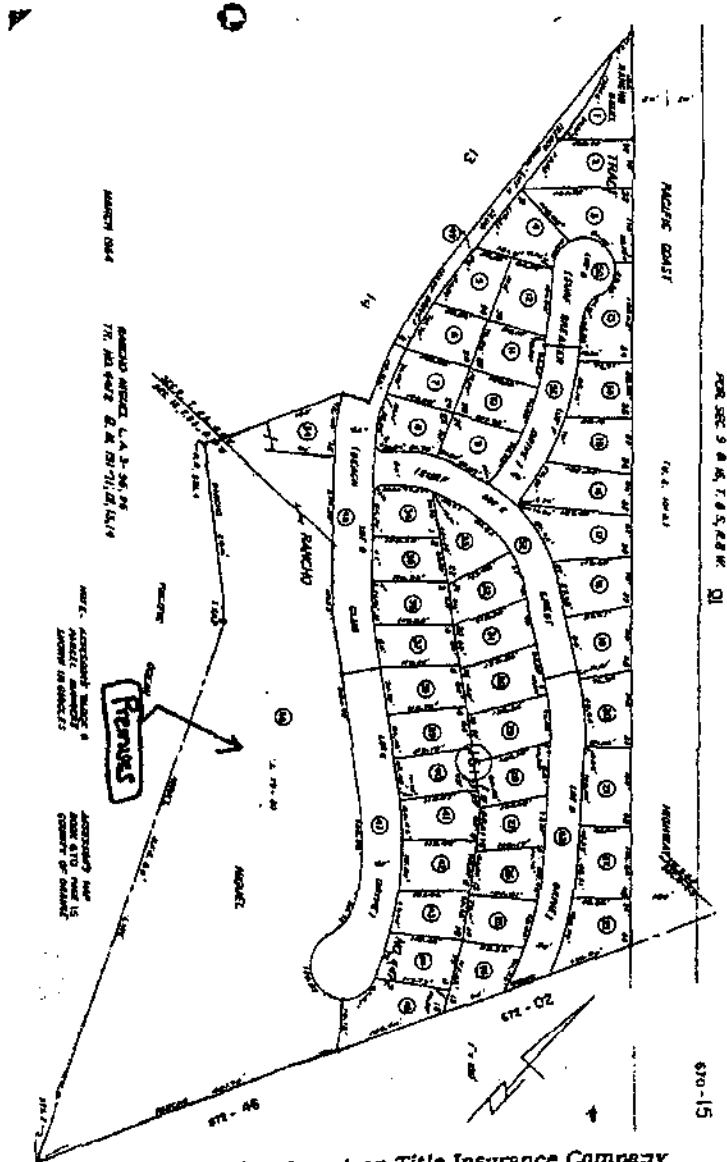


Exhibit B

First American Title Insurance Company
THIS MAP IS FOR INFORMATION ONLY AND IS NOT A PART OF THIS TITLE ENDORSEMENT

EXHIBIT C

MAP OF ACCESS ROAD

EXHIBIT C

MAP OF ACCESS ROAD

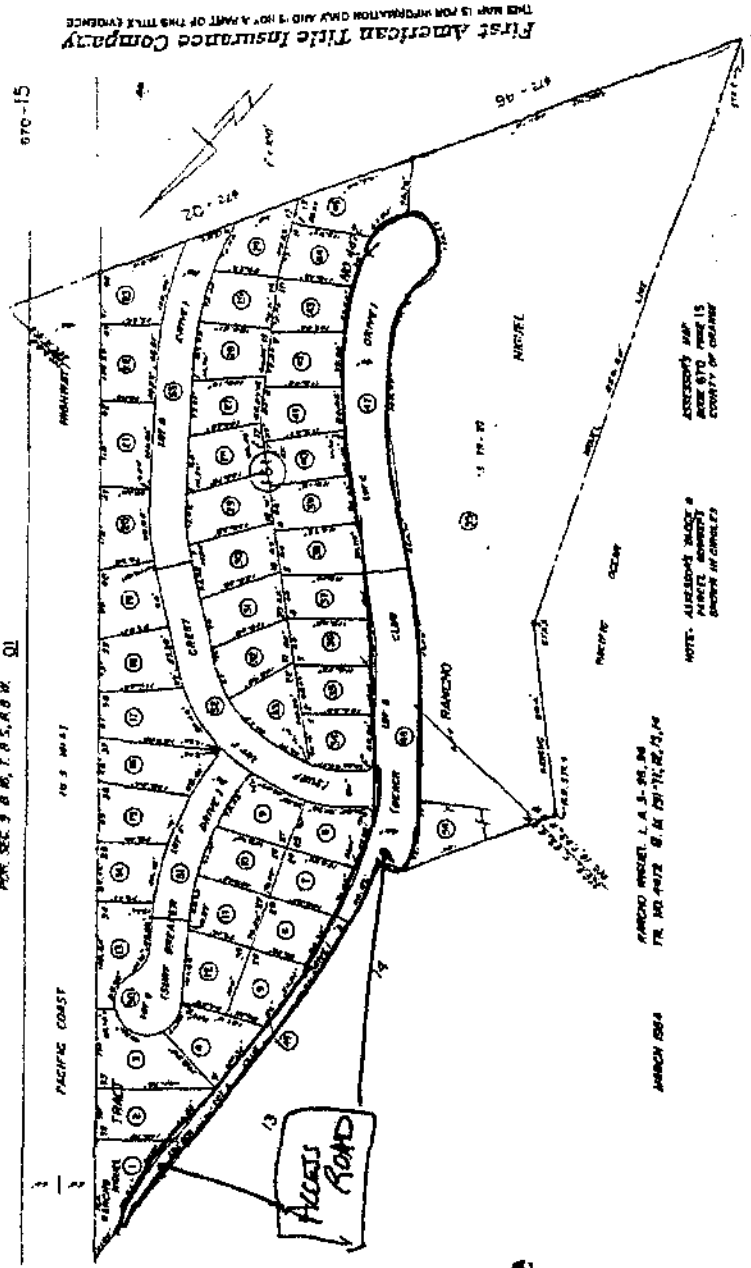


EXHIBIT D

**MONARCH BAY CLUB
RULES AND REGULATIONS
MARCH 22, 2018**

EXHIBIT D

MONARCH BAY CLUB RULES AND REGULATIONS MARCH 22, 2018

STATEMENT OF PURPOSE

These Rules have been adopted by the Board of Directors of the Monarch Bay Club to govern activities at the Bay Club. The Bay Club is a private Club, and is located adjacent to the Monarch Bay Community in Dana Point, California. Many of the Rules set forth below are designed to minimize the impact of Club operations on its neighbors. Although these Rules will be enforced equitably and in a non-discriminatory manner, questions of interpretation of Rules that effect resident neighbors of the Club will be determined in a manner best contemplated to minimize noise, traffic or other interference with the Club's neighbors in Monarch Bay.

THE CLUB

The Monarch Bay Beach Club is a private beach club, operated for the benefit of its Members and their permitted guests. Only Members and permitted guests are entitled to the use and enjoyment of the Club's facilities, and all such use is subject to these Rules and the Bylaws of the Club. Membership in the Club is a privilege, not a right, and does not entitle a member to any equity participation or voting rights. Memberships may be suspended or terminated for a violation of these Rules.

MEMBERS

There are four classes of Members of the Club, and certain restrictions apply to certain of such classes but not to all, as more particularly set forth below. The classes of members are:

1. Resident Members (this includes one Landlord Membership and one Legacy Membership).
2. Nonresident Members.
3. Special Members.
4. Hotel Occupant Members. (Registered overnight guests of the Monarch Beach Resort & Spa (however flagged, the "Hotel"), during such persons' registered stay only).

Except for the Sponsor Member (the only voting member), all Members must be individuals. There are no "Corporate" Memberships available. Resident and Nonresident Members may access the Club by personal vehicle and, subject to availability and the limitations set forth in Rule i.3, use the Club's parking facilities. Special Members and Hotel Occupant Members may access the Club only by the Tram (defined below), except for handicapped persons. Special Members and Hotel Occupant Members may not use the Club's parking facilities.

RULES

1. Access, Parking, General Rules

1.1 Vehicular Access and Parking - General. Vehicular access to the Club is permitted only through the gated entrance of the Monarch Bay Community. Only Resident and Nonresident Members, permitted guests of Resident and Nonresident Members (subject to the provisions of Rule 3), authorized vendors, Club personnel, handicapped persons and emergency vehicles may access the Club by car or truck and use the Club's parking facilities.

1.2 Tram Access. Special Members and Hotel Guests may access the Club only by the tram (the "Tram") operated by the Hotel, pursuant to the Tram Operation Plan approved by the City of Dana Point and the California Coastal Commission (the "Tram Plan"). Hours of operation, frequency of Tram trips, Tram capacity and safety and noise reduction measures shall be as set forth in the Tram Plan, as the same may be amended from time to time, provided that the Tram Plan may not be amended to increase the size of Trams, the frequency of trips or the hours of operation without the prior approval of the Board of Directors of the Monarch Bay Association ("MBA") and the Board of Directors of the Estates at Monarch Cove.

1.3 Parking Regulations. The Club Manager may institute from time to time such reasonable procedures to insure maximum availability of parking for Club Resident and Nonresident Members on a first-come, first-served basis, with priority being afforded to Members over guests of Members. Any such procedures shall be distributed to all Members at least ten (10) days prior to becoming effective. As of the date hereof, guest parking is prohibited during daylight hours on weekends or holidays (after that, only on space available basis acknowledged by Club Manager) and is limited to one guest car on Fridays and to two guest cars on Mondays through Thursdays (other than holidays). However, the Club Manager has discretion to permit additional Member and guest parking when weather and other conditions indicate that admission of additional cars will not burden the capacity of the parking lot so that Members will be unable to park. Parking on the streets of Monarch Bay by any party other than a Resident Member or such Member(s)' guests is prohibited, and violators are subject to towing at their expense.

1.4 Parking Decals. Lost parking decals must be reported and will be replaced for a \$75 replacement fee.

1.5 Resident Member Transfer Fee. Residents may transfer their membership to tenants or new residents/owners. A Transfer Fee of \$350 will be assessed to the buyer or renters membership account. Seller's parking decals must be returned at time of transfer before new residents/owners or tenants are to be issued parking decals. A membership account must be in current standing prior to transfer; any outstanding balance will prohibit transfer of membership. All balances and fees incurred with the Monarch Bay Club must be paid in full prior to closing sale of any property in the Monarch Bay community. A membership may only be transferred once in any six month period with a maximum of two transfers permitted in any calendar year.

1.6 Method of Payment at Monarch Bay Club. All charges must be routed to member account. Cash, check and credit card payments are not accepted at the Monarch Bay Club.

2. Members and Hotel Guest Check-In and Identification.

2.1 Resident and Nonresident Members. Nonresident Members accessing the Club through Monarch Bay must check in at the Monarch Bay guard house as a condition of entering the Club. All Resident and Nonresident Members must display a current Monarch Bay Club decal on the lower portion of the driver's side windshield of their vehicles to gain access and to be permitted to park in the Club's parking lot. Guests of Resident and Nonresident Members must display a guest pass obtained from the Monarch Bay guard. Vehicles not displaying a Membership decal or guest pass may be towed at the vehicle owner's expense.

2.2 Special and Hotel Occupant Members. Special Members accessing the Club by Tram must present to the Tram driver their Monarch Bay Club Membership card. Hotel Guests must present identification which identifies the Hotel Guest.

3. Guest Policies. The following rules regarding guest use of the Club will be strictly enforced.

3.1 Guests of Resident and Nonresident Members. Resident and Nonresident Members may invite guests to the Club at their discretion, subject to the availability of dining room reservations and the limitations on parking and parties set forth in these Rules.

3.2 Special Members. Special Members may invite guests at the ratio of three (3) guests per Member or Household Resident. For example, a couple who are Special Members may invite up to three (3) couples to join them as guests. Such guests may access the Club only by the Tram. The foregoing limitations apply to all Club usage, including Club Events.

3.3 Hotel Occupant Member. Hotel Guests may invite up to but not more than three (3) guests per registered Hotel Guest only after 5:00 pm. Such guests may access the Club only by the Tram.

3.4 Member Responsibility. Each Member inviting any guest to use the Club's facilities must have at least one person comprising the Member (or another Member in good standing in the event of an emergency) present in person on Club grounds throughout the duration of such guest(s)' presence on Club property. There are no exceptions to this Rule. Members are fully responsible for the acts and omissions of their guests. Guests of Members must use their sponsoring Member's Club or room charge account for all purchases at the Club.

3.5 Violations. Any Resident, (subject to any limitations set forth in the Ground Lease applicable to the Club property), Nonresident or Special Member who violates the applicable Rules set forth above may have such Member's membership suspended or terminated. Any Hotel guest who violates any Rule applicable to the Hotel Occupant Member may be ejected from and barred from further entry to the Club.

4. Charges. Cash and credit card transactions at the Club are prohibited. The only acceptable method of payment for food and beverages and other Club services and amenities are a Member's Club account or a Hotel guest's Hotel room account. Nothing above, however, shall

preclude a Member or guest from paying cash gratuities to Club personnel. The Club may assess a fee to issue a replacement for a lost Club membership card or vehicle decal.

4.1 All members must provide a valid credit card for their member file to which all and any club charges will be billed per the monthly statement. Payments not received within 30 days of statement date will be applied to credit card on file. Accounts past due over thirty (30) days will be subject to one and one-half (1.5) percent late charge per month. Any amount not paid within thirty (30) days of the statement date will result in suspension of membership privileges until account becomes current.

4.2 It is the responsibility of the member to review and sign all charges at the point of sale. Dispute of charges or request for receipts must be submitted within 30 days from statement date after which charges may not be disputed. After 30 days from statement date, all charges will be deemed valid. All disputes will require submission of specific check number and dates for further review. Any refunds will be in the form of a credit to the member account.

4.3 It is the responsibility of the member to notify the Hotel of changes to their credit card/s on file, including changes to expirations, numbers, names, addresses, or any and all other items.

4.4 **Methods of Payment for Monthly Statements:** Monthly statements are payable via credit card on file, check or cashier check. Cash is not accepted for payment of monthly balances. Checks must be mailed to One Monarch Beach Resort, Dana Point, CA 92629 Attn: Membership Department.

5. **No Commercial Activities.** The Club is a private club, and no commercial activities or activities for the general public may be conducted on Club premises. The Club dining and bar facilities, lawn and beach areas are not and shall not be open to the public. The Club shall be operated solely for the benefit of its Members and permitted guests. Notwithstanding the foregoing, the Club Manager, in its discretion may:

- (a) Arrange for catering of parties and Club Events through the Hotel, but only when the Hotel and Club are managed by the same or affiliated entities.
- (b) Make available for Members and their permitted guests at a charge or charges determined by the Manager items such as kayaks, surfboards, body boards, standup paddleboards and other non-motorized recreational equipment, provided the general public shall have no right to use any of such items.

6. **Hours.** The Club shall be open for seven (7) business days a week, subject to closures for repairs, capital improvements and causes beyond the reasonable control of MBC, including, without limitation, weather conditions, strikes and lockouts, and acts of war, riot or terrorism; provided however, that Tenant may elect to close the Club or limit hours of operation on New Year's Day, Christmas Day and Thanksgiving Day. Hours of restaurant operation in the Club shall commence no earlier than 10:00 a.m. and shall cease no later than midnight, Sundays through Thursdays, and 1:00 a.m., Fridays and Saturdays. The minimum hours of restaurant service shall be as follows:

BAY CLUB

Lunch	Mon-Sat	11:30 a.m. – 2:30 p.m.
	Sun	Brunch 10:30 a.m. – 2:30 p.m.
Dinner	Mon-Thur	5:00 p.m. – 9:00 p.m.
	Fri -Sat	5:00 p.m. – 9:30 p.m.
Bar		
All-Day Bar Lounge Menu	Sun-Thur	11:30 a.m. – 9:00 p.m.
	Fri – Sat	11:30 a.m. – 9:30 p.m.

*Parking lot gate is locked nightly by Patrol One Security at 11:00 p.m. These hours may be amended only by written consent of the Landlord.

7. **Closures.** The Club's restaurant and bar may be closed for repairs or capital improvements (provided that reasonably anticipated repairs and capital improvements shall not be scheduled from Memorial Day through Labor Day), and, except for emergencies, shall not interfere with previously scheduled Member Parties, and the restaurant and bar may be closed, and access to the beach restricted in response to a court order or the order or recommendation of any public health agency.

8. **Sound Amplification.** The use of amplifiers or other sound amplification devices (which includes stereos, DVD players, CD players, radios, boom boxes, amplified musical instruments, and the like) outside of the Club building may not commence before 11:30 a.m. on any day and must cease by 8:30 p.m. Sundays through Thursdays and by 10:00 p.m. Fridays and Saturdays. Such devices must be oriented in a manner that directs sound away from the residents on Beach Club Drive (i.e., toward the ocean).

9. **Equal Availability of Facilities.** The Club shall be available on a non-discriminatory, first-come, first-served basis to all Members and their permitted guests, subject to the limitations on parties set forth below. There shall be no special or segregated restaurant, bar, lawn, beach or other areas

10. **Restaurant and Lounge.** The restaurant and lounge are for the enjoyment of all Members. No behavior will be permitted by anyone who disturbs the ability of others to enjoy the restaurant and lounge areas. The Club Manager shall have the right to refuse service to anyone.

10.1 **Consumption of alcoholic beverages.** Service will be refused to anyone who appears intoxicated or who behaves in an unruly or disorderly fashion. Alcohol service will be discontinued one-half hour before the restaurant and lounge close for the day.

10.2 **Children.** Members and guests are responsible at all times for supervising their children. Minors are permitted in the lounge from open until 8:00 p.m.

10.3 Attire. When in restaurant and lounge area all guests and members are required to wear appropriate attire, i.e. beach cover-up, shirt, etc.

During periods when minors are not allowed in the lounge, minors accompanied by adults will be served in the restaurant area, including outside patios. However, no persistent crying, or loud, unruly or disruptive behavior will be tolerated at any time at the Club.

Any Member violating these rules may be subject to the following:

- (i) First violation -written warning.
- (ii) Subsequent violation - suspension or termination of Membership, as determined by the Club Board of Directors, subject to any applicable limitations in the Ground Lease.

However, flagrant or willful violations may result in immediate suspension or termination, and will result in removal of the offending parties from the Club premises.

11. Parties and Events.

11.1 Parties.

- (a) Definition. A "party" is an event organized by a Member, as opposed to a Club Event (defined below), excluding meals or gatherings for twenty (20) or fewer persons. All parties and Club Events must end by 11:00 p.m. All food and beverages must be supplied by the Club or the Hotel, except (i) that a Member or guest may bring in a cake for a birthday, anniversary or other similar event, and (ii) as provided in Rule 10.4.
- (b) Size Limitations. Except as set forth below, the maximum number of participants at any party shall be fifty (50) individuals. Each party must be booked in advance through Club management, and is subject to the availability of Club facilities and/or prior bookings. There shall be no more than one party conducted at one time. If a party will involve Member guests arriving by vehicle, the names of all such guests must be registered in advance with the Monarch Bay guard gate.
- (c) Exception to Size Limitations. Subject to availability and/or prior bookings, a Resident Member, and only a Resident Member may sponsor a party for more than 50 persons, but no more than 250, provided that the same is approved in writing by MBA, and provided, further, that the Member complies with all applicable legal requirements, including obtaining any special permit from the City of Dana Point, and pays for the services at least one security guard (or more, as determined by MBA in each instance) who shall be present at all times during the party.
- (d) Presence of Sponsor; Admission Procedures. Any Member sponsoring any party at the Club must have one person comprising such Member physically present throughout the duration of the party. Resident or Nonresident Members who have

party guests accessing the Club by vehicle through Monarch Bay must register such guests in advance at the Monarch Bay guard gate and verify arrival with the guard. For parties arranged by the Hotel, one of the Club managers shall be deemed the Member's representative for the purpose set forth above. It is the responsibility of the member to coordinate with Monarch Bay Club staff for all planned parties and events at Monarch Bay Club.

- (e) Violation of Requirements. The requirement that a Member be present throughout the duration of a party sponsored by such Member is designed to insure that only Members and permitted guests utilize the Club as a private club. Such presence is the material consideration in each instance for permission to utilize the Club for a private party. Under no circumstances may a Member arrange a party for a non-member (other than the Hotel Occupant Members for Hotel Guests). Any Member violating this requirement may be subject to the following:
 - (i) First violation -written warning.
 - (ii) Subsequent violation - suspension or termination of Membership, as determined by the Club Board of Directors, subject to any applicable limitations in the Ground Lease.
- (f) Additional Limitations. Each party also shall be subject to the Rules regarding hours of operation and sound amplification.
- (g) Receipt and Payment. Determined minimum spend for an event must be paid in full prior to event; any overages will be applied to the credit card on file. A receipt of payment and summary of charges will be provided by Club Management to Member. Payment can be made on the credit card on file, another credit card as provided or by check mailed to _____ at One Monarch Beach Resort, Dana Point, CA 92629 Attn: Membership Department.

11.2 Club Events.

- (a) Annual Club Events. The Club, in its sole discretion, may sponsor annual barbecues or other large events for the benefit of the Members and their permitted guests one day on each of Memorial Day weekend, July 4th (or July 4th weekend, if applicable), Labor Day weekend and New Year's Eve. If a Club Event is held on a reservation basis, the maximum number of reservations permitted at such Club Event shall be 250. Any such "Club Event" shall comply with the requirements of applicable law and the Rules regarding hours of operation and sound amplification. The Club shall provide adequate security for Club Events, including a mobile security guard to enforce the prohibition against parking on the streets of the Monarch Bay Community.

11.3 Special Club Dinners, Etc. The Club, in its sole discretion, at any time or from time to time, may arrange for special theme dinners, brunches, luncheons, children events, buffets, wine tastings, or similar matters, available to all Members on a first-come, first-served basis. None of such events shall be deemed a party or a Club Event for the purposes of these Rules and Regulations.

11.4 Fire Pits. The Club currently has eight (8) fire pits, which are for the use of Members and their guests. There is a rental fee to reserve a fire pit and reservations should be made in advance. Fire pit reservations are taken on a first come first serve basis. Fire pit fee includes set up of all items, two bundles of wood, beach chairs, food tables, dining tables, dining chairs, table linen, garbage can, grill and propane and is subject to the published discount schedule in the lease. Members may bring food and soft drinks for their own consumption when using the Club's fire pits or grills for parties of 25 or less than 20. All parties over of 20 or more need to buy all food and beverage from the club. Alcoholic beverages must be purchased through the Club at all times. The limitation with respect to the size of parties applies to all fire pits. Groups at adjacent fire pits may not combine their parties to circumvent this limitation. Members who do not clean up and leave excessive mess may be subject to the imposition of a clean-up fee, at discretion of Monarch Bay Club management. After 6:00 p.m. on the day of use, between Memorial Day weekend and Labor Day weekend, and after 4:00 p.m. between Labor Day weekend and Memorial Day weekend, if a fire-pit remains unreserved, a Resident member may use the fire pit free of charge, in which event (a) no wood, food tables, dining tables, dining chairs, table linen, garbage can, grill and propane will be provided, and (b) the Resident Members will be responsible for all associated clean up and returning the fire pit and its immediate surrounding to its prior condition. Members who do not clean up and leave excessive mess may be subject to the imposition of a clean-up fee, at discretion of Monarch Bay Club management.

11.5 Tents. Use of tents for any party or Club Event shall be permitted only upon issuance of a permit from the City of Dana Point. Resident Members sponsoring a tented party must supply a copy of the permit to the Club and to the Monarch Bay Association ("MBA") (faxed to 949) 582-7796 at Progressive Management) at least 3 days in advance of the party. Tent installation and removal is allowed only between the hours of 9:00 a.m. and 11:00 p.m.

12. Prohibited Activities. The following activities are prohibited on Club property:

- (a) Tailgate parties.
- (b) The use of glass, crystal, porcelain or china on the lawn or beach.
- (c) Tents and canopies (unless provided by the Club) on the lawn or beach.
- (d) Grills, hibachis or open-air fires (unless provided by the Club).
- (e) Camping.
- (f) Launching of any motor driven watercraft.
- (g) Overnight parking.
- (h) Surf fishing.

- (i) Pets and animals, whether or not leashed, unless proof of registration as a service animal is presented prior to entrance to the facility.
- (j) Alcoholic beverages, except as purchased through the Club or the Hotel or under the terms of the published corkage fee.
- (k) Fireworks.
- (l) Vandalism, theft, violations of law and activities, which create a public nuisance or a danger to others, including littering.
- (m) Smoking (the Monarch Bay Club is a smoke free facility).

13. **Administration.** Inquiries, complaints or other communications regarding the Club should be directed in writing to 500 Monarch Bay Drive, Monarch Beach, California 92629 or by telephone at (949) 234-3330.

14. **Lockers.** Lockers are available only to Members on a first-come, first- served basis at a rate of \$300 per year. A refundable lock deposit will be required.

15. **Assumption of Risk.** Each Member or guest swimming in the ocean assumes the risk of such activity, which includes, but is not limited to, large surf, riptides, shifting sandbars, submerged objects, and operating a non-motorized recreational equipment. Each Member or guest using a firepit or grill or sporting or play equipment assumes the risks incident to such use. The Club is not responsible for, and each Member and guest by the use of the Club's facilities releases the Club, its other Members and management and staff from any and all liability for injury or death or property damage resulting from any of the foregoing activities.

16. **Amendments by the Club.** These Rules may be amended from time to time in the discretion of the Club's Board of Directors, provided that Rules 1 through 7, and 10 may not be amended without the consent of the Board of Directors of the Monarch Bay Association ("MBA"). Revised Rules will be sent to all Members at least ten (10) days prior to becoming effective.

17. **Amendments by the MBA.** These Rules may be amended by the MBA as follows:

- (a) Any Resident Member of the MBA in good standing may submit to the MBA Board of Directors a request for an amendment to the Rules which must include a petition containing the signatures of 25% of the Members of the MBA indicating their support for the amendment;
- (b) Upon receipt of the petition with the requisite number of signatures, the MBA will submit the proposed amendment to the Rules to the Club which shall within 30 days of receipt provide an analysis of the per annum cost, if any, of the proposed amendment to the Club and a proposed adjustment in the annual rent payable to the MBA under the Club Lease, if any;

- (c) Within 45 days after receipt of the Club's cost analysis as provided in paragraph b., above, the MBA shall mail ballots to the MBA membership and allow a 30 day minimum voting period which ballot will include a description of the cost of the Rule change;
- (d) If 67% of the MBA members approve the proposed amendment, then the proposed amendment will be adopted effective 30 days after the vote and the rent under the Lease will be adjusted to account for the cost of the amendment to the Club.

18. Governing Document. If there are any discrepancies, ambiguities, or conflicts between these Rules and Regulations and the Lease between the MBA and Monroe MBR, LLC dated March 22, 2018, the Lease shall supersede and govern.

EXHIBIT E

LEGACY MEMBERSHIP RULES

EXHIBIT E

LEGACY MEMBERSHIP RULES

Under the Terms of the Lease for the Monarch Bay Club between the Monarch Bay Association and Monroe MBR, LLC, the parties to that Lease have granted a single Legacy Membership for the benefit of 18 descendants of the Moulton Family (each individual beneficiary of the Legacy Membership shall hereafter be referred to as a "Descendent Member"). This Legacy Membership shall be irrevocable except that any Descendent Member shall be subject to the same disciplinary rules of Resident Members. Each of the Descendent Members shall be provided with a separate Member's Club account, a membership card and parking decal, as provided for in the Club Rules and Regulations.

Classification

Monarch Bay Association and Monroe MBR, LLC acknowledge that the Legacy Membership is classified as Resident Members. The Legacy Member shall not be considered or labeled as a part of "Special Members," or "Nonresident Members." Legacy Membership shall not be included within any calculation of Special or Nonresident Members and shall not be a part of any Special or Nonresident limit or cap.

Legacy Membership Benefits and Fee Limits

Descendent Members shall be subject to the same membership obligations and the same benefits as are received by "Resident Members." "Resident Members" are defined as residents of the Monarch Bay community.

Restrictions on Use

Descendant Members shall be subject to the same restrictions, rules and regulations governing use of the Club and its facilities that apply to Resident Members.

Household Residents and Guests of Legacy Member

Each Descendant Member shall be entitled to designate a Descendant Member representative as the primary member, and all members of such primary member's immediate family residing in the same household with such primary member, including the spouse of the primary member and any children under the age of twenty-five (25) years old, shall be entitled to access and use the Monarch Bay Club. A Descendant Member will fall under the same "guest" policies as Monarch Bay residents.

Member Parties

Descendant Members shall have the same privileges to host parties and other gatherings at the Club as Resident Members. Descendant Members shall be subject to the same restrictions, rules and regulations that apply to Resident Members concerning parties and gatherings.

Access and Parking

Descendant Members shall be permitted to access the Club by passenger vehicular access through the guard gate at the Monarch Bay Property and Beach Club Drive. Each Descendant Member may use the parking spaces available in the parking area of the Club at any time and at no charge and expense to the Descendant Member. Descendant Members shall be subject to the same restrictions on parking that apply to Resident Members.

Eligible Descendant Members

Each of the following three (3) families (individually, a "Legacy Family" and collectively, the "Legacy Families") shall be entitled to six (6) Descendant Memberships in the Club: (a) Lewis M. Mathis and his heirs; (b) Jane M. Barnes and her heirs; and (c) Glenn E. Mathis, Jr. and his heirs. For purposes of determining eligibility for the Descendant Memberships to be granted hereunder, the term "heirs" shall mean children, grandchildren and other lineal heirs of the designated ancestor, with the relationship of parent and child determined in accordance with the provisions of California Probate Code Section 21115 in effect on January 1, 2008.

Legacy Family Representatives

Each Legacy Family shall select one (1) Legacy Family member to act as its representative ("Legacy Family Representative") to communicate with the Monarch Bay Association or its Tenant concerning the Descendant Memberships granted to their respective family. Each Legacy Family Representative shall have full authority to act on behalf of their respective Legacy Family and to bind their members on all matters and decisions affecting the Legacy Memberships including, but not limited to, (a) the power to designate up to six (6) members of the Legacy Family who shall be Descendant Members and (b) the power to make changes in the identity of the Descendant Members. The initial Legacy Family Representatives shall be Todd W. Mathis, Franklin J. Barnes, III and Jared K. Mathis. Each Legacy Family Representative may give written notice to Monarch Bay Association and its Tenant identifying the Descendant Members who shall be granted the six (6) Descendant Memberships allocated to each Legacy Family; provided, however, Monarch Bay Association acknowledges that the following individuals shall constitute the initial Descendant Members and initial Legacy Family Representatives of the Legacy Families (with each Legacy Family Representative reserving the right to designate any remaining Descendant Members at a later date):

Lewis M. Mathis and Christyn E. Mathis Legacy Family (4 of 6 available designated below)

Lewis M. Mathis
Todd W. Mathis (Legacy Family Representative)
Jeffrey H. Mathis
Stephanie C. Mathis.

Jane M. Barnes and Franklin J. Barnes, Jr. Legacy Family (4 of 6 available designated below)

Jane M. Barnes
Franklin J. Barnes, III (Legacy Family Representative)
Chelsea Taylor
Scott T. Barnes.

Glenn E. Mathis, Jr. and Marion C. Mathis Legacy Family (4 of 6 available designated below)

Glenn E. Mathis, Jr.
Glenn E. Mathis, III
Wade M. Mathis
Jared K. Mathis. (Legacy Family Representative)

EXHIBIT F

SITE MAP OF HOTEL TRAM PATH

EXHIBIT F

SITE MAP OF HOTEL TRAM PATH

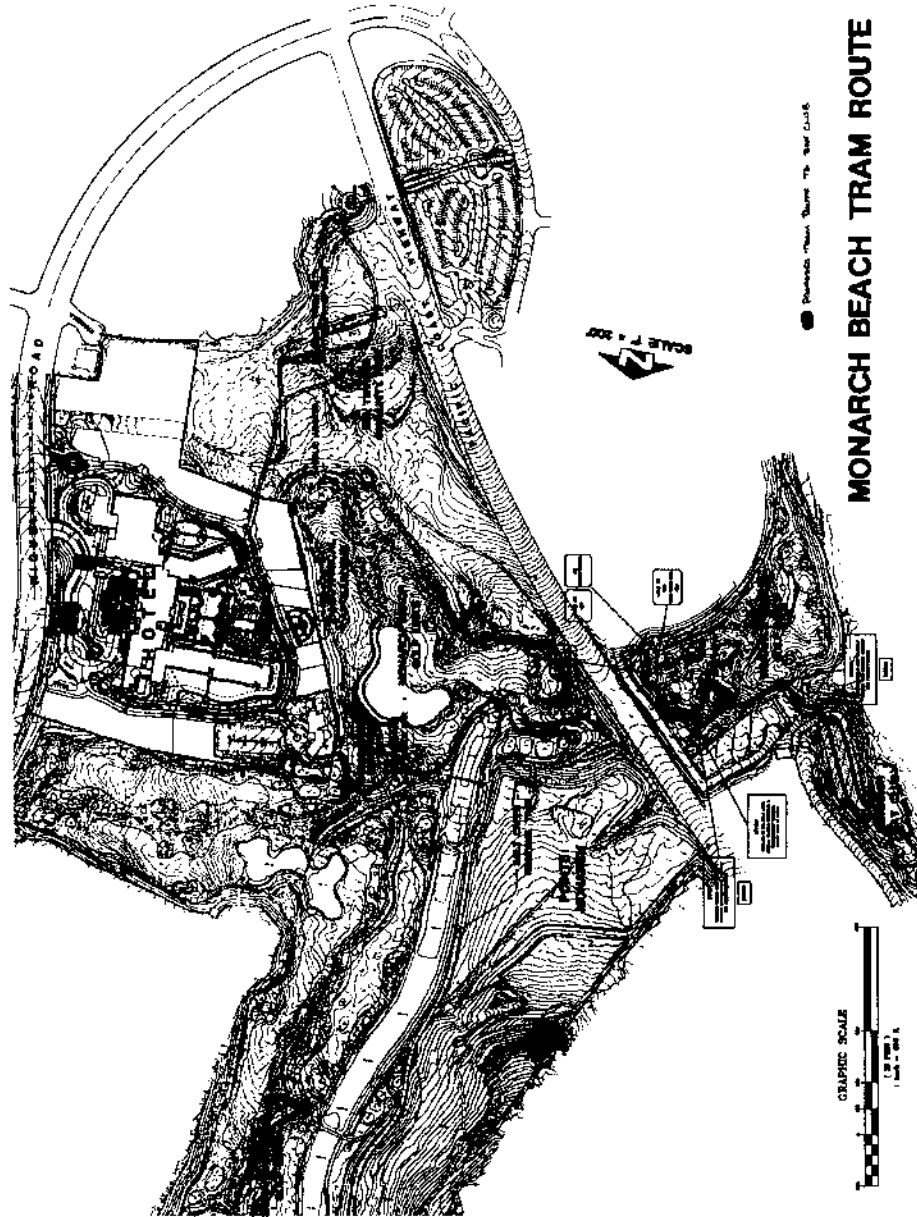


EXHIBIT G

MONARCH BAY CLUB
FORM OF TENANT'S ESTOPPEL CERTIFICATE

EXHIBIT G

MONARCH BAY CLUB
FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Lease (the "Lease") made and entered into as of _____, by and between Monarch Bay Association as Landlord, and the undersigned as Tenant, for Premises known as the Monarch Bay Club and more particularly described in the Lease attached hereto, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.

2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on _____, and the Lease Term expires on _____, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building or the Monarch Bay Property.

3. Base Rent becomes payable on _____

4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.

5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:

6. Tenant shall not modify the documents contained in Exhibit A without the prior written consent of Landlord's mortgagee.

7. All monthly installments of Base Rent and all Additional Rent and all monthly installments of Additional Rent have been paid when due through _____.

8. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.

9. No Base Rent has been paid more than one calendar quarter, month or year, respectively, in advance and no security has been deposited with Landlord except as provided in the Lease.

10. As of the date hereof, there are no existing defenses or offsets, or, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned under the bankruptcy or similar laws of the United States or any state.

13. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.

14. There is no tenant improvement work to be performed by Landlord under the Lease.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at _____ on the _____ day of _____, _____.

"Tenant":

By:
Its:

By:
Its: