

AMENDED AND RESTATED LEASE

Between

COUNTY OF CONTRA COSTA

as Lessor

and

Dale Village Apartment Company, LP

as Tenant

April 1, 2023

Contra Costa County
Buchanan Field Airport
550 Sally Ride Drive
Concord, CA 94520-5606
(925) 681-4200

AMENDED AND RESTATED LEASE

COUNTY OF CONTRA COSTA

AND

DALE VILLAGE APARTMENT COMPANY, LP

| | | |
|-----|--|------|
| 1. | <u>Lease</u> | -2- |
| 2. | <u>Capital Improvements; Shortfall Fee</u> | -2- |
| 3. | <u>Term</u> | -2- |
| 4. | <u>Holding Over</u> | -2- |
| 5. | <u>Rent</u> | -3- |
| 6. | <u>Percentage and Other Additional Rent</u> | -3- |
| 7. | <u>Additional Payment Provisions</u> | -6- |
| 8. | <u>Lessor Processing and Transaction Fees</u> | -7- |
| 9. | <u>Use of Premises</u> | -7- |
| 10. | <u>Condition of Premises</u> | -7- |
| 11. | <u>Utility Obligations</u> | -8- |
| 12. | <u>Alterations and Additions</u> | -8- |
| 13. | <u>Maintenance, Repair and Storage</u> | -9- |
| 14. | <u>Lawful Conduct</u> | -12- |
| 15. | <u>Waste, Quiet Conduct, Nuisance, Pollution</u> | -13- |
| 16. | <u>Hazardous Materials</u> | -13- |
| 17. | <u>Stormwater Discharge</u> | -15- |
| 18. | <u>Rules and Regulations</u> | -16- |
| 19. | <u>Noise Ordinance</u> | -16- |
| 20. | <u>Security</u> | -16- |
| 21. | <u>Indemnification</u> | -16- |
| 22. | <u>Insurance</u> | -17- |
| 23. | <u>Taxes</u> | -18- |
| 24. | <u>Inspection, Access and Notice</u> | -18- |
| 25. | <u>Assignment and Encumbrances</u> | -19- |

| | | |
|-----|---|------|
| 26. | <u>Surrender of Possession</u> | -19- |
| 27. | <u>Default</u> | -20- |
| 28. | <u>Lessor’s Remedies</u> | -22- |
| 29. | <u>Destruction</u> | -23- |
| 30. | <u>Condemnation</u> | -24- |
| 31. | <u>Cancellation by Lessor</u> | -24- |
| 32. | <u>Financing of Leasehold Estate</u> | -25- |
| 33. | <u>Non-Discrimination</u> | -28- |
| 34. | <u>Operation of Airport by Lessor</u> | -29- |
| 35. | <u>Airport Use and Development</u> | -29- |
| 36. | <u>Development of Premises</u> | -30- |
| 37. | <u>Instrument of Transfer</u> | -30- |
| 38. | <u>Choice of Law</u> | -30- |
| 39. | <u>Notices</u> | -30- |
| 40. | <u>Time is of the Essence</u> | -31- |
| 41. | <u>Binding on Successors</u> | -31- |
| 42. | <u>Invalid Provisions; Severability</u> | -31- |
| 43. | <u>Entire Agreement</u> | -31- |
| 44. | <u>Cumulative Rights and Remedies</u> | -31- |
| 45. | <u>No Third-Party Beneficiaries</u> | -32- |
| 46. | <u>No Continuing Waiver</u> | -32- |
| 47. | <u>Covenant Against Liens; Recordation Against Premises</u> | -32- |
| 48. | <u>Force Majeure</u> | -32- |
| 49. | <u>Lease Authorization</u> | -32- |
| 50. | <u>Drafting Conventions</u> | -33- |

EXHIBIT A – Legal Description

EXHIBIT B – Potential Capital Improvements

AMENDED AND RESTATED LEASE

This amended and restated lease agreement is dated as of April 1, 2023 (the “**Effective Date**”), and is between of the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “**County**” or “**Lessor**”), and DALE VILLAGE APARTMENT COMPANY, LP, a California limited partnership (“**Tenant**”).

RECITALS

- A. Lessor owns and operates Buchanan Field, a public airport located at Concord, California (the “**Airport**”), as shown on the Airport Layout Plan, which plan is on file in the office of the County Director of Airports (“**Director of Airports**”).
- B. Lessor and Tenant are parties to a lease dated September 21, 1971, as modified, amended, and assigned (the “**Original Lease**”), under which Tenant is leasing real property at the Airport commonly known as 45 John Glenn Drive, as more fully described in Exhibit A (the “**Premises**”). Tenant’s possession of the Premises began under the Original Lease. As permitted under the Original Lease, the Premises has been improved by the construction of a 323-room hotel (the “**Hotel**”).
- C. The County and Tenant desire to amend and restate the Original Lease in order to extend its term and modify various provisions. As consideration for the extension of the term of the Original Lease, Tenant has the option to pay a lease extension fee of \$1,300,000 (the “**Extension Fee**”) or to make capital improvements to the Premises, as more fully described below.

The parties therefore agree as follows:

AGREEMENT

1. Lease: For and in consideration of the rent, fees, and faithful performance by Tenant of the terms and conditions and the mutual covenants hereof, Lessor hereby leases to Tenant, and Tenant hereby leases from Lessor the Premises, subject to all easements and encumbrances of record. Effective on the Effective Date, this lease supersedes and replaces the Original Lease. Effective on the Effective Date, the Original Lease has no force or effect. Notwithstanding the preceding sentence, the terms of the Original Lease remain in effect with respect to any rights or obligations that were accrued or incurred prior to the Effective Date.
2. Capital Improvements; Shortfall Fee:
 - A. Capital Improvements. During the term of this lease, Tenant may elect to make capital improvements to the Premises that (i) do not interfere with the safe operation of the Airport, and (ii) are consistent with the ongoing use and operation of the Hotel, such as those identified within Exhibit B (any such improvements, “**Capital**

Improvements”). Any Capital Improvements Tenant elects to perform are to be constructed by well-trained, adequately supervised workers, in a good and workmanlike manner, free from design, material and workmanship defects in accordance with all Applicable Laws and Restrictions (the “**Performance Standards**”). For purposes of this lease, “**Applicable Laws and Restrictions**” means all laws (including, without limitation, the Americans with Disabilities Act), ordinances, regulations, building codes, fire codes, orders, and policies in existence or adopted from time to time by the United States, the State of California, the County of Contra Costa and other government agencies having jurisdiction over the Premises.

- B. **Shortfall Fee.** If Tenant does not spend at least \$10,000,000 on Capital Improvements by June 30, 2028, Tenant shall pay the County the Shortfall Fee, plus interest on the Shortfall Fee calculated at 6% per year from the Effective Date through the date the Shortfall Fee is paid. For purposes of this lease, the “**Shortfall Fee**” is equal to the result obtained by multiplying the Extension Fee by a fraction, the numerator of which is the Shortfall Amount and the denominator of which is \$10,000,000. For purposes of this lease, the “**Shortfall Amount**” means the amount by which Tenant spends less than \$10,000,000 on Capital Improvements after the Effective Date and prior to July 1, 2028.
- i. **Example No. 1.** If the Shortfall Amount is \$1,000,000, the Shortfall Fee will be equal to $\$1,300,000 \times (\$1,000,000 / \$10,000,000)$, or \$130,000, plus interest at 6% per year from the Effective Date.
 - ii. **Example No. 2.** If the Shortfall Amount is \$10,000,000, the Shortfall Fee will be equal to $\$1,300,000 \times (10,000,000 / \$10,000,000)$, or \$1,300,000, plus interest at 6% per year from the Effective Date.
- C. **Documentation.** As soon as practicable after the earlier to occur of (i) June 30, 2028, and (ii) the date Tenant determines it has completed all the Capital Improvements it is going to make, if any, in connection with the calculation of the amount due under Section 2.B – Shortfall Fee, above, Tenant shall notify the Director of Airports in writing of the date the Capital Improvements were completed (such notice, the “**Completion Notice**”). Tenant shall cause the Completion Notice to include evidence of the amount expended to complete the Capital Improvements that were completed on or before June 30, 2028.
3. **Term:** The term of this lease is 50 years, beginning on the Effective Date and ending March 31, 2073.
4. **Holding Over:** If Tenant remains in possession of the Premises after the expiration of the term of this lease, it is not a renewal or extension of this lease but is only a tenancy from month to month that may be terminated at any time by Lessor or Tenant upon 30 days written notice. All terms and conditions of this lease then in effect will govern the month-to-month tenancy.

5. Rent: Monthly rent is payable monthly in advance without demand on or before the first day of each month (“**Ground Rent**”). For any partial month, Tenant shall pay Ground Rent to Lessor at a rate of 1/30 of the applicable Ground Rent per day.
- A. Initial Ground Rent: For the period April 1, 2023, through March 31, 2029, Tenant shall pay Ground Rent in the amount of \$41,700.00 per month.
- B. Adjusted Ground Rent:
- i. Revaluation Dates. Ground Rent will be adjusted every three years on the anniversary of the Effective Date (each such date, a “**Revaluation Date**”); provided, however, the first Revaluation Date will be April 1, 2029.
- ii. Calculation. Beginning on each Revaluation Date, Tenant shall pay Ground Rent for the subsequent three-year period in an amount equal to (1) the amount determined by dividing the sum of all Ground Rent and Percentage Rent (defined below) incurred during the preceding three-year period by 36 and multiplying the result by 0.65, or (2) the Ground Rent in effect during the preceding three-year period, whichever is greater. In no event will the adjusted Ground Rent be less than the Ground Rent in effect for the immediately preceding three-year period. The Lessor shall initiate the revaluation process prior to each Revaluation Date.
6. Percentage and Other Additional Rent:
- A. Percentage Rent. In addition to Ground Rent, beginning on April 1, 2026, Tenant shall pay Percentage Rent monthly in arrears, provided Percentage Rent is a positive number. If Percentage Rent is not a positive number, no Percentage Rent is due for that month.
- B. Percentage Rent Due Date. Percentage Rent is due no later than the 15th day of the month that follows the month Tenant earned the Gross Rooms Receipts and Other Gross Receipts (the “**Relevant Month**”).
- C. Definitions.
- i. “**Gross Receipts**” means, for any given period, collectively, Gross Rooms Receipts and Other Gross Receipts for that period.
- ii. “**Gross Rooms Receipts**” means all gross revenues for the rental of guest rooms in the Hotel that are collected, at the actual rates charged, and excluding any sales, use, excise or room or other similar taxes Tenant collects and transmits to the appropriate taxing authority. Gross Rooms Receipts does not include the value of any complimentary rooms or any gratuities or other charges that Tenant collects from guests that are paid or reimbursed to

employees or other parties. Gross Rooms Receipts does not include any bookings deposits until they have been earned.

- iii. **“Other Gross Receipts”** means all revenue and receipts derived from Tenant’s operation of the Hotel, excluding Gross Rooms Receipts, and excluding any sales, use, excise or other similar taxes Tenant collects and transmits to the appropriate taxing authority. Other Gross Receipts does not include the value of any complimentary goods and services (including food and beverage) or any gratuities or other charges that Tenant collects from guests that are paid or reimbursed to employees or other parties. Other Gross Receipts does not include any security deposits paid by or revenues of subtenants, licensees or concessionaires.
- iv. **“Percentage Rent”** means an amount equal to the result obtained by subtracting the then-current Ground Rent from the Percentage Threshold.
- v. **“Percentage Threshold”** for the period April 1, 2026, through March 31, 2033, means an amount equal to the result obtained by adding (x) the result obtained by multiplying Gross Rooms Receipts by 0.02, and (y) the result obtained by multiplying Other Gross Receipts by 0.01.
- vi. **“Percentage Threshold”** for the period April 1, 2033, through March 31, 2073, means an amount equal to the result obtained by adding (x) the result obtained by multiplying Gross Rooms Receipts by 0.04, and (y) the result obtained by multiplying Other Gross Receipts by 0.02.

D. Examples of Percentage Rent.

- i. Example No. 1. If Ground Rent is equal to \$41,700 and the Percentage Threshold is \$36,700:

$\$36,700 - \$41,700 =$ A negative number and no Percentage Rent is due.

- ii. Example No. 2. If Ground Rent is equal to \$41,700 and the Percentage Threshold is \$56,700:

$\$56,700 - \$41,700 = \$15,000$ and Percentage Rent of \$15,000 is due for that month.

E. Statement of Gross Receipts: No later than the 15th day of the month that follows the Relevant Month, Tenant shall furnish to the Lessor a written statement of monthly gross receipts that shows the Gross Rooms Receipts and Other Gross Receipts earned during the Relevant Month.

F. Certified Annual Statement: No later than 120 days after the close of Tenant’s fiscal year, and no later than 120 days after the termination of this lease, Tenant

shall deliver to the Lessor an annual statement of gross receipts that shows the Gross Rooms Receipts and Other Gross Receipts earned during the fiscal year, or if there is a stub period between the end of the most recently ended fiscal year and the termination of the lease, the Gross Rooms Receipts and Other Gross Receipts for that stub period, certified as being correct by an authorized accounting officer of the Tenant (“**Certified Annual Statement**”).

- i. If the Certified Annual Statement shows that an additional amount of Percentage Rent is due and payable to the Lessor, Tenant shall make such payment currently with the delivery of the Certified Annual Statement to the Lessor.
- ii. If the Certified Annual Statement shows that there has been an overpayment of Percentage Rent, such overpayment will be applied to future Ground Rent until such overpayment has been reimbursed to Tenant.

- G. Records: The Lessor may inspect the books and records of Tenant and any and all Subtenants from which any Statement of Gross Receipts or Certified Annual Statement is prepared at any reasonable time upon request. For this purpose, Tenant shall keep for a period of four years after submission of any such statement to the Lessor, all of Tenant’s records, books, accounts, and other data pertaining or necessary to the verification of Gross Receipts as defined herein, and shall, upon request, make the same available to the Lessor, the Lessor’s auditor, representative or agent for examination at any time during such four-year period. Failure to keep, maintain, and make available the records, books, accounts, and other data required by this Section is a default of this lease.
- H. Audits: The Lessor may, at the Lessor’s option, engage the services of an independent certified public accountant to audit and verify the accuracy of Tenant’s records, books, and accounts, including the Certified Annual Statement. If the audit shows that an additional amount of Percentage Rent is due and payable to the Lessor, Tenant shall make such payment within seven days of the Lessor’s demand therefor. If the audit shows that there has been an overpayment of Percentage Rent, the Lessor shall promptly repay to Tenant the amount of such overpayment or, at Lessor’s sole election, credit the amount of the overpayment to Ground Rent next due the Lessor by Tenant. If the audit shows an underpayment by Tenant that is greater than five percent of the Percentage Rent due to the Lessor, Tenant shall pay for the reasonable and actual cost of the audit.
- I. Records to Be Maintained: Tenant shall record all sales and other transactions, whether cash or credit, and shall keep full and accurate books of account and records in accordance with United States Generally Accepted Accounting Principles consistently applied, including without limitation, a sales journal general ledger, and all bank account statements showing deposits of gross receipts revenue. In addition, Tenant shall keep all cash register receipts with regard to

Gross Receipts, credits, refunds and other pertinent transactions, as well as records of all other exclusions and deductions from Gross Receipts.

- J. Additional Rent: In addition to the Ground Rent and Percentage Rent, Tenant shall pay as additional rent, all other charges, costs and fees required to be paid by Tenant pursuant to the provisions of this lease (such amounts, “**Additional Rent**,” and together with the Ground Rent and Percentage Rent, “**Rent**”).

7. Additional Payment Provisions:

- A. Late Rental Payments: If Tenant fails to pay Lessor any amount due under this lease within five days after the amount is due, Tenant shall pay to Lessor a late charge of \$100 per occurrence (the “**Late Charge**”), plus interest on the unpaid balance at a rate of one and one-half percent per month, from the date the payment was due until paid in full. Tenant shall pay all Late Charges as Additional Rent on or before the date the next installment of Ground Rent is due. Lessor and Tenant hereby agree that it is and will be impracticable and extremely difficult to ascertain and fix Lessor’s actual damage from any late payments and, thus, that Tenant shall pay as liquidated damages to Lessor the Late Charge specified in this Section, which is the result of the parties’ reasonable endeavor to estimate fair average compensation for the late payment (other than attorneys’ fees and costs). Lessor’s acceptance of the Late Charge as liquidated damages does not constitute a waiver of Tenant’s default with respect to the overdue amount or prevent Lessor from exercising any of the rights and remedies available to Lessor under this lease.
- B. Form and Place of Payment: Tenant shall pay all rents and fees in cash or by personal check, certified check, or money order, payable to the County of Contra Costa, by delivering same on or before due date to the Director of Airports Office, 550 Sally Ride Drive, Concord, California 94520, or at such other place as Lessor may designate from time to time.
- C. Returned Checks: If a check written by Tenant is returned for insufficient funds, Lessor may impose a reasonable service charge in addition to any Late Charge and in addition to any charges imposed by the bank. Lessor may require Tenant to pay Rent by certified check or money order if Tenant’s bank or banks have returned one or more personal checks within the preceding 12-month period.
- D. Security Deposit: Upon execution of this lease, Tenant shall pay \$41,700.00 to Lessor in cash as security for the faithful performance of the terms, covenants, and conditions of this lease (the “**Security Deposit**”).

Upon the occurrence of a Default, as defined in Section 27, Lessor may, in its sole discretion (but is not required to), apply the Security Deposit, or any portion of it, to any expense, loss or (i) any Rent or other sum owed to Lessor, (ii) any amount that Lessor may spend or become obligated to spend in exercising Lessor’s rights

under this lease, or (iii) damage sustained by Lessor resulting from Tenant's Default. Upon demand by Lessor, Tenant shall immediately pay to Lessor a sum equal to that portion of the Security Deposit expended or applied by Lessor as provided in this subsection so as to maintain the Security Deposit at its original level.

Upon the expiration or termination of this lease and (i) Tenant's satisfaction of the conditions set forth in Section 26. Surrender of Premises, and (ii) a final accounting by Lessor, any remaining Security Deposit balance will be refunded to Tenant, without interest. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of law in force or that become in force after the date of execution of this lease, that provide that Lessor may claim from a Security Deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises. Lessor and Tenant agree that Lessor may, in addition, claim those sums reasonably necessary to compensate Lessor for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant or Tenant's officers, agents, employees, independent contractors or invitees.

8. Lessor Processing and Transaction Fees: In the event that Tenant requires or requests Lessor's review, investigation, processing, recordation, or any other action in connection with any Tenant document, proposal or other matter that requires Lessor's staff time and resources, other than time and resources of the Contra Costa County Airports Division (e.g., a proposed assignment or other transfer, or an estoppel certificate), Tenant shall pay Lessor a transaction fee of \$2,500.00 plus all of Lessor's costs, including, but not limited to, staff time at rates determined by the County Auditor for time spent in connection with the matter until the matter is complete ("**Transaction Fee**"). The Transaction Fee will increase by \$500.00 on every fifth anniversary of the Effective Date and is due 30 days after demand therefor by Lessor.
9. Use of Premises: Except as otherwise provided herein, the Premises may be used by Tenant only for the operation of a midscale or higher rated (in accordance with STR classifications or comparable rating system) hotel, including the operation of a restaurant, cocktail lounge, banquet rooms, meeting rooms, swimming pool, shops and services, parking and other hotel supporting amenities, and for no other purpose.

Tenant may not use the Premises for any other purpose without the Director of Airport's express prior written consent. Any use of the Premises other than as described herein without the Director of Airports' prior written consent is a default of this lease.

10. Condition of Premises:
 - A. No Warranty: Tenant is leasing the Premises in an "as is" physical condition with no warranty, express or implied, on the part of Lessor as to the physical condition of the Premises, including but not limited to, the condition of any existing Improvements (as defined below), the soil and the geology of the soil, the air,

surface water and groundwater, the presence of known and unknown faults, the presence of Hazardous Materials (as defined below) and all other kinds of contamination and pollutants of any kind in the air, soil, groundwater and surface water, and the suitability of the Premises for the permitted use.

B. Maintenance: Tenant shall maintain the Premises in accordance with Section 13. Maintenance, Repair and Storage.

11. Utility Obligations: Tenant shall pay, on Tenant's own account, all charges for utilities used or consumed on the Premises, including, but not limited to, gas, water, electricity, garbage disposal, storm water and sanitary sewer services, janitorial services, and telephone services.

If Lessor, or any utility company, requires that any existing or new overhead distribution system be installed underground, Tenant shall, at its own cost and expense, provide all necessary facility changes on the Premises so as to receive such services.

12. Alterations and Additions:

A. Tenant may not do any of the following without the prior written consent of the Director of Airports (which may include email): (i) erect or place any additional structures on the Premises, (ii) make any improvements or alterations to the exterior of any of the buildings on the Premises, including the Hotel, or the parking area or landscaping, (iii) make any improvements or alterations to the interior of any of Tenant's Buildings that require the issuance of a building permit, or (iv) make any improvements the construction of which could trigger safety concerns for the Airport, such as the height of the thing being constructed or the height of equipment used in the construction. Tenant shall provide the Director of Airports with written plans detailing any proposed improvement for approval by the Director of Airports; provided, however, obtaining the Director of Airports' approval of plans is not required for improvements that constitute maintenance or repair of existing Improvements or the replacement of furniture, fixtures or equipment, even if a building permit is required for such repairs or replacements. When the approval of the Director of Airports is required, the Director of Airports may not unreasonably withhold or condition approval of the proposed improvement.

B. If Tenant makes alterations, constructs additions, or adds additional structures that violate the conditions of this lease (each, an "**Unauthorized Addition**"), at the Director of Airports sole discretion, Tenant shall remove all or any portion of the Unauthorized Addition at Tenant's sole cost and expense. If Tenant is required to remove any Unauthorized Addition, Tenant, at its sole cost and expense, shall restore the Premises to the condition existing immediately prior to the existence of the Unauthorized Addition, or such other similar condition determined at the discretion of the Director of Airports, reasonably exercised and reasonably approved by Tenant. If the Director of Airports determines that Tenant is not

required to remove all or any portion of an Unauthorized Addition, then the portion of the Unauthorized Addition that is not required to be removed will remain on and be surrendered with the Premises on the expiration or termination of this lease.

- C. If the Director of Airports has given written consent to Tenant, permitting Tenant to make alterations or improvements to the Premises, Tenant may not commence construction until Tenant has (i) obtained all necessary building permits and all other approvals required, and (ii) provided Lessor with 20 days advance written notice of the commencement of the construction. In addition, so long as Lessor provides same to Tenant signed and notarized by Lessor within the timeframe set forth in Civil Code Section 8444, Tenant shall cause the notice of Lessor non-responsibility to be posted and recorded during construction in accordance with Civil Code Sections 8442 and 8444. A copy of the notice is to be mailed to Lessor upon filing it with the County Recorder.

13. Maintenance, Repair and Storage:

- A. Premises Maintenance: Tenant shall, at its sole expense, throughout the term of this lease, maintain the Hotel and other structures, signs, driveways, parking surfaces, curbs, walkways, perimeter fences, landscaping, drainage and sewage lines, utility lines, irrigation systems and other facilities and improvements on the Premises (collectively, the “**Improvements**”), in a good order, condition and repair and, following the Completion Date, the quality of appearance in effect on the Completion Date, ordinary wear and tear excepted (the “**Maintenance Standard**”). Following the Completion Date, Tenant shall cause all maintenance, repairs, and replacements to be of a quality substantially equal to the material and workmanship used in completing the Capital Improvements. Lessor is the sole judge, exercising reasonable discretion, of the maintenance standards required; provided, however, if the Hotel is operating under a brand, the maintenance standards of the brand will be controlling.

Tenant shall perform all maintenance and repairs in compliance with Applicable Laws and Restrictions.

If Tenant fails to perform its maintenance obligations as described herein within 30 days of written notice by County to Tenant of such failure, County has the right to enter upon the Premises and to perform such necessary maintenance obligations and Tenant shall reimburse County for the costs thereof within 20 days after receipt of an itemized invoice therefor. If such maintenance obligations are of such a nature that they cannot reasonably be completed within such 30-day period, Tenant will be deemed to have performed its maintenance obligations within the 30-day period if Tenant begins to perform the maintenance obligations within the 30-day period and diligently pursues performance to completion.

- B. Lease Maintenance Plan: The Lessor shall reasonably determine what additional work Tenant is required to perform in order to maintain the Improvements in accordance with the Maintenance Standard through the remaining term of the lease (the “**Maintenance Work**”). Prior to such determination, the Lessor and Tenant shall conduct a joint inspection of the Improvements not earlier than April 1, 2066 and not later than March 31, 2067.

The Maintenance Work may include, but is not limited to, (i) interior and exterior building improvements, including roof, doors, windows, signage, street facades, painting, flooring, fixtures (i.e., lights, toilets and sinks), (ii) asphalt, (iii) HVAC, (iv) electrical and plumbing systems, but in all instances not requiring replacements and only requiring repairs to assure that the Improvements are in good condition, taking into account the age of the Improvements.

Within 90 days after the joint inspection of the Premises, Tenant shall prepare and submit to the Director of Airports for his approval a detailed plan that itemizes the Maintenance Work to be performed. The maintenance plan must include a timeline for the performance of the Maintenance Work and the expected cost of the Maintenance Work. The Director of Airports will review the proposed maintenance plan and approve or disapprove it within 30 days of receipt. If the proposed maintenance plan is not approved by the Director of Airports, the Director of Airports shall set forth in writing and notify Tenant of his reasons for withholding such approval. Tenant shall thereafter submit a revised maintenance plan to the Director of Airports, which approval is to be granted or denied within 30 days of receipt in accordance with the procedures set forth above. The Director of Airports may not unreasonably withhold approval of a proposed maintenance plan. If Tenant’s proposed maintenance plan is disapproved by the Director of Airports, Tenant shall submit a revised proposed plan to the Director of Airports until the approval of the Director of Airports is obtained. If the Director of Airports responds to Tenant’s proposed maintenance plan(s) (including, without limitation, any resubmittal thereof) in the time frame required in this Section, Tenant will be in default of this lease if a proposed maintenance plan is not approved by the Director of Airports by the date that is six months after the joint inspection of the Premises; provided, however, that such six-month period may be extended for an additional 90-day period, at the reasonable discretion of the Director of Airports, if the parties are in good faith negotiating the approval of the maintenance plan. The proposed maintenance plan that is submitted by Tenant and approved by the Director of Airports is the “**Maintenance Plan.**” Tenant’s failure to carry out the Maintenance Plan is a default of this lease.

- C. Plans and Lessor’s Approval: Prior to commencing any Maintenance Work, Tenant shall obtain the Director of Airports’ written approval of any plans prepared by architects, engineers or contractors that relate to the Maintenance Plan, and all modifications or amendments thereto, (including all working drawings and other supplements thereto, but excluding immaterial field changes).

- D. Tenant Responsibility for Maintenance Work: Tenant is solely responsible for obtaining all necessary permits and approvals and for paying any and all fees required for the Maintenance Work. Approval of the Maintenance Plan by the Director of Airports does not constitute a representation or warranty as to its conformity with other requirements, and responsibility therefor remains at all times in Tenant.

Tenant shall cause all Maintenance Work to be carried out in conformance with: (i) all requirements of the Lessor, (ii) the Maintenance Plan, (iii) Applicable Laws and Regulations, and (iv) the Maintenance Standard or the Performance Standard, as applicable.

- E. Performance Bond: Not less than ten working days before the commencement of the Maintenance Work, Tenant shall, at its sole cost and expense, furnish to the Lessor a performance bond of a surety company licensed to transact business in the State of California, or other type of security satisfactory to the Lessor, that (i) is in the amount of 100% of the total estimated cost of the Maintenance Work that is being performed, (ii) names Tenant as principal, and (iii) guarantees faithful performance of all construction work associated with the Maintenance Plan by the date that is identified in the Maintenance Plan as the date the Maintenance Work will be completed. The performance bond or other security must be in a form acceptable to the Lessor. Notwithstanding anything to the contrary in this subsection 13.E, if the cost to perform the Maintenance Work is equal to or less than 10% of Gross Receipts for Tenant's most recently completed fiscal year for which a Certified Annual Statement has been prepared, the Director of Airports, utilizing reasonable discretion, may waive the requirement of a performance bond or other security.
- F. Payment Bond: Not less than ten working days before the commencement of maintenance pursuant to the Maintenance Plan, Tenant shall, at its sole cost and expense, furnish to the Lessor either of the following: (i) a payment bond of a surety company licensed to transact business in the State of California that (x) is in the amount of 100% of the total estimated cost of carrying out the Maintenance Plan, and (y) guarantees the payment of all labor, materials, provisions, supplies and equipment used in, upon, for or about the performance of the construction work; or (ii) an alternate form of security that is acceptable to the Lessor in its sole discretion. The payment bond must be in a form acceptable to the Lessor and must satisfy the requirements of California Civil Code section 3248. Notwithstanding anything to the contrary in this subsection 13.F, if the cost to perform the Maintenance Work is equal to or less than 10% of Gross Receipts for Tenant's most recently completed fiscal year for which a Certified Annual Statement has been prepared, the Director of Airports, utilizing reasonable discretion, may waive the requirement of a payment bond or other security.

- G. Inspection and Acceptance: Tenant shall obtain all applicable permits and authorizations of, all local, state, federal and other government agencies and entities that have jurisdiction over the Maintenance Work, including but not limited to, the Contra Costa County Department of Conservation and Development and the Contra Costa County Public Works Department. All Maintenance Work is subject to inspection, testing, and acceptance in accordance with applicable laws, rules, regulations, and requirements of all governmental agencies and entities that have jurisdiction over the Maintenance Work. Nothing in this lease is to be construed as approval of any permit or authorization of any local, state, or federal government agency or entity that has jurisdiction over the Maintenance Work.
 - H. No Warranties: The inspection, testing and acceptance by the Lessor under this or any other section of this lease, of any plans submitted by or acts performed by Tenant does not constitute a warranty by the Lessor, and does not relieve Tenant of its obligation to fulfill the provisions of this lease and of the Maintenance Plan as approved by the Lessor, nor is the Lessor thereby estopped from exercising any of its remedies provided at law or equity or under this lease.
 - I. Engineering: Tenant is responsible for all engineering work and the accuracy thereof. Any material deviations from the Maintenance Plan approved by the Director of Airports must have prior written approval by the Lessor.
 - J. Paving and Concrete: As necessary during the term of this lease, Tenant shall upgrade the pavement for the parking lots within the Premises to enable them to accommodate the heaviest vehicle expected to operate in the area. When installed, the pavement must have an expected pavement life of at least 20 years. All road access must comply with the standards of the County's Public Works Department.
 - K. Notice of Non-Responsibility: Provided Lessor provides to Tenant a signed and notarized notice of Lessor non-responsibility within the timeframe set forth in Civil Code Section 8444, Tenant shall cause the notice to be posted and recorded during construction in accordance with Civil Code Sections 8442 and 8444. A copy of the notice must be filed with the County Recorder and mailed to the Director of Airports after filing.
 - L. Storage on Premises: Tenant may not store materials, supplies, products, equipment or other personal property that is not directly necessary for the operation of a hotel and associated uses on the Premises. Tenant shall store personal property items, supplies and materials and combustibles necessary for the operation of a hotel and associated uses inside the Tenant's Buildings in a safe, neat and sanitary manner.
14. Lawful Conduct: In connection with Tenant's use of the Premises, Tenant shall obey and observe, all the terms and conditions of this lease and all statutes, ordinances, resolutions,

regulations, orders, and policies now in existence or adopted from time to time by the United States, (including, but not limited to, the Federal Aviation Administration) the State of California, the County of Contra Costa, the Central Contra Costa Sanitary District, the San Francisco Bay Regional Water Quality Control Board, and all other government agencies with jurisdiction over the Premises, including, but not limited to, applicable laws concerning health, safety, fire, accessibility, police, and the environment.

Tenant shall pay all fines and penalties levied against it by any government agency for Tenant's violation of any applicable law associated with Tenant's activities on the Premises.

15. Waste, Quiet Conduct, Nuisance, Pollution: Tenant may not commit, or suffer to be committed, any waste upon the Premises or any nuisance or other act or thing that may disturb the quiet enjoyment or the use of the Airport or surrounding property.

Tenant may not permit any activity on the Premises that directly or indirectly produces unlawful or excessive amounts or levels of air pollution, (e.g., gases, particulate matter, odors, fumes, smoke, dust), water pollution, noise, glare, heat emissions, trash or refuse accumulation, vibration, electronic or radio interference with navigational and communication facilities used in the operation of the Airport or by aircraft, or any other activity that is hazardous or dangerous by reason or risk of explosion, fire, or harmful emissions.

16. Hazardous Materials:

A. Definition of Hazardous Materials: As used in this lease, the term "**Hazardous Materials**" means any hazardous or toxic substance, hazardous or radioactive material, or hazardous waste, pollutant or contaminant at any concentration that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Premises. Hazardous Materials include, but are not limited to, the following: (i) Any "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste," as defined in Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health & Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) any "hazardous substance" as that term is defined in Section 25316 of the California Health & Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) any material or substance listed as a chemical known to cause cancer or reproductive toxicity pursuant to Section 6380 of the California Labor Code, Division 5, Part 1, Chapter 2.5 (Hazardous Substances Information and Training Act); (iv) any "hazardous waste" as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* (42 U.S.C. Section 6903); (v) any "hazardous substance" as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.* (42 U.S.C. Section 9601); (vi) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local statute, ordinance,

resolution, regulation, order, policy, 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; (vii) any petroleum product; (viii) any radioactive material, including any “source materials”, “special nuclear materials”, or “byproduct material” as defined in 42 U.S.C. Section 2011 *et seq.*; (ix) any asbestos in any form or condition; and (x) any polychlorinated biphenyls (PCBs) and any substances or any compounds containing PCBs.

- B. Use of Hazardous Materials: Tenant may not cause or permit any Hazardous Material, as defined in this Section, to be generated, brought onto, stored, used, emitted, released, discharged or disposed of in, on, under, or about the Premises by Tenant or its officers, employees, agents, contractors, renters, guests or invitees, except for the limited quantities reasonably required for keeping the Hotel and Premises in the standard required by the terms of this lease, of (i) standard office, landscaping, janitorial, pool and other supplies typically used in the operation of a hotel; (ii) building materials in the existing improvements on the Premises that were legally permitted when installed and are legally permitted to remain as part of the Premises so long as not disturbed, and (iii) such other Hazardous Materials as are approved in advance in writing by Lessor. During the term of this lease, Tenant shall comply with all applicable laws, statutes, ordinances, regulations, orders, etc., in effect that relate to public health and safety and protection of the environment including, but not limited to those identified in this Section (“**Environmental Laws**”).
- C. Notification to the Director of Airports: If, during term of this lease, Tenant becomes aware of (i) any actual or threatened release of any Hazardous Materials 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, Tenant shall (i) immediately provide verbal notification to the Director of Airports and (ii) provide written notification of such release or investigation to the Director of Airports within 24 hours after learning of it. In the event Tenant receives any claims, notices of violation, reports, or other writing concerning the aforementioned release or investigation, Tenant shall furnish copies of all such materials to Lessor no later than the business day following Tenant’s receipt thereof.

Notification to the Director of Airports under this Section does not relieve Tenant of any obligation to notify any government agency under any Applicable Law.

- D. Indemnification: Tenant shall, at Tenant’s sole expense and with legal counsel reasonably acceptable to Lessor, indemnify, protect, defend, and hold harmless Lessor and Lessor’s officers, employees, agents, and contractors from and against any and all demands, losses, claims costs, suits liability and expenses including without limitation, attorney’s fees and consultant fees arising out of or relating to the violation of any Environmental Laws or the use, handling, generation,

emission, release, discharge, storage or disposal of any Hazardous Materials by Tenant or Tenant's officers, employees, agents, contractors, Subtenants, renters, guests or invitees. This indemnification applies whether or not the concentration of such Hazardous Materials exceeds state or federal maximum contaminant or action levels or whether any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (i) losses attributable to diminution in the value of the Premises; (ii) loss or restriction of use of rentable space on the Premises; (iii) adverse effect on the marketing of any rental space on the Premises; and (iv) penalties and fines levied by, and remedial or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Premises and surrounding properties). This indemnification clause will survive any expiration or termination of this lease.

17. Stormwater Discharge: Lessor has applied for and received a National Pollutant Discharge Elimination Permit ("NPDEP") under the Federal Clean Water Act, which covers Tenant's operations on the Premises. In accordance with Section 14, Lawful Conduct, of this lease, Tenant shall comply with (i) all laws and regulations arising under the Federal Clean Water Act that are applicable to Tenant's operations on the Premises; and (ii) Lessor's NPDEP.

Tenant shall ensure that no pollution or Hazardous Materials of any type is discharged from the Premises into the stormwater system at the Airport and shall comply with Lessor's NPDEP in all respects as it relates to the Premises and in accordance with the Stormwater Control Plan and Stormwater Control Operation and Maintenance Plan for the Premises, and any amendments thereto, and in accordance with all applicable laws and regulations and other Lessor requirements. Copies of the Stormwater Control Plan and Stormwater Control Operation and Maintenance Plan for the Premises will be maintained on file at the Contra Costa County Public Works Department and are incorporated herein by reference.

If Tenant conducts or produces any type of operation on the Premises that allows pollutants of any kind to enter the Airport's storm water system (a "**Storm Water Release**"), then Tenant shall notify County in writing that such event has occurred. If Tenant allows another Storm Water Release to occur after County's written notice to Tenant, then Tenant shall provide and install, at Tenant's sole expense, a separate drainage, collection, and/or separation system ("**Storm Water Equipment**") to ensure that no untreated liquid waste from any type of operation, prohibited from being discharged directly into the storm drainage or sanitary system, will enter the storm drainage system or sanitary system of the Airport, and assures that no pollution of any type or any Hazardous Materials, as defined in Section 16. Hazardous Materials, will be discharged into the storm water system at the Airport and shall comply with the NPDEP in all respects and shall be held responsible for any such discharge either by Tenant or by any of Tenant's subtenants, agents, or employees, during the entire term of this lease. Any fine or cost of remedial action required of the Airport by any agency or agencies having jurisdiction there over, as a result of actions on or discharges from the Premises,

will be charged to Tenant, and Tenant shall immediately reimburse County for these costs upon demand.

Tenant is responsible for any unlawful discharge by Tenant, its officers, employees, agents, contractors, renters, guests or invitees during the entire term of this lease. Any fine or remedial action required of Lessor, by any agency or agencies having jurisdiction over the Airport, as a result of actions or discharges from the Premises by Tenant, its officers, employees, agents, contractors, renters, guests or invitees, will be charged to Tenant, and Tenant shall immediately reimburse Lessor for these costs upon demand.

18. Rules And Regulations: Tenant shall observe and obey all policies, rules, and regulations promulgated by Lessor's Board of Supervisors and any other government entities or agencies having jurisdiction over the Airport., but such policies, rules and regulations may not be discriminately applied to the Premises or Tenant.
19. Noise Ordinance: Tenant shall comply with County Ordinances 87-8 and 88-82, as amended, and all other rules and ordinances relating to noise standards at the Airport, as may be approved from time to time by the County Board of Supervisors, to the extent such ordinances and rules are specifically relevant to the operation of the Hotel on the Premises. Lessor shall cause all other Airport tenants to comply with such ordinances and rules.
20. Security: Lessor has no obligation to provide security to the Premises; provided, however, that the existing fence between the Premises and the Airport was installed by Lessor and Lessor shall maintain such fence in good condition and repair. Lessor agrees that the fence prevents unauthorized vehicular or pedestrian traffic between the Premises and the Airport. Notwithstanding the foregoing, to the extent Tenant has access to the Airport through such fence (i.e., via a gate), Tenant agrees that it will not allow parties within the control of Tenant to access the Airport through such fence, and to the extent Tenant makes any changes to the Premises (as permitted by the terms of this Lease) that may impact the existing fencing, Tenant shall ensure that there is no unauthorized pedestrian or vehicular access between the Premises and the aircraft operating area in compliance with FAA and Airport security Requirements. Tenant shall provide adequate lighting to provide for all-night illumination of the perimeter of all Tenant's Buildings on the Premises, including vehicular parking lots and pedestrian walkways surrounding the Premises. If at any time during the Term of this Lease additional security requirements are imposed on the Airport by the FAA or any other agency having jurisdiction over the Airport which would be applicable to the Hotel operating on the Premises, Tenant shall comply with said security requirements at Tenant's sole expense. If Airport is fined by FAA for a security violation caused by Tenant, Tenant shall immediately reimburse Lessor upon demand.
21. Indemnification: Tenant shall defend, hold harmless, and indemnify the Indemnitees (as defined below) from the liabilities defined in this Section 21, but in no event will Tenant's indemnification obligation extend to any Liabilities caused by any intentional or negligent act or omission by Lessor or its respective officers, employees, agents, or representatives.

- A. “**Indemnities**” means Lessor, its governing body, elective and appointive boards, commissions, officers, employees, representatives and agents.
 - B. “**Liabilities**” means any liability or claim for damage of any kind allegedly suffered, incurred because of an Act (as such term is defined below) and such liabilities include, but are not limited to personal injury, death, property damage, or any combination of these, and including the defense of any suits or actions at law or equity concerning these.
 - C. An “**Act**” means any intentional or negligent act or omission by Tenant or its officers, employees, agents, representatives, invitees, contractors, subtenants, renters or guests (each, a “**Tenant Party**”) with respect to the Premises or matters related thereto, or claimed to be attributable to a Tenant Party.
 - D. The terms set forth in this Section 21 are not conditioned or dependent on whether Tenant or Lessor has prepared, supplied, or approved any plans or specifications in connection with work performed pursuant to Section 12. Alterations and Additions, or Section 13. Maintenance, Repair and Storage, or whether there is insurance or other indemnification covering any such matters. This indemnification clause will survive any expiration or termination of this lease.
 - E. Notice. Tenant shall give Lessor prompt and timely notice of any claim made or suit instituted of which it has knowledge, and which could in any way directly, contingently or otherwise affect Lessor. In such a circumstance, both Tenant and Lessor have the right to participate in the defense of the claim or suit to the extent of their respective interests.
22. Insurance: Tenant shall procure and maintain, at its own cost and expense, at all times during the term of this lease, the following policies issued by insurance companies authorized to do business in California, with a financial rating of at least an A-status (unless otherwise stated below) as rated in the most recent edition of Best’s Insurance Reports:
- A. Commercial General Liability and Property Damage Insurance: Tenant shall obtain and maintain, owner, landlord, and tenant commercial general liability insurance with a financial rating of at least an A- or P status (pooled insurance coverage) covering and insuring all parties hereto (including naming Contra Costa County and its officers, agents, and employees as additional insureds under the policy or policies) with a minimum combined single limit coverage of \$3,000,000.00 for all damages due to bodily injury, sickness or disease, or death to any person and damage to property, including the loss of use thereof, arising out of each accident or occurrence arising out of Tenant’s leasehold interest in, or maintenance or use of, the Premises and all operations necessary or incidental thereto. Liability insurance will be factored periodically to maintain adequate coverage.

- B. Property and Fire Insurance: Tenant shall insure for fire and extended coverage risks all personal property, improvements, and alterations in, on, or about the Premises (excluding earthquake and flood). Such insurance must be in an amount equal to 100% of insurable, full replacement value of any improvements located on thereon, and include vandalism and malicious mischief endorsements. Such property insurance policies must contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder.
- C. Worker's Compensation: Tenant shall obtain workers' compensation insurance as required by law, covering all employees of Tenant, and such insurance shall be kept in force during the entire term of this lease.
- D. Form of Policies: Tenant shall cause all policies of insurance required by this Section to be in such standard form and written by such qualified insurance companies as is reasonably satisfactory to Lessor. Tenant shall provide evidence of such insurance to Lessor in the form of (i) a copy of the policies, and (ii) a duly executed certificate of insurance. All of such certificates shall name "Contra Costa County, its officers, agents, and employees" as additional insureds. To the extent available, said policy or policies or certificates shall contain a provision that written notice of policy lapses, cancellation or any changes thereto shall be delivered to Lessor no fewer than 30 days in advance of the effective date thereof.
23. Taxes: Tenant agrees to pay before delinquency all taxes (including, but not limited to, possessory interest tax), assessments, and other charges that are levied and assessed upon Tenant's interest in the Premises, or upon Tenant's personal property installed or located in or on the Premises, by Contra Costa County and other legally authorized government authority. Tenant may pay any taxes and assessments under protest, without liability, cost or expense to Lessor, to contest the amount in good faith.
24. Inspection, Access and Notice: Subject to the next sentence, after giving written notice to Tenant 24 hours in advance, Lessor and its agents may enter and inspect the Premises and the Improvements, including the Hotel. Lessor acknowledges that the guests of the Hotel have a reasonable expectation of privacy while in their rooms and nothing in this lease gives the Lessor the right to enter a guest's hotel room without first satisfying applicable legal requirements. Lessor also has the right to serve or to post and to keep posted on the Premises, or on any part thereof, any notice permitted by law or this lease, including but not limited to a notice pursuant to Section 8444 of the Civil Code. Lessor is not liable in any manner for any inconvenience, disturbance, loss of business, or other damage arising out of Lessor's entry on the Premises as allowed in this Section unless Lessor's acts are negligent or constitute an illegal entry as to an occupied guest room. Lessor shall conduct the activities as allowed in this Section in compliance with applicable laws and in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Tenant and Hotel guests, and does not materially interfere with access to or use of the Premises. Tenant shall provide an access gate through the Premises for emergency vehicles.

25. Assignment and Encumbrances: Tenant may not voluntarily sell, assign, sublet, transfer or encumber (each, a “**Transfer**”), its interest in this lease or in the Premises, or allow any other person or entity (except Tenant’s authorized representatives or customers/guests of the Hotel) to occupy or use all or any part of the Premises, without first obtaining Lessor’s written consent, which may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing sentence, Lessor has the right to require financial and other information from a proposed assignee, sublessee, purchaser, transferee or other encumbering party (each, a “**Transferee**”), to make its decision, and Tenant shall assist Lessor in obtaining such information from any proposed Transferee. Any Transfer without Lessor’s prior written consent is voidable and, at Lessor’s election, constitutes a Default. Any consent to a Transfer does not constitute a further waiver of the provisions of this Section.

If Tenant is a corporation or a limited liability company, any (i) dissolution, merger, consolidation, or other reorganization of Tenant, or (ii) sale or other transfer of a controlling percentage of the capital stock or membership interests, as the case may be, of Tenant, or (iii) sale of 50% of the value of the assets of Tenant, will be deemed a voluntary assignment. The phrase “controlling percentage” means (a) in the case of a corporation, the ownership of, and the right to vote, stock possessing more than 50% of the total combined voting power of all classes of Tenant’s capital stock issued, outstanding, and entitled to vote for the election of directors and (b) in the case of a limited liability company, ownership of, and the right to vote, membership interests possessing more than 50% of the total combined voting interests of Tenant.

26. Surrender of Possession:

A. Improvements:

- i. Title to Improvements. Subject to subsection 26.A.iii below, title to all Improvements, including all alterations or additions thereto (including Unauthorized Additions), will remain in Tenant until the expiration, cancellation, or other earlier termination of this lease. Upon expiration, cancellation or other earlier termination of this lease, except as otherwise provided herein, title to all Improvements will automatically vest in Lessor and will remain on and will be surrendered with the Premises.
- ii. Surrender. Subject to subsection 26.A.iii below, within 30 days after the expiration, cancellation, or termination of this lease, Tenant shall surrender to Lessor the Premises and all Improvements, including alterations and additions, in good condition (ordinary wear and tear excepted). If Tenant fails to surrender the Premises to Lessor within the time frame required by this lease, Tenant shall defend, indemnify, and hold Lessor harmless from any and all claims, liability, costs, and damages resulting from Tenant’s failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant or renter.

iii. Unauthorized Additions. If (i) the Director of Airports determines that Tenant has not removed an Unauthorized Addition(s) that the Director of Airports had previously directed Tenant to remove in accordance with Section 12.B., or (ii) the Director of Airports was not made aware of the existence of the Unauthorized Addition(s) and, therefore, did not have an opportunity to direct Tenant to remove the Unauthorized Addition(s) in accordance with Section 12.B, and (iii) the Director of Airports elects to decline to take title to such Unauthorized Addition(s), the Director of Airports will notify Tenant in writing as soon as practicable following such election. Tenant shall cause the Unauthorized Addition(s) to be removed above ground level not later than 30 days after the expiration, cancellation, or termination of this lease, or such other date that is agreed upon by Tenant and Lessor. If Tenant fails to remove the Unauthorized Additions as required by this lease, Lessor may remove the Unauthorized Additions at Tenant's expense, and, upon written demand by Lessor, Tenant shall immediately reimburse Lessor, in full, for all of the reasonable and actual costs and expenses incurred by Lessor in removing the Unauthorized Additions.

B. Personal Property:

- i. Title to Personal Property. Title to personal property belonging to Tenant will remain in Tenant at all times during the term of this lease, and Tenant has the right at any time to remove any or all of its personal property from the Premises, provided that upon any such removal, Tenant shall repair, at Tenant's expense, any damage resulting therefrom and shall leave the Premises in a broom clean condition.
- ii. Failure to Remove Personal Property. If Tenant fails to remove any personal property from the Premises within 30 days after the expiration, cancellation, or termination of this lease, such personal property may be removed by Lessor at Tenant's expense by charging such expense to the Security Deposit. If the cost to remove personal property from the Premises exceeds the amount of the Security Deposit, then Tenant shall reimburse Lessor the difference between Lessor's cost and the amount of the Security Deposit, immediately upon receipt of Lessor's written demand therefor.

C. Effectiveness: The provisions of this Section will survive the expiration, cancellation or earlier termination of this lease.

27. Default: The occurrence of any of the following is a "**Default**" by Tenant:

- A. Tenant's failure to pay any Rent or other charges when due if the failure continues for 30 days after such payment is due. Notwithstanding the foregoing, failure to pay any Rent or other charges when due twice in any twelve-month period is a Default without further notice from Lessor.

- B. Tenant's failure to undertake such reasonable maintenance of the Premises as directed by the Director of Airports, if the failure continues for 30 days after notice of any reasonably required maintenance has been given to Tenant or if more than 30 days is required to complete such maintenance so long as Tenant commences to cure the default within the 30-day period and diligently pursues the cure to completion.
- C. Tenant's failure to cure a safety hazard impacting the Airport immediately upon notice from Lessor to do so. If, in the sole discretion of the Director of Airports, the required cure of the noticed safety hazard cannot be completed within 24 hours, Tenant is not in Default of this lease if Tenant commences to cure the failure within the 24-hour period and diligently and in good faith continues to cure the Default as soon as reasonably possible.
- D. Tenant's failure to provide any instrument or assurance or estoppel certificate required by this lease if the failure continues for five business days after written notice of the failure from Lessor to Tenant.
- E. Tenant's failure to perform any other obligation under this lease or any other deemed default under this lease if the failure continues for 30 days after written notice of the failure from Lessor to Tenant. If, in the sole discretion of the Director of Airports, the required cure of the noticed default cannot be completed within 30 days, Tenant is not in Default of this lease if Tenant commences to cure the Default within the 30-day period and diligently and in good faith continues to cure the Default to completion.
- F. The committing of waste on the Premises, including any intentional act by Tenant to harm the Premises, which is incapable of being cured within the cure period described in Section 27 B. above.
- G. Tenant's failure to comply with any of the provisions of Section 33, Non-Discrimination.
- H. To the extent permitted by law:
 - i. A general assignment is given by Tenant or any guarantor of the Lease for the benefit of creditors.
 - ii. The filing by or against Tenant or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within 60 days of its filing.
 - iii. The appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor unless possession is unconditionally restored to Tenant or that guarantor within 30 days and the trusteeship or receivership is dissolved.

- iv. Any execution or other judicially authorized seizure of all or substantially all of the assets of Tenant located on the Premises, or of Tenant's interest in this lease, unless that seizure is discharged within 30 days.

28. Lessor's Remedies: Lessor has the following remedies upon the occurrence of a Default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law:

- A. Lessor may terminate this lease and Tenant's right to possession of the Premises at any time. No act by Lessor other than giving written notice to Tenant shall terminate this lease. Lessor's acts of maintenance, efforts to re-let the Premises, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this lease do not constitute a termination of Tenant's right to possession and Lessor has a duty to mitigate any damages it may suffer due to Tenant's Default. Upon termination of this lease, Lessor has the right to recover from Tenant:
 - i. The worth at the time of the award, of the unpaid Rent that had been earned at the termination of this lease.
 - ii. The worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided.
 - iii. Subject to Civil Code section 1951.2(c), the worth, at the time of the award, of the amount by which the unpaid Rent for the balance of the lease term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided.
 - iv. Any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Tenant's Default.

"The worth, at the time of the award," as used in (i) and (ii) of this Section, is to be computed by allowing interest at the rate of ten percent per annum or the maximum rate permitted by law, whichever is less. "The worth, at the time of the award," as used in (iii) of this Section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent.

- B. Lessor, at any time after the occurrence of a Default described in Section 27.B, can cure the Default at Tenant's cost, provided Tenant has failed to cure such Default within the 30-day notice period described in Section 27.B.
- C. Lessor, at any time after the occurrence of a Default described in Section 27.C, can cure the Default at Tenant's cost, provided Tenant has failed to cure such Default within the 24-hour notice period described in Section 27.C or fails to diligently and in good faith continue to cure the Default as soon as reasonably possible.

- D. If Lessor at any time, by reason of Tenant's Default, pays any sum to cure a Default or does any act that requires the payment of any sum, the sum paid by Lessor will be due from Tenant to Lessor within 30 days from the time the sum is paid, following written notice by Lessor to Tenant of the amount due. If such amount is not paid within 30 days of the notice, the amount due will bear interest at the rate of ten percent per annum or the maximum rate permitted by law, whichever is less, from the date the sum is paid by Lessor until Lessor is completely reimbursed by Tenant. The amount due from Tenant, together with interest accrued thereon, is Additional Rent.
29. Destruction: Tenant shall promptly notify Lessor in writing of any damage or destruction to any or all of the Hotel (a "**Casualty**").
- A. Twenty Percent or Less. In the event of a Casualty valued at 20% or less of the then-replacement value of the Hotel, Tenant shall repair the damage to the Hotel and no rent abatement will apply.
- B. Greater than Twenty Percent. In the event of a Casualty valued in excess of 20% of the then-replacement value of the Hotel, Tenant has the option to either (i) terminate this Lease, provided Tenant assigns to Lessor all insurance proceeds arising from the Casualty that remain after any required payment to the Mortgagee, as defined in Section 32 – Financing of Leasehold Estate, pursuant to an express provision of the Leasehold Mortgage, as defined in Section 32 below, or (ii) repair the Hotel to a condition that is substantially the same as the one that existed immediately before the Casualty. Tenant shall give written notice of its election to Lessor within 30 days after the Casualty. If Tenant elects to terminate, the termination will be effective as of the date of Tenant's notice to Lessor. If Tenant elects to rebuild, Tenant is entitled to a proportionate reduction of Ground Rent (i) while repairs are being made, or (ii) for three months, whichever is less, unless Tenant is compensated by insurance for rent due Lessor, in which case no rent abatement will apply. The proportionate reduction in Ground Rent will be calculated by multiplying the monthly Ground Rent by a fraction, the numerator of which is the number of square feet of the Hotel that are unusable by the Tenant and the denominator of which is the total square feet in the Hotel.
- i. If Tenant elects to repair the Hotel, Tenant will have 180 days to commence repair or restoration and shall diligently pursue the completion of the repair or restoration.
- ii. If Tenant elects to terminate this lease in accordance with this Section 29 and insurance proceeds are paid to Lessor, after Lessor either (i) completes repairs that return the Hotel to the condition that existed immediately prior to the Casualty, or (ii) demolishes the Improvements and removes the debris, any remaining insurance proceeds will belong to the Tenant.

30. Condemnation:

- A. If the whole or any part of the Premises is taken as a result of the exercise of the power of eminent domain or is conveyed to any entity having such power under threat of exercise thereof (both such actions being hereinafter referred to as “**Condemnation**”), this lease will automatically terminate as to the portion taken as of the date physical possession is taken by the condemnor. The value of any damages to the remainder of the Premises sustained by Tenant and Lessor as a result of a Condemnation action will be determined by a court of law or by negotiation and agreement with the condemnor.
- B. If the remaining part of the Premises is not reasonably suitable for the use described in Section 9, Use of Premises, as reasonably determined by Tenant, this lease may be terminated by either Lessor or Tenant through written notice to the other party within 30 days of the condemning agency’s adoption of a resolution of necessity (or such agency’s equivalent determination), to condemn the whole or any portion of the Premises. If a Condemnation takes (i) 25% or more of the Premises, or (ii) the portion of the Premises providing Tenant access to the Site Improvements, Tenant may terminate this lease by providing Lessor written notice within 30 days of the condemning agency’s adoption of a resolution of necessity (or such agency’s equivalent determination), to condemn such portion of the Premises. If the remaining part of the Premises is reasonably suitable for the operation of the business described in Section 9, as reasonably determined by Tenant, this lease will continue in full force and effect as to such remaining part. If this lease is not terminated as of the date of such Condemnation, Rent will be reduced to an amount equal to the product of (i) the then-current Rent multiplied by (ii) a fraction, the numerator of which is the number of square feet of the Premises remaining after such Condemnation, and the denominator of which is the number of square feet of the Premises prior to such Condemnation.

In the event that all or any part of the Premises is taken by Condemnation or conveyed in lieu thereof, both parties have the right to pursue a condemnation award against the condemning agency. To the extent allowed by law, Tenant is entitled to any award for lost business, the residual value of its leasehold interest, moving expenses, and the depreciated value of any fixtures or property improvements installed and not removed by Tenant. Lessor is entitled to all other amounts awarded, including but not limited to, all amounts awarded for land value. No claim made by or payment to Tenant will diminish or otherwise adversely affect Lessor’s award. Provided the Lessor is not the condemning agency, Tenant will not have, and may not make, any claim against Lessor for any loss, damage or other matter arising out of any Condemnation.

31. Cancellation by Lessor: If Lessor requires the Premises for purposes other than the operation of a hotel and related activities, Lessor may terminate this lease with not less than 12 months’ prior written notice (the “**Material Change Termination Option**”). The written notice provided by Lessor will specify the date on which the lease will

terminate (the “**Termination Date**”). The Termination Date may not be sooner than the 25th anniversary of the Effective Date.

If Lessor exercises its Material Change Termination Option, Lessor shall pay Tenant an amount equal to (i) the value of Tenant’s remaining interest in the Premises based on the fair market value of the remaining term of the lease and any other relevant factors, and (ii) the then-existing fair market value of the Site Improvements (the “**Termination Value**”). Payment of the Termination Value is due within ten days of the earlier to occur of (i) the Termination Date and (ii) Tenant’s satisfaction of its obligation to maintain the Premises in a first-class condition, in accordance with Section 13.A. above.

Tenant has no right to recover the value of its Improvements in the event the lease is terminated as a result of Tenant’s Default or for any reason other than as specified in this Section.

32. Financing of Leasehold Estate:

- A. Tenant’s Right to Encumber. Subject to the conditions set forth below, Tenant may, at any time, encumber, at its discretion, all or any portion of its interest in the Lease, the leasehold estate, and the Improvements by mortgage (a “**Leasehold Mortgage**”). Tenant may have no more than two Leasehold Mortgages outstanding at any time. Any Leasehold Mortgage will be subject and subordinate to all rights and interests of Lessor and will be a lien only on Tenant’s interests in and to this lease and the leasehold estate and will not be a lien on Lessor’s fee interest in the Premises or reversionary interest in the Improvements. Any Leasehold Mortgage is subject to the terms and provisions of this lease and the holder of the Leasehold Mortgage (each, a “**Mortgagee**”), or anyone claiming by, through or under the Mortgagee, will not, by virtue of the Leasehold Mortgage, acquire any greater rights hereunder than Tenant has under this lease. Tenant shall deliver to Lessor copies of all documents recorded to evidence any and all Leasehold Mortgages and all notices of default received by Tenant from a Mortgagee. Tenant shall also cause any Mortgagee to deliver copies of default notices to Lessor, simultaneously upon mailing to Tenant.
- B. Tenant’s Obligations. Tenant covenants and agrees to pay the indebtedness secured by a Leasehold Mortgage when the same becomes due and payable and to perform, when such performance is required, all obligations of the mortgagor thereunder. Tenant further agrees not to suffer or permit any default to occur and continue under a Leasehold Mortgage.
- C. Rights of Mortgagee. A Mortgagee may enforce its rights under its Leasehold Mortgage and acquire title to the Tenant’s leasehold estate in any lawful way. Subject to this lease, including without limitation, the “Use of Premises” and “Rent” provisions hereof, and all other terms, provisions and conditions of this lease, upon foreclosure of such Leasehold Mortgage and the Director of Airports’ receipt of a copy of the final judgment confirming the sale, the successor in interest may take possession of that portion of the leasehold estate subject to the

Leasehold Mortgage. During such time as the Mortgagee or any successor in interest is the owner and holder of the leasehold estate and Tenant's interest hereunder, whether by foreclosure or otherwise, such interests are subject to all of the terms, conditions and provisions of this lease.

- D. Notice to Mortgagee. So long as Tenant or Mortgagee has provided Lessor with Mortgagee's address for notices, Lessor shall provide Mortgagee with a copy of any notice of Default served upon Tenant by Lessor. Lessor agrees that if Tenant fails to cure such Default within the time provided for in this Lease, then the Mortgagee may have the following additional times to cure:
- i. as to any Rent and other sums payable hereunder, within 30 days after written notice from Lessor to Mortgagee that Tenant has not cured such default within the applicable cure period provided in this Lease; and
 - ii. as to all other defaults which are susceptible to cure by Mortgagee by performance, within 30 days after the later of (a) the date Mortgagee receives written notice from Lessor of such default or (b) the last day that Tenant is given to remedy or cause to be remedied the defaults complained of, or, if within such period such default cannot be cured, to commence to so cure within such 30 day period and thereafter diligently and continuously proceed therewith to completion; provided that, with respect to such other defaults under this subclause (b) which cannot be cured by Mortgagee without obtaining possession of the Premises, then Mortgagee's time to cure the default will not start until it obtains possession of the Premises so long as Mortgagee, within 60 days after receiving notice of such default, commences formal legal proceedings to obtain such possession and thereafter prosecutes such proceedings diligently and so long as Mortgagee or a wholly owned subsidiary or affiliate of Mortgagee has cured by payment and performance all other defaults then or thereafter existing.
- E. Notice of Compliance. Upon written request by Tenant, Lessor shall execute, acknowledge, and deliver to Tenant or to any Mortgagee, a written statement stating (i) whether the Lease is unmodified and is in full force and effect, and if modified, whether the modified Lease is in full force and effect, and stating the nature of the modification, (ii) whether Lessor is aware of any Default by Tenant in the performance or observance of any term or condition of this lease, (iii) whether any notice has been given to Tenant of any Default that has not been cured (and, if so, specifying the nature of the Default) and (iv) any other information reasonably requested of Lessor.
- F. No Modifications. Notwithstanding anything contained in this lease to the contrary, so long as there exists an unpaid Leasehold Mortgage on the leasehold estate of Tenant which Lessor has been notified of in accordance with the provisions of this lease, this lease may not be modified, amended or altered in any respect and Lessor may not accept a voluntary surrender of the Premises or a

cancellation of this lease (provided Leasehold Mortgagee timely remedies any default and keeps this lease current, all as provided above) prior to the expiration or sooner termination thereof, without the prior written consent of Leasehold Mortgagee, not to be unreasonably withheld, conditioned or delayed in the case of a proposed amendment or modification, and which may be withheld in Leasehold Mortgagee's sole and absolute discretion in the case of a voluntary surrender or cancellation.

- G. No Merger. So long as any debt secured by a Leasehold Mortgage in compliance with the provisions hereof remains unpaid and provided the Mortgagee timely remedies any Default and keeps the monetary obligations due under this lease current, all as provided above, unless Mortgagee otherwise consents in writing, the fee title to the Premises and the leasehold estate in the Premises may not merge but are to be kept separate estates, notwithstanding the union of such estates either in Lessor or in Tenant or in a third party by purchase or otherwise.
- H. Modifications Requested by Lender. From time to time during the Term, Lessor agrees to enter into proposed amendments to this lease reasonably requested by a Mortgagee and approved by Lessor in its reasonable discretion; provided, such changes may not: (a) affect Lessor's rights or Tenant's obligations under this lease; (b) increase any of Lessor's obligations hereunder; (c) affect the Rent to be paid hereunder; or (d) affect the use restrictions set forth in this lease in any material respect. As a condition to entering into any such modifications, Tenant shall pay all of reasonable Lessor's attorneys' fees and costs in connection with such proposed amendment.
- I. Foreclosure. In no event will Lessor's consent be required for a Mortgagee to foreclose on the Leasehold Mortgage or for Mortgagee to effect a transfer or assignment in lieu of foreclosure to itself or an affiliate (which Mortgagee may cause Tenant to enter into). If at any time during the term of this lease, the Mortgagee succeeds to Tenant's interest in the lease by foreclosure or otherwise, the Mortgagee will be subject to the terms and provisions of this lease, including, without limitation, the obligation to pay Rent as and when due. After acquiring Tenant's rights by foreclosure or by transfer in lieu of foreclosure, Mortgagee will continue to be liable for perform Tenant's obligations under this lease, including those accruing and arising prior to the conclusion or consummation of such foreclosure or other transfer, until the Mortgagee transfers or assigns the leasehold estate as permitted by this lease. In no event will a Leasehold Mortgagee acquire greater rights or interest than Tenant has under this lease.
- J. New Lease. In addition, if the lease terminates for any reason, including without limitation a default by Lessee thereunder or rejection of the lease in any bankruptcy proceeding without full satisfaction of the Leasehold Mortgage, and within 30 days after such termination, Mortgagee, by written notice, requests Lessor to enter into a new lease of the Premises, then Lessor shall enter into a new lease with Mortgagee (or its nominee, subject to Lessor's prior written consent,

which consent shall not be unreasonably withheld) within 30 days after the giving of the written notice by Mortgagee, except that Mortgagee shall continue to keep all rent and other sums payable under the this lease current and abide by all other terms of this lease up to the effective date of the new lease.

33. Non-Discrimination:

- A. Tenant hereby covenants and agrees: (i) that no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to, discrimination in the use of the Premises on the grounds of race, color, sex, or national origin; (ii) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination on the grounds of race, color, sex, or national origin; and (iii) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, as such regulations may be amended.
- B. In the event of a breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this lease and to re-enter and repossess the Premises and the facilities thereon. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including the expiration of any appeal rights.
- C. Tenant shall furnish its accommodations and services on a fair, equal, and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- D. Noncompliance with subsection C above constitutes a material breach thereof and, in the event of such noncompliance, Lessor has the right to terminate this lease without liability therefor or, at the election of Lessor or the United States, either Lessor or the United States government, or both have the right to judicially enforce the provisions of this subsection D.
- E. Tenant agrees that it shall insert the above subsections A through E in any sublease agreement by which Tenant grants a right or privilege to any person, firm, or corporation to render accommodations or services, or both to the public on the Premises.
- F. In the event Tenant employs anyone on the Premises or in connection with its activities on the Premises, Tenant assures that it will undertake an Affirmative Action program (as such term is defined by 14 CFR Part 152, Sub-part E (“**Sub-part E**”)), as required by Sub-part E to ensure that no person is excluded from participating in any employment activities covered by Sub-part E on the grounds

of race, creed, color, national origin, or sex. Tenant assures Lessor that no person will be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Sub-part E. Tenant assures Lessor that it will require that its covered suborganizations provide assurances to Tenant that they similarly will undertake Affirmative Action programs, and that they will require assurances from their suborganizations, as required by Sub-part E, to undertake the same effort.

34. Operation of Airport by Lessor:

- A. Aviation Hazards: Lessor shall take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, including preventing Tenant from constructing, or permitting the construction of, any building or other structure on the Premises that, in the opinion of Lessor or the Federal Aviation Administration, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- B. Navigational Aids: Lessor reserves the right during the term of this lease, during any renewal and/or extension or holdover period thereof to install air navigational aids including lighting, in, on, over, under, and across the Premises, subject to Tenant's reasonable review and approval of same. In the exercise of any of the rights hereof, Lessor shall give Tenant no less than 90 days written notice of its intention to install such air navigational aids and shall negotiate in good faith with Tenant as to the location and operation of same. In no event may the navigational aids disturb or interfere with the operation of the Hotel, and if they do, it will be deemed a taking requiring compensation to Tenant. Following installation, Lessor is responsible for the maintenance and operation of such equipment in a manner that does not disturb or interfere with the operation of the business on the Premises.

35. Airport Use and Development:

- A. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Tenant and without interference or hindrance.
- B. Lessor reserves the right, but is not obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities at the Airport.
- C. This lease is subordinate to the provisions and requirements of any existing or future agreement between Lessor and the United States, including but not limited to the Federal Aviation Administration, relative to the development, operation, and maintenance of the Airport.
- D. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace

above the surface of the Premises. This public right of flight includes the right to cause in said airspace all noise inherent in the operation of any aircraft used for navigation or flight through said airspace, and all noise inherent in landing at, taking off from, and operations at the Airport.

36. Development of Premises:

- A. Tenant shall comply with any applicable notification and review requirements covered by 14 CFR Part 77 of the Federal Aviation Regulations in connection with any modification or alteration to an existing building on the Premises and in connection with the construction, modification or alteration of any building or structure constructed on the Premises in the future.
- B. Tenant may not cause or permit the construction of any structure or object, or the growth of any tree on the Premises, to exceed the established height contours. In the event the aforesaid covenants are breached, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at Tenant's sole cost and expense.
- C. Tenant may not use or develop the Premises in any manner that might interfere with or otherwise constitute a hazard to the landing and taking off of aircraft from the Airport or otherwise constitute a hazard (an "**Interference Hazard**"). Upon learning of any Interference Hazard, Lessor may enter upon the Premises and cause the abatement of such Interference Hazard at the sole cost and expense of Tenant.
- D. Nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. § 40103) or to consent to future construction, modification or alteration.
- E. This lease and all of its provisions are subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport by the United States during a time of war or national emergency.

37. Instrument of Transfer: This lease is subordinate and subject to the provisions and requirements of the Instrument of Transfer by and between the United States and County dated the 9th day of October 1947, and recorded in Book 1137 at page 114 of Official Records of Contra Costa County, California.

38. Choice of Law: This lease is governed by the laws of the State of California.

39. Notices: Any and all notices to be given under this lease, or otherwise, may be served by enclosing same in a sealed envelope addressed to the party intended to receive the same, at its address set forth below, and deposited in the United States Post Office as certified

mail with postage prepaid. When so given, such notice will be effective from the third date of its mailing. Notices may also be given via a reputable overnight courier service, effective on the next business day following delivery of the notice to the courier service for next day business delivery. Unless otherwise provided in writing by the parties hereto, the address of Lessor and Tenant and the proper party to receive any notices on their behalf are:

County: Director of Airports
Contra Costa County Airports
550 Sally Ride Drive
Concord, CA 94520-5550

Tenant: Dale Village Apartment Company
c/o Concord Plaza Hotel
45 John Glenn Drive
Concord, CA 94520
Attention: General Manager

With Copy to: Concord Plaza Hotel
c/o Hunt Pacific Management Corporation
26 Corporate Plaza Drive, Suite 270
Newport Beach, CA 92660
Attention: David L. Warner

40. Time is of the Essence: Time is of the essence for each provision of this lease.
41. Binding on Successors: The terms of this lease inure to the benefit of and bind the heirs, successors, executors, administrators and assigns of the parties hereto, subject to the limitations on assignment of this lease.
42. Invalid Provisions; Severability: It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision contained herein is held to be invalid by a court of competent jurisdiction, such invalidity does not invalidate any other covenant, condition or provision of this lease, provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Tenant in their respective rights and obligations contained in the valid covenants, conditions and provisions of this lease.
43. Entire Agreement: This lease and all exhibits (which are incorporated herein and made a part of this lease by this reference) referred to in this lease constitute the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed, and supersedes all prior or contemporaneous understandings or agreements of the parties. No alterations or variations of this lease are valid unless they are in writing and signed by Lessor and Tenant.
44. Cumulative Rights and Remedies: The rights and remedies with respect to any of the terms and conditions of this lease are cumulative and not exclusive and are in addition to

all other rights and remedies at law or in equity. Each right or remedy shall be construed to give it the fullest effect allowed in law.

45. No Third-Party Beneficiaries: Nothing in this lease, express or implied, is intended to confer on any person, other than Lessor and Tenant and their respective successors-in-interest, any rights or remedies under or by reason of this lease.
46. No Continuing Waiver: The waiver by Lessor of any breach of any of the terms or conditions of this lease does not constitute a continuing waiver or a waiver. The receipt by Lessor of any Rent with knowledge of the breach of any term or condition of this lease may not be deemed to be a waiver by Lessor, unless such waiver is specifically expressed in writing by the Director of Airports. No payment by Tenant or receipt by Lessor of a lesser amount than specified in this lease may be deemed to be other than a payment on account of such Rent and may not be deemed to be a waiver of notice of termination and of forfeiture of this lease.
47. Covenant Against Liens; Recordation Against Premises: Neither Tenant nor Lessor may permit any mechanic's, materialman's, or other lien against the Premises, or the property of which the Premises forms a part, in connection with any labor, materials, or services furnished or claimed to have been furnished. If any such lien is filed against the Premises, or property of which the Premises forms a part, the party charged with causing the lien will cause the same to be discharged; provided however, that either party may contest any such lien, so long as the enforcement thereof is stayed.
48. Force Majeure: In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, public health crises, pandemics, government shutdown order, or court order. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. In no event will Lessor be required to agree to cumulative delays in excess of 180 days.
49. Lease Authorization: This lease is made and entered into by Lessor in exercise of authority as recognized in Section 25536 of the Government Code of the State of California.

[Remainder of Page Intentionally Left Blank]

50. Drafting Conventions: The section headings and captions of this lease are, and the arrangement of this lease is, for the sole convenience of the parties to this lease. The section headings, captions, and arrangement of this lease do not in any way affect, limit, amplify or modify the terms and provisions of this lease.

The lease is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this lease and their counsel have read and reviewed this lease and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this lease. The definitions in this lease apply equally to both singular and plural forms of the terms defined.

If any date specified in this lease as a date for taking action falls on a day that is not a business day, then that action must be taken on the next business day.

Tenant hereby represents and warrants that it is a limited liability company duly organized and validly existing under the laws of the State of California.

The parties are signing this lease as of the Effective Date.

LESSOR

TENANT

CONTRA COSTA COUNTY, a political
Subdivision of the State of California.

**DALE VILLAGE APARTMENT
COMPANY, LP**

By _____
Greg Baer
Director of Airports

By _____
Name: _____
Its: _____

RECOMMENDED FOR APPROVAL:

By _____
Beth Lee
Assistant Director of Airports

APPROVED AS TO FORM:

By Thomas L. Geiger, Chief Assistant County Counsel

By _____
Kathleen M. Andrus,
Deputy County Counsel

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PORTIONS OF RANCHO MONTE DEL DIABLO, DESCRIBED AS FOLLOWS:

PARCEL ONE:

Commencing at the point on intersection of the center line of Concord Avenue and the proposed center line of Meridian Park Boulevard, as said center lines are shown on Map of Subdivision 3258, filed April 28, 1965 in Book 104 of Maps, at Page 1, Official Records of said County; thence from point of commencement along the center line of the proposed northwesterly extension of Meridian Park Boulevard, north $40^{\circ}28'23''$ west, 53.34 feet to the northwest line of said Concord Avenue; thence along said northwest line, being parallel to and 52 feet, right angle measurement, from said center line ("L2" Line) of Concord Avenue, north $62^{\circ}23'00''$ east, 209.01 feet to the true point of beginning; thence from said point of beginning continuing along said parallel and northwest line of Concord Avenue north $62^{\circ}23'00''$ east, 701.86 feet to a tangent curve to the left having a radius of 20.00 feet; thence leaving the northwest line of Concord Avenue along said tangent curve, through a central angle of $90^{\circ}00'00''$, an arc distance of 31.42 feet to the west line of the County Road known as John Glenn Drive; thence along said west line north $27^{\circ}37'00''$ west, 216.00 feet and northeasterly along a tangent curve to the right having a radius of 234.36 feet, through a central angle of $32^{\circ}07'06''$ an arc distance of 131.38 feet to the southeast corner of the parcel of land described in the lease by and between Contra Costa County, as Lessor, and Pacific States Aviation, Inc., as Lessee, dated February 19, 1963, on file in the Office of the Clerk of the Board of Supervisors of said County; thence leaving said west line of John Glenn Drive along the southerly line of said parcel of land leased to Pacific States Aviation, north $85^{\circ}29'54''$ west, 249.01 feet to the southwest corner of said lease parcel; thence south $24^{\circ}28'42''$ west, 466.12 feet; thence south $62^{\circ}23'00''$ west, 217.46 feet; thence south $27^{\circ}37'00''$ east, 72.00 feet; thence along the arc of a non-tangent curve concave to the northeast having a radius of 135.00 feet to which beginning of curve from which a radial bears north $51^{\circ}55'31''$ east; thence southeasterly along said curve through a central angle of $35^{\circ}12'52''$, an arc distance of 82.97 feet; thence non-tangent from last said curve south $27^{\circ}37'00''$ east, 62.59 feet to the trust point of beginning.

PARCEL TWO:

Commencing at the point on intersection of the center line of Concord Avenue and the proposed center line of Meridian Park Boulevard, as said center lines are shown on Map of Subdivision 3258, filed April 28, 1965 in Book 104 of Maps, at Page 1, Official Records of said County; thence from point of commencement along the center line of Concord Avenue, south $62^{\circ}23'00''$ west, 2.03 feet; thence leaving said center line of Concord Avenue along the Monument line of the northwesterly extension of Meridian Park Boulevard, north $40^{\circ}28'23''$ west, 184.08 feet;

thence north 30°28'30" west, 45.00 feet to the true point of beginning of the following described parcel of land; thence from said true point of beginning, continuing north 30°28'30" west, 22.11 feet; thence north 24°28' 42" east, 155.60 feet; thence south 65°31 '18" east 55.07 feet; thence north 62°23'00" east, 211.49 feet; thence north 24°28'42 east, 460.86 feet; thence south 85°29'54" east, 69.16 feet to the most northerly corner of the parcel of land described in Exhibit "A" in the Lease by and between Contra Costa County, as Lessor, and Concord Properties (a General Partnership), as Lessee, recorded September 29, 1971 in Book 6487 of Official Records at Page 216, Records of said County; thence along the northwesterly and northerly lines of said Lease (6487 OR 216); south 24°28'42" west, 466.12 feet; thence south 62°23'00" west, 338.57 feet; thence south 24°28'42" west, 47.62 feet; thence southerly along a tangent curve concave to the east having a radius of 20.00 feet, through a central angle of 83°45'54", an arc distance of 29.24 feet, to a point of cusp with a tangent curve concave to the south having a radius of 45.00 feet; thence westerly along said curve through a central angle of 61 °11 '18", an arc distance of 48.06 feet to the true point of beginning.

PARCEL THREE:

Commencing at the point on intersection of the center line of Concord Avenue with the proposed center line of Meridian Park Boulevard, as said center lines are shown on Map of Subdivision 3258, filed April 28, 1965 in Book 104 of Maps, at Page 1, Official Records of said County; thence from point of commencement along the center line of the proposed northwesterly extension of Meridian Park Boulevard, north 40°28'23" west, 53.34 feet to the northwesterly right of way line of said Concord Avenue; thence along said northwesterly line being parallel with and 52.00 feet northwesterly measured at right angles, from said center line of Concord Avenue north 62°23'00" east, 65.77 feet; thence continuing along said parallel and northwesterly line of Concord Avenue, north 62°23'00" east, 143.24 feet; thence north 27°37'00" west, 62.21 feet to the true point of beginning of the following described parcel of land from which point a radial line of a non-tangent curve concave to the northeast, having a radius of 135.00 feet, bears north 16°42'39" east; thence from said true point of beginning along said curve, through a central angle of 35°12'52", an arc distance of 82.97 feet; thence, non-tangent to said curve north 27°37'00" west, 72.00 feet to a point which shall hereinafter be referred to as Point "A", being on the southeasterly line of the above described Parcel Two; thence along said southeasterly line south 62°23'00" west, 50.67 feet; thence 40°37'00" east, 100.00 feet; thence south 82°37'04" east, 81.20 feet to the true point of beginning.

PARCEL FOUR:

Commencing at the point on intersection of the center line of Concord A venue with the proposed center line of Meridian Park Boulevard, as said center lines are shown on Map of Subdivision 3258, filed April 28, 1965 in Book 104 of Maps, at Page 1, Official Records of said County; thence from said point of commencement along the center line of the northwesterly extension of Meridian Park Boulevard, north 40°28'23" west, 53.34 feet to the northwesterly right of way line of said Concord Avenue; thence along said northwesterly line being parallel with and 52.00 feet northwesterly measured at right angles, from said center line of Concord Avenue north 62°23'00" east, 65.77 feet to the true point of beginning of the following described

parcel of land; thence from said true point of beginning continuing along said parallel and northwesterly line of Concord Avenue, north $62^{\circ}23'00''$ east, 143.24 feet; thence north $27^{\circ}37'00''$ west, 62.61 feet; thence north $82^{\circ}37'04''$ west, 81.30 feet; thence north $40^{\circ}37'00''$ west, 100.00 feet to a point which shall hereinafter be referred to as Point "B"; thence south $62^{\circ}23'00''$ west, 20.44 feet; thence south $24^{\circ}28'42''$ west, 47.62 feet; thence southerly along a tangent curve concave to the east having a radius of 20.00 feet, through a central angle of $83^{\circ}45'54''$, an arc distance of 29.24 feet to a point on the northeasterly line of said northwesterly extension of Meridian Park Boulevard from which point a radial line of a reverse curve concave to the southwest, having a radius of 45.00 feet, bears south $30^{\circ}42'40''$ west; thence along said northeasterly line as follows: southeasterly along said reverse curve, through a central angle of $53^{\circ}54'38''$, an arc distance of 42.34 feet, southerly along a reverse curve concave to the east, having a radius of 10.00 feet, through a central angle of $35^{\circ}05'49''$, an arc distance of 6.13 feet; tangent to said curve, south $40^{\circ}28'23''$ east 75.26 feet and easterly along a tangent curve concave to the north, having a radius of 40.00 feet, through a central angle of $77^{\circ}06'37''$, an arc distance of 53.86 feet to the true point of beginning.

Bearings used in the above description are based on the California Coordinate System, Zone III taken on the Monument Line of Concord Avenue bearing of north $62^{\circ}23'00''$, east as shown on that certain Parcel Map M.S. 21-77 filed for Record on June 6, 1977 in Book 55 of Parcel Maps at Page 12, Official Records of Contra Costa County.

EXHIBIT B

Potential Capital Improvements

| Site / Building Exterior: Estimated Capital Improvement Spend \$1,700,000 | |
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| Site, Parking Areas, Drive Aisles, and Sidewalks | |
| 1. | Retain the services of a Marriott-recommended, licensed architect to renovate exterior elements as required by this conversion scope. |
| 2. | Clean and power wash sidewalks. |
| 3. | Replace stamped concrete in the drive aisle at the main hotel entrance/porte cochere. |
| 4. | Employ an acoustical consultant to assess the impact of the nearby airport (maximum acceptable hourly equivalent noise levels in guestrooms are 45 dBA during the day and 40 dBA at night). Submit the results of the acoustical survey, in addition to a recommended action plan to mitigate these conditions. |
| 5. | Replace damaged concrete curbs and sidewalks. |
| 6. | Repave and restripe parking lot. |
| 7. | Provide/replace seating and decorative trash receptacle(s) at building entrances. |
| 8. | Remove non-permanent structures (sheds, storage containers) from the site. |
| 9. | Replace dumpster enclosure to match the new design of the building. |
| Exterior Lighting | |
| 10. | Provide a photometric study of existing site lighting and submit a plan with revisions to conform to brand standards. |
| 11. | Connect exterior and building lighting systems to photo cell sensors with time clock back-up. |
| 12. | Provide bollard light fixtures to illuminate walkways. |
| 13. | Replace exterior sconces and building-mounted light fixtures. |
| Landscaping | |
| 14. | Design and implement a comprehensive landscaping plan for the site. Submit proposed plan for review and approval. |
| 15. | Prune plants and manicure planting beds. Remove dead and misshapen plants. |
| Outdoor Patio / Courtyard / Terrace | |
| 16. | Provide a small outdoor transitional seating area adjacent to the hotel entrances. |
| 17. | Provide a permanent masonry fire pit or similar features. |
| Site & Building Signage | |
| 18. | Replace exterior building and site signs. Signs shall be designed and provided by a franchisor-approved sign vendor. |
| 19. | Provide exterior and interior wayfinding signage. |
| Architectural / Building Envelope / Main Entry / Porte Cochere | |
| 20. | Re-concept the building exterior and porte cochere. Develop a custom design concept inspired by the brand's current generation exterior architectural features, materials, and color palette. |
| 21. | Provide architectural trim or other treatments on the building exterior to provide greater surface variation. |
| 22. | Verify condition of windows and doors and reseal, repair, or replace any damaged units. |
| 23. | Provide insect screens for guest room windows. |
| 24. | Replace balcony railings and replace with glass, steel cable, or similarly upgraded handrail design. |
| 25. | Remove canopy from the over the guestroom window within the atriums area. |
| 26. | Provide a permanent structured overhang over all exterior doors to protect guests from inclement weather. |
| 27. | Reimage the porte cochere by reducing the massing and incorporating finishes to compliment the interior architecture finishes. The under-structure and support columns may be salvageable. |
| 28. | Provide a vestibule at the main entry area. |

Building Interior: Estimated Capital Improvement Spend \$5,700,000

| General Requirements | |
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| 29. | Retain the services of a Marriott recommended and licensed design professional (interior designer, architect) to assist with the layout and design of the public space, guestrooms, and the development of an interior decor scheme appropriate to the market, location, and Franchisee preference. Marriott can provide a comprehensive list of Interior Designers approved for the Recommended Designs Program upon request. |
| 30. | Provide a comprehensive replacement of FF&E and interior finishes including, but not limited to, wall finishes (full height corner guards, painted surfaces and vinyl wall coverings), floor finishes (tile, carpet, and base), ceiling finishes, stair nosings, countertops, chair rails, crown molding, door, door hardware, plumbing fixtures, vanities, casegoods, soft goods, upholstered seating (including ergonomic task chairs), architectural and decorative lighting (fixtures, lamps, and shades), window treatments (including hardware), artwork, decorative mirrors, and accessories. |
| 31. | Renovate interior and exterior elements as required by this conversion scope. Clarify the public space programming design intent, linked or blended, and design spaces to accommodate the respective brand's key count and select service operation model. <ul style="list-style-type: none"> - Provide a brand agnostic design for all shared spaces. - Public spaces that may be shared include the lounge, Courtyard Bistro & Crate market, fitness, pool, guest laundry, meeting rooms, and back-of-house areas. For any shared spaces, the Courtyard brand design standards and guidelines apply. - Provide separate brand specific registration desks and arrival experiences. - For the Fairfield guest, provide a breakfast room with complimentary breakfast offering a 24-hour coffee station. Size the buffet and breakfast seating to accommodate the Fairfield key count. - The restaurant offering is not a brand requirement and can be repurposed to other uses. - The pool and spa are optional, and the space may be repurposed to other uses. |
| 32. | Reimage the atrium/terrace to align to the select service operation model. <ul style="list-style-type: none"> - Replace decorative light fixtures. - Provide a 10-foot minimum landscaping or alternate buffer in front of guestroom windows. |
| 33. | Remove brochure rack, tourism collateral, newspaper racks, and ATM from lobby and vestibule area. |
| 34. | Replace damaged or stained finishes. |
| 35. | Replace brass railing and trims. |
| 36. | Replace interior signage. |
| 37. | Provide a full range of Courtyard and Fairfield guestroom types in the hotel; identify proposed room mix. |
| 38. | Provide a small minimum percent guest suite room types for each brand. |
| 39. | Configure guest rooms to provide brand-required elements and interior zoning (i.e., bathroom, living room, and bedroom). |
| 40. | Provide showers in one hundred percent (100%) of king rooms and in fifty percent (50%) of queen-queen rooms, or in seventy-five percent (75%) of total key count. |
| 41. | Franchisor requires an acceptable proof of concept design set to include a proposed site plan, ground and typical floor plans, exterior building elevations or renderings, and enlarged guestroom plans with guest bathroom reconfiguration for each room type offered. |
| Vestibule / Reception Area | |
| 42. | Provide a vestibule with an automatic, bi-parting doors at both the inner and outer doors of the vestibule. |
| 43. | Provide a key card reader and intercom in the vestibule and positioned within view of the front desk. |
| 44. | Provide a dedicated space to house luggage carts. |
| 45. | Provide safe-deposit boxes for guest use at reception. Position the box so it is visible by guests when in use. |

| Amenities: Estimated Capital Improvement Spend \$250,000 | |
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| Fitness Room | |
| 46. | Expand the fitness room to accommodate the minimum quantities of fitness equipment and program requirements as noted in the brand standards. Provide four (4) areas or zones for cardio, strength, stretch, and hydration. |
| 47. | Replace cardiovascular equipment older than five years and/or lacking individual TV screens. |
| 48. | Provide the hydration station millwork with automatic water bottle filler, shelves, towel and trash receptacles. |
| 49. | Provide a wall-mounted, 55" television with high definition signal, viewable from the weight training area. |
| 50. | Provide a storefront glazed wall and door into the fitness room. |
| 51. | Provide enlarged windows on the exterior wall of the fitness room to maximize daylighting. |
| Swimming Pool and Spa Area | |
| 52. | Replace pool deck surface. |
| 53. | Replace decorative waterline tiles, depth markers, and "no diving" tiles. |
| 54. | Provide depth indicators and "no diving" tiles on pool deck. |
| 55. | Replace existing pool coping with a handgrip pool coping profile. |
| 56. | Provide in-deck sleeve and permanently-mounted accessible lift. |
| Guest Laundry | |
| 57. | Provide seating and a built-in table for folding clothes. |
| Back-of-House: Estimated Capital Improvement Spend \$300,000 | |
| Associate Facilities | |
| 58. | Provide dedicated employee break room(s), size space and kitchen to accommodate the total key count. |
| 59. | Replace refrigerator, sink, microwave oven, and coffee maker. |
| Food Production | |
| 60. | Repair and clean elements and equipment to remain. |
| 61. | Remove broken equipment that is no longer in service. |
| 62. | Provide equipment in support of the brand's food and beverage program; augment with new equipment. |
| 63. | Remove excess storage items. |
| Main Laundry / Housekeeping | |
| 64. | Remove broken equipment that is no longer in service. |
| Hotel Support Systems / Mechanical / Electrical / Plumbing: Estimated Capital Improvement Spend \$1,800,000 | |
| Elevators | |
| 65. | Rehabilitate (remove scratches, corrosion, etc.) elevator doors. |
| 66. | Provide a comprehensive elevator modernization for passenger and service elevators. |
| 67. | Replace interior cab finishes (flooring, side and back walls, and ceiling finishes). |
| Technology Infrastructure / Low Voltage | |
| 68. | Install brand-standard property management systems (PMS), point of sale (POS), and other required hotel systems. |
| 69. | Install approved mobile key certified RFID lock system with BLE key reader on all doors including, but not limited to, guest room entries, guest-accessed facilities, exterior entrances, meeting spaces, and back-of-house doors at the front desk/check-in station, and front office. |
| 70. | Provide wireless high-speed internet access (HSIA) throughout the public spaces and guestrooms of the hotel. In addition to wireless, provide an optional wired connection at the guestroom desk that is easily accessible to guests. |
| 71. | Provide a commercial-free, built-in, background music (BGM) system with speakers in public space to include, but not limited to, lobby, lounge, porte cochere, and recreational amenities. |
| 72. | Provide a house telephone in the engineer's office, pool equipment room, food preparation kitchen, and main laundry room. |
| 73. | Provide a house telephone in the meeting room(s), elevator lobbies, fitness center, and guest laundry. |

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| 74. | Provide doorbells with disconnect switches in rooms for the hearing impaired guestrooms. |
| Mechanical | |
| 75. | Provide a Building Automation System (BAS) to provide automatic scheduling, operation, and optimization of major HVAC and plumbing systems. Provide sensors in public areas with temperature controls by BAS. Generally, locate sensors in main area of occupancy. Function spaces require local controls. |
| 76. | Provide guestroom management system (GRMS) that meets Marriott standards. The system must include a remote digital thermostat with integral occupancy sensor that faces into the guestroom sleeping area and interfaces with the RFID signal from the entry door lock. Recommend that a system integrator be retained to be responsible for design, installation, project management, procurement, and commissioning of the GRMS. |
| 77. | Replace package terminal air conditioning (PTAC) units more than seven years old with new Marriott approved standard PTAC heat pumps. Sized at maximum 12,000BTU/500sf. Ensure clearances are met at exterior grille to maintain PTAC warranties. Provide manufacturer subbase to conceal wires. |
| 78. | Recommission the water-source heat pump and valves in Guestrooms to like new. Replace units that have failed. New unit size should be standardized and should be sized at 12,000BTU/500sf. When a unit sizing falls between two standard sizes, select the smaller size unit for increased run times. Submit sizing of new units to Marriott Engineering for review and acceptance. |
| Electrical | |
| 79. | Replace sliding dimmers in guest facing public spaces with four-scene programmable dimming system with timeclock for event. In meeting rooms, provide local, individual zone control. |
| 80. | At public restrooms, provide keyed light switches. Ceiling-mounted occupancy sensors are permitted, but note that lights should dim to 50 percent. |
| Plumbing | |
| 81. | Domestic hot water (DHW) must be stored in tanks at minimum 140°F. Provide a digital mixing valve (Armstrong "The Brain", Watts "Intelistation", or Leonard "Nucleus") to temper DHW to guest zones at maximum 125°F. Thermostatic mixing valves are not acceptable. |
| Fire Protection and Life Safety: Estimated Capital Improvement Spend \$250,000 | |
| General | |
| 82. | The above property was surveyed virtually on March 8, 2022 through drawings, photographs, and a virtual tour. This project has been surveyed with the understanding that the work performed in this building meets renovation as defined as refinishing, replacement, bracing, strengthening, or upgrading of existing materials, elements, equipment, or fixtures without involving the reconfiguration of spaces. If any other work in the building is performed, such as reconfiguration, change of use, additions, etc., Marriott Fire Protection must be contacted for a reassessment of the fire and life safety requirements. |
| 83. | The following items noted below must be completed prior to conversion. The fire protection and life safety systems must be inspected and tested by Marriott FLS prior to conversion: |
| Fire Alarm | |
| 84. | Provide fire alarm system smoke detectors with sounder bases in all guestrooms. These will be programmed to sound a local alarm for smoke detector activations as well as for general alarms. Hearing-impaired guestrooms will require 177cd strobes in the sleeping area and bathrooms meeting NFPA 72 requirements. |
| 85. | Provide system type carbon monoxide detectors with sounder bases in all areas with fuel fired appliances. |
| Life Safety | |
| 86. | Limit the occupant load to a maximum of 49 persons in Acorn and Oak meeting rooms. Post new signage and revise the sales brochure to reflect new occupant load. |
| 87. | Provide panic hardware on assembly occupancy exit doors in the Contra Costa room if not equipped. |
| 88. | Provide emergency lighting at all exterior exit door discharge. |

| Smoke Control | |
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| 89. | Re-certify and provide documentation from a licensed contractor that the existing atrium mechanical smoke exhaust is compliant with the original building Design Rational Analysis. If the current system does not meet or is not installed to meet the original building Design Rational Analysis or NFPA 92/IBC 909, then an atrium smoke exhaust system shall be provided in accordance with NFPA 92/IBC 909. |
| Sprinkler | |
| 90. | Provide quick response fire sprinklers in all guestrooms and guestroom corridors. Standard response type sprinklers may remain in the public and back of house areas of the hotel provided the sprinklers are in working condition. |