

**CITY OF HUNTINGTON BEACH  
SUPPLEMENTAL COMMUNICATION**  
Joan L. Flynn, City Clerk  
Office of the City Clerk

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Joan L. Flynn, City Clerk   
**DATE:** 11/17/2014  
**SUBJECT:** SUPPLEMENTAL COMMUNICATIONS FOR THE NOVEMBER 17, 2014, REGULAR CITY COUNCIL/PFA MEETING & SPECIAL MEETING OF THE SUCCESSOR AGENCY

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Attached are the Supplemental Communications to the City Council (received after distribution of the Agenda Packet):

**NOTICE OF ABSENCE**

Notice of Absence received from Matthew M. Harper requesting permission to be absent from the November 17, 2014 City Council meeting.

**CONSENT CALENDAR**

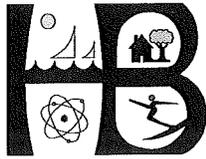
#11. Communication submitted by Ken Domer, Assistant City Manager, dated November 17, 2014 submitting a revised Attachment #4, Second Amendment to Agreement Containing Covenants Affecting Real Properties.

**PUBLIC HEARING**

#17. Communications received regarding the appeal of Planning Commission's denial of Zoning Text Amendment No. 14-001 and Local Coastal Program Amendment No. 14-002 (DTSP – District 1 On-Site Alcohol Sales):

Ann Tarkington

Robert Franklin



# CITY OF HUNTINGTON BEACH

City Council Interoffice Communication

**To:** Honorable Mayor Pro Tem and City Council Members  
**Attention:** Joan Flynn, City Clerk  
**From:** Matthew Harper, Mayor  
**Date:** November 12, 2014  
**Subject:** ***NOTICE OF ABSENCE***

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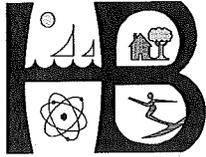
I will be absent from the regular City Council Meeting scheduled for November 17, 2014, as I will be visiting our Sister City Anjo, Japan.

Pursuant to City Council Resolution Number 2001-54, and there being no objection, the City Council's permission for this absence shall be expressed in the official minutes of this meeting.

A handwritten signature in black ink that reads "Matthew Harper". The signature is written in a cursive style with a horizontal line underneath it.

Matthew Harper, Mayor

xc: Fred Wilson, City Manager  
Ken Domer, Assistant City Manager



# CITY OF HUNTINGTON BEACH

## Interdepartmental Memo

**TO:** Honorable Mayor and Members of the City Council

**VIA:** Fred A. Wilson, City Manager

**FROM:** Ken Domer, Assistant City Manager  
Kellee Fritzal, Deputy Director

**DATE:** November 17, 2014

**SUBJECT:** **Supplemental Communication – Item #11: Approval of Assignment and Agreements related to the sale of The Strand Project from CIM/Huntington to Cypress Equities and DiamondRock Hospitality**

Attached is a revised Second Amendment to Agreement Containing Covenants Affecting Real Properties. The revision includes language allowing the Successor Agency Executive Director approval on future assignments or transfers that are permitted through the Development and Disposition Agreement (Implementation Agreements) or Covenant Agreement. Based on discussions with DiamondRock, this change is requested and recommended by Staff in order to expedite future assignments as permitted through the Implementation Agreements. DiamondRock is a publicly traded company, and while their corporate structure may be modified in the future necessitating such an assignment, it would not impact their hotel portfolio and therefore is considered a minor delegation of authorization.

Attachment

### SUPPLEMENTAL COMMUNICATION

Meeting Date: 11-17-2014

Agenda Item No. 11

OFFICIAL BUSINESS  
Document entitled to free  
recording per Government Code  
Sections 6103 and 27383

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648  
Attention: Successor Agency Executive Director

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**SECOND AMENDMENT TO  
AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY**

This SECOND AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (this "Second Amendment") is made and entered into by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH (the "Successor Agency"), CIM/HUNTINGTON HOTEL, L.P., a California limited partnership ("Hotel LP") and CIM/HUNTINGTON, LLC, a California limited liability company ("Owner") as of \_\_\_\_\_ with reference to the following:

A. Owner holds fee title to that certain real property described in the legal description attached hereto as Exhibit A (the "Owner Property"), and a leasehold interest in that certain real property described in the legal description attached hereto as Exhibit B ("Leased Premises"). Hotel LP owns that certain real property described in the legal description attached hereto as Exhibit C (the "Hotel Property"), and a leasehold interest in that certain real property described in the legal description attached hereto as Exhibit D ("Hotel Leased Premises"). The City owns the parking areas described on Exhibit E attached hereto (the "Parking Parcel"). The Owner Property, the Leased Premises, the Hotel Property, the Hotel Leased Property and the Parking Parcel are collectively referred to herein as the "Property". A mixed-use hotel, retail and office project (the "Project") has been completed on the Property.

B. The Property is subject to the Redevelopment Plan for the Main-Pier Redevelopment Project, which was approved and adopted by Ordinance No. 2578 of the City Council of the City of Huntington Beach, amended by Ordinance No. 2634, and merged with certain other redevelopment projects in the City by the adoption of Ordinance No. 3343 on December 16, 1996 to form the Huntington Beach Redevelopment Project (the "Merged Redevelopment Project").

C. The Property is subject to that certain Disposition and Development Agreement by and between the Successor Agency and Owner dated June 17, 1999, which Disposition and Development Agreement was supplemented by that certain [First] Implementation Agreement

entered into between the Redevelopment Agency of the City of Huntington Beach (the "Agency") and CIM Group, LLC dated April 6, 2000; that certain Second Implementation Agreement entered into between the Agency and CIM Group, LLC dated March 5, 2001, that certain Third Implementation Agreement entered into between the Agency and CIM/HUNTINGTON, LLC dated October 30, 2002, that certain Fourth Implementation Agreement entered into between the Agency and CIM/HUNTINGTON, LLC dated as of September 15, 2003, that certain Fifth Implementation Agreement entered into between the Agency and CIM/HUNTINGTON, LLC dated as of July 19, 2004 and certain Sixth Implementation Agreement entered into between the Agency and CIM/HUNTINGTON, LLC dated as of November 3, 2008 (collectively, the "DDA"). The Property is referred to in the DDA as the "Site." All capitalized terms in this Second Amendment shall have the meanings ascribed to them in the DDA unless indicated to the contrary herein.

D. Pursuant to the DDA, Agency and Owner entered into that certain Agreement Containing Covenants Affecting Real Property dated as of June 23, 2004 ("Original Covenant Agreement"), which was recorded on June 25, 2004 as Instrument No. 2004000580586 and that certain First Amendment to Agreement Containing Covenants Affecting Real Property dated as of November 3, 2008 (the "First Amendment" and together with the Original Covenant Agreement, the "Covenant Agreement"), which was recorded on November 21, 2008 as Instrument No. 2008000544606.

E. Pursuant to the Fifth Implementation Agreement entered into between the Agency and CIM/HUNTINGTON, LLC dated as of July 19, 2004, Owner has transferred (or is concurrently with the recordation of this Second Amendment) transferring the Hotel Property to Hotel LP.

F. The Successor Agency succeeded to all of the interest of the Agency as successor agency pursuant to the Dissolution Act. "Dissolution Act" as used herein means ABx1 26, making certain changes to the California Community Redevelopment Law and the California Health and Safety Code by adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code, as amended by Assembly Bill No. 1484 (Chapter 26, Statutes 2012) which was signed by the Governor of California on June 27, 2012, and as further amended by Assembly Bill No. 1585 which was signed by the Governor of California on September 29, 2012, and as further amended by Senate Bill No. 341 which was signed by the Governor of California on October 13, 2013, and as may be further amended from time to time.

G. Prior to Owner's conveyance to Hotel LP of the Hotel Property, Owner has filed two commercial condominium plans against the Owner Property, the Leased Premises, the Hotel Property, and the Hotel Leased Property. One condominium plan was filed on \_\_\_\_\_ and contains two condominium units that will be used for the operation of a hotel (the "Hotel Condo Plan"). The other condominium plan was filed on \_\_\_\_\_ and contains two condominium units that will be used for retail and office purposes (the "Retail Condo Plan"). It is anticipated that the condominium units in the Hotel Condo Plan (collectively, the "Hotel Units" and each a "Hotel Unit") and the condominium units in the Retail Condo Plan (collectively, the "Retail/Office Units" and each a "Retail/Office Unit") will all be sold by Hotel

LP and Owner, respectively, subject to the transfer provisions in, among other applicable agreements, the DDA and the Covenant Agreement, as amended by this Second Amendment. Each of the Hotel Units and the Retail/Office Units may also be referred to herein a "Unit". The fee owner of any Unit shall be referred to herein as a "Unit Owner," provided that if any Unit is owned by more than one party as an undivided interest, the obligations shall be applicable to any holder of an undivided interest of 50% or more of such Unit.

H. Owner, Hotel LP and the Successor Agency desire to enter into this Second Amendment to amend the Covenant Agreement so that the obligations imposed on Owner and Hotel LP shall be divided into obligations applicable to each Unit Owner for such Unit Owner's respective Unit and obligations that become the obligations of the Responsible Party (as defined below).

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

1. Revisions to Covenant Agreement.

1.1. Construction Covenants. The Construction Covenants have previously been released pursuant to the Release of Construction Covenants recorded on September 10, 2009 as Instrument No. 2009000483454 and the Completion Date has been determined to be \_\_\_\_\_.

1.2. References to Agency. All references to the Agency in the Covenant Agreement shall be deemed to refer to the Successor Agency and all references to the Agency Executive Director shall refer to the Successor Agency Executive Director.

1.3. Surviving Covenants.

1.3.1. Individual Unit Owners' Responsibility and Description of Responsible Party. From and after the effective date of this Second Amendment, each Unit Owner (initially Hotel LP as to the Hotel Units and Owner as the Retail/Office Units) shall be responsible for all covenants contained in this Covenant Agreement with respect to the Unit owned by such Unit Owner. The covenants contained in this Covenant Agreement that are applicable to portions of the Property outside the Units (such as common areas and the Parking Parcel) shall be performed by the "Responsible Party," which shall be the Unit Owner of Parcel 1 of the Retail/Office Units, provided that if all of the Unit Owners unanimously elect to have such covenants performed by one or more property owners' associations for portions of the Property outside the Units (such as common areas but specifically not including the Parking Parcel), by giving written notice to the Successor Agency, such designated property owners' association shall be the Responsible Party for the performance of such covenants.

1.3.2. First Paragraph of Section 2. The first sentence of Section 2 shall be deleted and the following substituted in its place:

“The parties hereby covenant and agree on behalf of themselves and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that such parties and their successors and assigns shall comply with and be bound by the following covenants (hereinafter referred to as the “Surviving Covenants”), provided that upon the transfer by a Unit Owner, the new Unit Owner shall be bound by the Surviving Covenants only as applicable to such Unit Owner’s Unit and shall not be liable or responsible for any breach of this Covenant Agreement by any other party except for the Responsible Party as to the Parking Parcel:...”

1.3.3. Section 2.a. – Surviving Covenants. The first paragraph of Section 2.a. of the Covenant Agreement is hereby deleted in its entirety and replaced with the following:

“a. Devote the Property, or cause the Property to be devoted, to use solely in accordance with the Redevelopment Plan, the Grant Deed, the Agreement Containing Covenants Affecting Real Property (as amended), the DDA, and plans approved by the City of Huntington Beach for hotel uses (with respect to the Hotel Units), retail uses (with respect to the Retail/Office Units), restaurant uses (with respect to the Hotel Units and the Retail/Office Units) and parking uses (with respect to the Parking Parcel), with at least 142 and approximately 157 hotel rooms, and approximately 101,591 net square feet of gross leasable area of retail and restaurant uses, and a public parking facility conforming with City approved plans. In addition to all of the other requirements under this Covenant Agreement, the hotel to be maintained on the Hotel Units shall be a Boutique Hotel having an overall standard of quality equal to or better than the following Joie de Vivre Hotels as of the date of the Sixth Implementation Agreement to the DDA (all of which have at least a four star rating): (i) Harvest Inn located in St. Helena, California; (ii) Hotel Kabuki located in San Francisco, California; (iii) Hotel Los Gatos located in Los Gatos, California; (iv) Hotel Montgomery located in San Jose, California; and (v) Hotel Vitale located in San Francisco, California, and the retail and restaurant uses to be maintained on the Property shall be nationally or regionally recognizable and reputable retailers or restaurants of the nature and quality customarily included in retail/restaurant centers meeting the requirements and restrictions of the Second Revised Scope of Development (Second Revised Attachment No. 4), and meeting the following requirements and restrictions:”

1.3.4 Sections 2.h. and 2.i. – Surviving Covenants. Sections 2.h. and 2.i. of the Covenant Agreement are hereby deleted in their entirety and replaced with the following:

“h. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, creed, color, national origin, sex, sexual orientation, disability, marital status, age or any other protected classification in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Owner or Hotel LP for themselves or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

- i. Each Unit Owner shall refrain from restricting the rental, sale or lease of the property on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(ii) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(iii) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use,

occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.” ”

1.3.5 Sections 2.o., 2.p., 2.q., 2.r. and 2.s. – Surviving Covenants. Sections 2.o., 2.p., 2.q., 2.r., and 2.s. shall be deleted in their entirety and replaced with the following:

- “o. Use the Hotel Units only for a Boutique Hotel and for no other use.
  
- p. As a Responsible Party obligation, maintain, repair and operate the existing public parking facility located beneath the Property, including the twenty-five (25) additional parking spaces above and beyond the four hundred eleven (411) parking spaces required by the City to be located in the public parking facility in connection with the development of the Property, for a total of four hundred thirty-six (436) parking spaces in the public parking facility. Any changes to the size (e.g., tandem and/or compact) and locations within the public parking facility of the twenty-five (25) additional parking spaces shall be pre-approved in writing by the City Planning Department from time to time. The maintenance (including repair, restoration and reconstruction) and operation of the twenty-five (25) additional parking spaces shall be in accordance with this Covenant Agreement, the Parking Management Plan approved by the City, the covenants, conditions and restrictions and reciprocal easement agreement and operating agreement to be entered into and recorded against the Site in accordance with the Conditions of Approval and the DDA, and plans approved by the City of Huntington Beach.
  
- q. As a Responsible Party obligation, pay, on behalf of City and Successor Agency, any and all amounts owed to Abdelmuti Development Company (“Abdelmuti”) and James A. Lane and Victoria Jean Lane, as Trustees of the James A. Lane and Victoria Jean Lane 1197 Trust, due to any increase in the cost of annual public parking passes that exceed the Threshold Cost Increase (as defined in the “Amendment to OPA”) pursuant to paragraph 3 of the Fourth Amendment to Owner Participation Agreement dated February 3, 2003 between Agency and Abdelmuti (the “Amendment to OPA”), and to defend, protect, indemnify and hold harmless the City and the Agency and their respective officers, agents, elected and appointed officials, employees and volunteers free and harmless therefrom.
  
- r. Owner has previously entered into a hotel management agreement with Joie De Vivre Hospitality, Inc. which was approved in writing by the Agency (the “Original Management Agreement”). Prior to the expiration or termination of the Original Management Agreement (and any successor hotel management agreement(s)), Hotel Unit Owners shall obtain the Successor Agency’s written approval of a new hotel management agreement which shall become effective

concurrently with the expiration or sooner termination of the hotel management agreement which it replaces. Each such hotel management agreement shall be with a manager determined by the Successor Agency to have not less than eight (8) years of experience in the successful operation of first quality hotels comparable to the hotel located on the Hotel Property. Approvals required of the Successor Agency under this Section 2.r. shall follow and be limited by the following procedures:

Within twenty (20) business days after receipt of Hotel Unit Owners' request for approval, the Successor Agency shall respond in writing by stating what further information, if any, the Successor Agency reasonably requires in order to determine whether or not to approve the agreement. Hotel Unit Owners shall promptly furnish to Successor Agency such further information as may be reasonably requested. Hotel Unit Owners' request for approval shall be deemed complete twenty (20) business days after Successor Agency's receipt thereof, if no timely response requesting further information is delivered to Hotel Unit Owners, or, if such a timely response requesting further information is received, on the date that Hotel Unit Owners deliver such additional information to Successor Agency, provided that Hotel Unit Owners' additional information is responsive to Successor Agency's request. Successor Agency shall approve or disapprove the matter within thirty (30) business days after Hotel Unit Owners' request for such approval is accepted as complete or is deemed complete. Approval will not be unreasonably withheld if Hotel Unit Owners demonstrate that the proposed management agreement will provide capable, competent and experienced operation of hotels similar in quality, size and type as required to be maintained on the Property pursuant to the DDA and this Covenant Agreement. If Successor Agency shall disapprove a hotel operator, Successor Agency shall do so by written notice to Hotel Unit Owners stating the reasons for such disapproval.

s. At the time Owner entered into the Original Management Agreement, the requirement for a hotel franchise agreement was waived. Prior to entering into any franchise agreement or changing the flag of the hotel, Hotel Unit Owners shall obtain the Successor Agency's written approval of such hotel franchise agreement (the "Original Franchise Agreement") and/or new flag of the hotel using the same approval procedures as are set forth in Section 2.r. herein above for approval of the hotel management agreement. Any franchise agreement or hotel flag shall provide for the operation of a hotel meeting the size, level of quality and other requirements and restrictions set forth herein and shall be with a franchisor determined by the Successor Agency to be comparable to, or of higher quality than, the franchisor under the Original Franchise Agreement. Prior to the expiration or termination of the Original Franchise Agreement (and any successor hotel franchise agreement(s)), Hotel Unit Owners shall obtain the Successor Agency's written approval (pursuant to said approval procedures) of a new hotel franchise agreement which shall become effective concurrently with the

expiration or sooner termination of the hotel franchise agreement which it replaces.”

1.3.6 Section 4—Transfer Restrictions. Section 4 of the Covenant Agreement shall be deleted in its entirety and the following substituted in its place:

“Transfer Restrictions. Owner and Hotel LP recognize that:

Development of the Property is important to the general welfare of the community;  
and

Substantial financing and other public aids have been made available by law and by the government for the purpose of making redevelopment possible; and

The qualifications and identity of Owner, Hotel LP and each Unit Owner are of particular concern to the community and Successor Agency.

Accordingly, Owner, Hotel LP and each Unit Owner agree to comply with the provisions of this Covenant Agreement relating to Transfer.

(a) For the reasons set forth above in this Paragraph 4, neither Owner, Hotel LP nor Unit Owner shall assign this Covenant Agreement or sell the Property, any Unit or any portion thereof, nor lease nor make any total or partial conveyance or transfer in any mode or form of all or any part of the Property or Unit or the improvements thereon, or any interest therein, nor shall there be any change in the identity of Owner, Hotel LP or Unit Owner or change in the ownership of Owner, Hotel LP or Unit Owner or in the relative proportions thereof, or with respect to the identity of the parties in control of Owner, Hotel LP or Unit Owner or the degree thereof, by any method or means (other than such changes occasioned by the death or incapacity of any individual), (collectively, “Transfer”), without the prior written approval of Successor Agency, which approval shall not be unreasonably withheld or delayed if the proposed Transferee (as defined hereinbelow) is determined by the Successor Agency to have qualifications equal to or better than the original Owner as of the date of Original Covenant Agreement in all material respects, including but not limited to (a) financial strength, (b) experience in the successful operation, management and marketing of hotels, restaurants, and retail improvements, (c) character and reputation, and (d) the ability to perform all of the agreements, undertakings, and covenants of this Covenant Agreement (as amended), the Grant Deed, and all other agreements entered into by Owner, Hotel LP or Unit Owner which relate to the management, operation, maintenance, and restoration of the Property or Unit and of the improvements thereon. Owner, Hotel LP or Unit Owner (as applicable) shall promptly notify Successor Agency of any and all changes whatsoever in the identity of the parties in ownership or control of Owner, Hotel LP or Unit Owner or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Any entity formation agreements and documents (or changes therein) related to a Transfer, as well as the agreements and documents effectuating any Transfer, shall be subject to the approval of Successor Agency’s Executive Director in connection with its approval of the Transfer.

(b) To assist Successor Agency in determining whether or not the proposed Transferee is so qualified, the requesting Owner, Hotel LP or Unit Owner shall furnish to Successor Agency at no expense to Successor Agency, prior to that Transfer, detailed and complete financial statements of the proposed Transferee, audited by a certified public accountant reasonably satisfactory to Successor Agency, together with detailed and complete information about the business of the proposed Transferee, including its experience in developing and operating improvements of the type to be constructed on the Property, the use to be made of the Property and the improvements thereon by the proposed Transferee, projections by the proposed Transferee of the sources of funds to be used to pay any indebtedness that the proposed Transferee will assume or take subject to, or agree to pay, in connection with the Transfer, and other claims on and requirements for those funds, together with any other information Successor Agency may reasonably require to assist Successor Agency in determining whether or not the proposed Transferee is so qualified. To the greatest extent permitted by law, if Owner, Hotel LP or such Transferee provides Successor Agency with any proprietary financial information relating to a proposed Transferee, Successor Agency shall not, without Owner's, Hotel LP's or Unit Owner's (as applicable) prior written consent, disclose or make any such financial information available to the public.

(c) Approval by Successor Agency of any Transfer shall be conditioned upon such assignee, conveyee or transferee (collectively "Transferee") agreeing, in writing, to assume the rights and obligations thereby transferred and to keep and perform all covenants, conditions and provisions of this Covenant Agreement (as amended) and the Grant Deed which are applicable to the rights acquired.

(d) The limitations on Transfer contained in this Paragraph 4 shall not be deemed to apply to or prevent, nor shall Successor Agency's approval be required under this Paragraph 4 in connection with, the granting of any security interest expressly permitted under this Covenant Agreement (as amended); nor the exercise by any mortgagee of its right to foreclose its mortgage by power of sale or judicial foreclosure; nor any Transfer of an interest by a mortgagee having acquired Owner's interest in the Property or Hotel LP's interest in the Property or a Unit Owner's interest in a Unit as a result of its rights under the mortgage, or by any successor to the mortgagee whose interest shall have been acquired by, through or under any mortgage or shall have been derived immediately from any holder thereof. Notwithstanding the foregoing provisions of this paragraph (d), the limitations on Transfer contained in this Paragraph 4 shall apply to any mortgagee which acquires its interest in the Property or the improvements thereon other than by the exercise of its rights pursuant to the mortgage or deed in lieu of foreclosure.

(e) Any purported Transfer shall be null and void unless it complies with the terms of this Paragraph.

(f) Each Unit Owner shall only Transfer each Unit Owner's entire interest in the Unit and the Improvements thereon as a whole and shall not re-subdivide the Property or the Unit or the improvements thereon beyond the subdivision existing as of the date of the recordation of the Second Amendment to this Covenant Agreement without the prior written approval of Successor Agency, which Successor Agency may grant or withhold in its discretion;

provided, however, the two Units in the Hotel Condo Plan shall at all times be owned by the same Owner and shall not be financed, conveyed, hypothecated or transferred separately.

(g) All costs incurred by Successor Agency to review any Transfer proposed by Owner, Hotel LP or a Unit Owner as reasonably necessary to close any Transfer shall be paid by the requesting party. With respect to each Transfer, the requesting party shall deliver a retainer to Successor Agency in the sum of Five Thousand Dollars (\$5,000), to be applied to the payment of Successor Agency's costs. The administrative costs of Successor Agency shall be charged at the actual cost thereof not to exceed an hourly rate of Fifty Dollars (\$50.00). The costs of Successor Agency for consultants or legal services required for providing such assistance shall be the actual sums billed to Successor Agency for such consulting or legal services. All such costs in excess of Five Thousand Dollars (\$5,000) shall be paid within ten (10) days after written request therefor by Successor Agency. If such costs incurred by Successor Agency for a Transfer equal less than Five Thousand Dollars (\$5,000), the balance shall be refunded promptly following the closing.

(h) With respect to the leasing of space for occupancy, Owner or a Unit Owner shall not be required to submit the documentation otherwise required for a Transfer by subparagraph (b), nor the assignment and assumption agreement otherwise required by subparagraph (c), nor pay the costs referred to in subparagraph (g); provided, however, that such lease shall contain appropriate provisions conforming the use and operation of the premises to the covenants of the Grant Deed and this Covenant Agreement (as amended), and further provided, that such tenant is a first quality nationally or regionally recognizable and reputable retailer or restaurant of the nature and quality customarily included in retail/restaurant centers meeting the requirements and restrictions of this Covenant Agreement (as amended)."

1.3.7 Section 5—Agency Participation Payment. Each Unit Owner shall calculate the Agency Participation Payment with respect to such Unit Owner's Unit and pay any Agency Participation Payment, subject to the following:

(a) The current balance of the Project Cost for each Unit as of April 30, 2013 (including all accrued Developer's Annual Return as of such date) is:

Retail/Office Units:

Parcel 1: \$54,253,852

Parcel 2: \$26,980,450

Hotel Units (to be calculated as one Unit): \$79,873,706

(b) Each Unit Owner shall be responsible for complying with the reporting and payment obligations for such Unit Owner's Unit as described in Covenant Agreement, provided that the Hotel Units shall be calculated and reported together by the Unit Owner of the Hotel Units.

2. Covenant to Hold Hotel Units Together. The two Units in the Hotel Condo Plan shall at all times be owned by the same Owner and shall not be financed, conveyed, hypothecated or transferred separately.

3. Release and Covenant Not to Sue. Owner and Hotel LP for themselves, and on behalf of each and all of their respective members, partners, employees, agents, attorneys, successors and assigns hereby fully, absolutely and irrevocably waives, releases, remises, acquits and forever discharges Successor Agency and City of Huntington Beach and each of their respective members, commissioners, employees, partners, shareholders, principals, agents, attorneys, successors and assigns from any and all claims, rights, demands, suits, awards, judgments, damages, actions, causes of action, lawsuits, costs, obligations, liabilities, defaults and duties of every kind and nature, known or unknown, existing or future, suspected or unsuspected, asserted or unasserted, fixed or contingent, at law or in equity arising out of or relating in any way to any of the following events:

(a) Successor Agency's Oversight Board and/or the California Department of Finance asserts jurisdiction and/or the right to approve or disapprove this Second Amendment or threatens to assert jurisdiction and/or the right to approve or disapprove this Second Amendment;

(b) Successor Agency's Oversight Board and/or the California Department of Finance disapproves or threatens to disapprove this Second Amendment or determines or threatens to determine that this Second Amendment is invalid (or any similar disapproval/determination);

(c) Successor Agency's Oversight Board and/or the California Department of Finance determines or threatens to determine that the DDA or any term(s) therein or any parts thereof is/are no longer an "enforceable obligation(s)" under the Dissolution Act due in any way to the Successor Agency approving or entering into this Second Amendment and/or implementation of this Second Amendment (or any similar determination);

(d) Any third party initiates or threatens to initiate any litigation or administrative proceeding or action due in any way to Successor Agency approving or entering into this Second Amendment and/or implementation of this Second Amendment; and/or

(e) Successor Agency's Oversight Board and/or the California Department of Finance determines or threatens to determine that any amounts listed on any ROPS pertaining to the DDA should be reduced or disapproved in whole or in part due in any way to the Successor Agency approving or entering into this Second Amendment and/or implementation of this Second Amendment (or any similar disapproval/determination).

The events in Sections 3(a) through 3(e) above may each be referred to herein as a "Challenge".

Owner and Hotel LP for themselves, and on behalf of each and all of their respective members, partners, employees, agents, attorneys, successors and assigns hereby agree that Owner and Hotel LP and each and all of their respective members, partners, employees, agents, attorneys, successors and assigns shall not initiate, institute, maintain or prosecute in any manner

any suit, action, or other proceeding, or voluntarily aid in the initiation, institution, maintenance or prosecution of any claim or legal action, state or federal, in law or in equity, against Successor Agency or City of Huntington Beach or any of their respective members, commissioners, employees, partners, shareholders, principals, agents, attorneys, successors and assigns with respect to any matter, cause or thing whatsoever arising out of or relating in any way to any Challenge.

In this regard, and not by way of limitation of the foregoing, Owner and Hotel LP each acknowledge that it has been represented by its own legal counsel with respect to the subject matter of this Second Amendment and the negotiation and preparation of same, that it has not relied upon any representation or warranty of Successor Agency or the City of Huntington Beach with respect thereto or the validity or enforceability of this Second Amendment, and in particular that neither Successor Agency nor the City of Huntington Beach has made and is not making any representation or warranty to Owner or Hotel LP with respect to Successor Agency's authority to approve, enter into, and/or perform obligations under this Second Amendment under applicable provisions of the Dissolution Act or otherwise or with respect to Successor Agency's authority to do so without seeking and obtaining the approvals of Successor Agency's Oversight Board and/or the California Department of Finance, and that Owner and Hotel LP assume the full risk with respect thereto, including, without limitation, in the event a Challenge occurs.

In this regard, Owner and Hotel LP forever and irrevocably each waive the protections of California Civil Code Section 1542, entitled "General release; extent," and which provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Notwithstanding the foregoing, however, nothing herein is intended or shall be interpreted as a release, waiver, or covenant not to sue arising out of any actual or alleged default or breach by Successor Agency in performing its obligations under this Second Amendment.

4. Indemnity. Owner and Hotel LP each covenant to indemnify, defend, and hold harmless Successor Agency and the City of Huntington Beach and each of their respective members, commissioners, employees, partners, shareholders, principals, agents, attorneys, successors and assigns from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) arising out of or relating in any way to any Challenge.

Without limiting the foregoing, and as a part of the foregoing indemnity and hold harmless, in the event of a Challenge described in Section 3 (e), Successor Agency agrees, at no cost to Successor Agency or the City of Huntington Beach, to participate in whatever administrative appeal or meet-and-confer process may be available under applicable provisions of the Dissolution Act, including, without limitation, Health & Safety Code Section 34177(m). As used herein, the phrase "at no cost to Successor Agency or the City of Huntington Beach" shall mean that Owner and Hotel LP shall be jointly responsible and liable for promptly paying or reimbursing Successor Agency and City of Huntington Beach for all of Successor Agency's and City of Huntington Beach's actual and reasonable costs and expenses, costs and expenses

related to Successor Agency's and City of Huntington Beach's consultants or legal counsel, and any other costs and expenses (e.g., travel costs) incurred with respect to such participation until the date the matter is finally resolved, all as reasonably determined by the Successor Agency Executive Director.

5. Further Revisions. Any provisions of the Covenant Agreement which conflict with the intent of this Second Amendment shall be deemed revised in accordance with this Second Amendment. Nothing in this Second Amendment is intended to or limits in any way any general provision in the Covenant Agreement that may pertain to Owner's or Hotel LP's or Unit Owner's obligations thereunder.

6. Binding on Successors and Assigns. This Second Amendment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties hereto.

7. DDA and Covenant Agreement in Full Force and Effect. Except as otherwise modified herein, the terms and conditions of the Covenant Agreement shall remain unmodified and in full force and effect. In the event of any conflict between the terms of this Second Amendment and the Covenant Agreement, the terms of this Second Amendment shall control.

It is the intention of the parties that this Second Amendment and each provision hereof be interpreted so as not to increase the obligations of the Successor Agency under the DDA and Covenant Agreement or to cause the Successor Agency to take any action described in Section 34180 of the California Health and Safety Code. In the event that for any reason this Second Amendment is determined to be denied, disapproved, invalid or unenforceable by a determination or ruling by any court or administrative agency or body, including, without limitation, Successor Agency's Oversight Board, the California Department of Finance, or the State Controller's Office, or if the California Department of Finance determines that the DDA and/or the Successor Agency's obligations thereunder is/are not an "enforceable obligation[s]" as defined in the Dissolution Act as a result of approving, entering into and/or performing obligations under this Second Amendment nothing herein shall be deemed to modify or terminate the DDA and Covenant Agreement as currently written, the same shall survive and shall be enforceable in accordance with and subject to the terms and conditions set forth therein, and Owner, Hotel LP and each Unit Owner shall be bound by the terms, covenants and restrictions thereof.

8. Further Assurances. The parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Second Amendment and the DDA.

9. Date of this Second Amendment. The effective date of this Second Amendment shall be the date upon which the Successor Agency has executed this Second Amendment.

10. Counterparts. This Second Amendment may be executed by each party on a separate signature page, and when the executed signature pages are combined with the balance of this Second Amendment, it shall constitute one single instrument.

11. Authority of Successor Agency Executive Director to Act for Successor Agency. Except as otherwise expressly provided in this Second Amendment, any consent, approval or other instrument described in this Second Amendment or the Covenant Agreement (including without limitation approvals of Transfers, hotel franchise agreements, hotel management agreements or any other matter) may be granted, given or executed by the Successor Agency Executive Director or designee on behalf of the Successor Agency and the Successor Agency Executive Director or designee shall be authorized to take any other action on behalf of the Successor Agency without the need for further authorization from the Successor Agency; provided, however that, notwithstanding the foregoing, the Successor Agency Executive Director or designee may, in his or her sole discretion, refer to the Successor Agency any item for which the Successor Agency Executive Director or designee has authority to act hereunder.

[signatures on following pages]

[remainder of page left intentionally blank]

**Successor Agency:**

Successor Agency to the Redevelopment Agency of the  
City of Huntington Beach

Date: \_\_\_\_\_

\_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_

REVIEWED AND  
APPROVED AS TO FORM:

  
APPROVED AS TO FORM: 11/17/14

Kane, Ballmer & Berkman

\_\_\_\_\_

[signatures continue on following page]

Owner:

CIM/Huntington, LLC,  
a California limited liability company

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Hotel LP:

CIM/Huntington Hotel, LP,  
a California limited partnership

By CIM California Urban RE Fund IV, LLC  
Its general partner

Date: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_, a Notary Public in and for said State,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_, a Notary Public in and for said State,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_, a Notary Public in and for said State,  
personally appeared \_\_\_\_\_, who proved to me on the basis of  
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instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
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foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT A  
OWNER PROPERTY

[behind this page]

EXHIBIT B  
LEASED PREMISES

EXHIBIT C

HOTEL PROPERTY .

EXHIBIT D

HOTEL LEASED PROPERTY

EXHIBIT E  
PARKING PARCEL

**Esparza, Patty**

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**From:** Dombo, Johanna  
**Sent:** Monday, November 17, 2014 7:53 AM  
**To:** Esparza, Patty  
**Subject:** FW: Next City Council Meeting  
  
**Importance:** High

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**From:** Ann Tarkington [<mailto:garytarkington@msn.com>]  
**Sent:** Thursday, November 06, 2014 4:45 PM  
**To:** Shaw, Joe  
**Cc:** Dombo, Johanna  
**Subject:** Next City Council Meeting  
**Importance:** High

Joe,  
The 10:00 pm restriction for new bars was voted down by planning commission last month, Connie has appealed it and it is back on the council agenda for their next council meeting. Please let this be tabled until the new council is in office.  
Thank you,  
Ann Tarkington

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11/17/2014  
Agenda Item No. 17

**Esparza, Patty**

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**From:** Surf City Pipeline [noreply@user.govoutreach.com]  
**Sent:** Monday, November 17, 2014 11:00 AM  
**To:** CITY COUNCIL; Agenda Alerts  
**Subject:** Surf City Pipeline: Comment on an Agenda Item (notification)

**Request # 20389 from the Government Outreach System has been assigned to Agenda Alerts.**

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**Request type:** Comment

**Request area:** City Council - Agenda & Public Hearing Comments

**Citizen name:** Robert Franklin

**Description:** The majority of the Planning Commission did not support the proposed code amendment to the DTSP based on the following reasons: Staff did not offer any proof or findings that the proposed code amendment would make the situation on Main Street any better; no viable method of enforcement of the proposed code amendment was offered by staff and the proposed code amendment would create an unfair impact on future Main Street businesses when compared to the approved hours of operation for future restaurants in Pacific City or nearby commercial areas.

**Expected Close Date:** November 18, 2014

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11/17/2014

Agenda Item No. 17