



PR51A-1053  
OC Parks/ OC Bird of Prey  
O'Neill Regional Park

## LEASE

THIS IS A LEASE AGREEMENT (hereinafter referred to as “**Lease**”) made \_\_\_\_\_, 2023, (“**Effective Date**”) by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as “**County**” or “**Lessor**”) and Orange County Bird of Prey Center, a California non-profit corporation, hereinafter referred to as “**Tenant**,” without regard to number and gender. The County and Tenant may individually be referred to herein as a “**Party**” or collectively as the “**Parties**.”

### RECITALS

- A. County is the owner of certain property known as O'Neill Regional Park which is located in northeast Orange County along Trabuco Creek and Live Oak Canyon.
- B. County and Tenant entered into that certain lease dated January 19, 2017 (“**Prior Lease**”) under which the Tenant promoted the development and operation of a bird rehabilitation facility on the Premises.
- C. On June 15, 2018, County and Tenant entered into a First Amendment to Lease which revised the legal description and Parcel Map of the Premises based on an Orange County Public Works Survey.
- D. The Parties desire to terminate the Prior Lease and enter into a new lease agreement for Tenant’s continued long-term use of the Premises, as more fully set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter contained the Parties hereto mutually agree to the following:

### 1. DEFINITIONS (1.0 SR)

The following words in this Lease shall have the significance attached to them in this Clause (DEFINITIONS), unless otherwise apparent from context:

“**Auditor Controller**” means the Auditor Controller, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

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

“**CEO/Office of Risk Management**” means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to Tenant, such other entity as shall be designated by the County Executive Officer.

“**County Executive Officer**” means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the Board of Supervisors.

“**Director of OC Parks**” or “**Director**” means the Director, Orange County Parks, OC Community Resources, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

## **2. PREMISES (1.1 SR)**

County leases to Tenant that certain property located at O'Neill Regional Park in the unincorporated area of Trabuco Canyon (“**Premises**”) and described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. The Premises are accepted “as is” and “where is” by Tenant subject to any and all existing easements and encumbrances.

## **3. USE (1.2 N)**

A. Required Uses. Tenant's use of the Premises shall be for the purpose of promoting the development and operation of a bird rehabilitation facility which services may include, but is not limited to, the following:

1. Rehabilitate wild birds of prey.
2. Release recuperated wild birds of prey.
3. Provide free year-round educational programs to the public.
4. Provide permanent housing for a maximum of fourteen (14) non-releasable birds of prey at any given time.
5. Provide a medical facility for the care of birds of prey.

B. Optional Uses. Subject to the prior written approval of the Director of OC Parks, Tenant may provide those additional services and uses which are ancillary and compatible with the services and uses listed above. Said optional services may include but are not limited to the following:

1. Provide an interpretive area and amphitheater.
2. Gift Shop Sales.
3. Fund Raising Activities (subject to conditions stated below).

C. Restricted Uses.

1. The Premises or any part of the net earnings derived from the use thereof shall not be used for the private gain of any of Tenant’s directors, officers, employees, agents, members, shareholders, contractors, suppliers or any other private individual.

2. Tenant's fundraising events held on the Premises shall be limited to those activities that have received the prior written consent of the Director of OC Parks or designee.
3. Tenant shall not allow or agree to the use of any portion of the Premises for unrelated business activity conducted by any outside vendors, event sponsors or promoters, or other individual or entity for purposes of profit motive, when such unrelated business activity is not a part of Tenant's fundraising event or has not received the prior written consent of the Director of OC Parks or designee.
4. The above listed-services and uses, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises.

NO TOBACCO OR MARIJUANA PRODUCTS SHALL BE SOLD FROM THE PREMISES. SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

#### **4. COUNTY'S USE RESERVATIONS AND RIGHT OF ENTRY (1.3 N)**

County reserves the right from time to time, without unreasonable interference, to access and use the Premises for County use as well as to confirm that Tenant is using the Premises consistent with those uses articulated in Clause 3 (USE). Tenant shall cooperate with County during County's access and use of the Premises. County shall make best efforts to notify Tenant prior to accessing and using the Premises.

Additionally, County may conduct tours, use the facilities and/or offer interpretative programs, in conjunction with Tenant within the Premises. Tenant shall not deny any such request by County for such tours, facility use or interpretative programs without reasonable cause.

#### **5. PARKING (1.4 SR) - *Intentionally Omitted***

#### **6. TERMINATION OF PRIOR AGREEMENTS (1.5 SR)**

It is mutually agreed that this Lease shall terminate and supersede any prior agreements between the Parties hereto covering all or any portion of the Premises, including the Lease dated January 19, 2017, and First Amendment dated June 15, 2018. Notwithstanding the foregoing, this provision shall not release Tenant from any obligations under any prior agreements to be performed through the Commencement Date of this Lease or from any obligations of indemnification based upon events occurring prior to the Effective Date of this Lease.

#### **7. TERM (1.6 SR)**

The term of this Lease shall be ten (10) years ("**Term**"), commencing the first day of the first full calendar month following the Effective Date ("**Commencement Date**"). Parties agree that the Commencement Date of this Lease will be confirmed in writing by either Party upon demand by the other.

This Lease shall be revocable by either Party at any time. However, as a courtesy, the terminating Party will attempt to give one hundred eighty (180) days prior written notice to the non-terminating Party prior to the termination date.

## **8. OPTION TO EXTEND TERM (1.7 SR)**

Provided Tenant is not in and has not been in Tenant Default under this Lease as defined in Clause 30 (DEFAULTS AND REMEDIES), Tenant may request an extension of the Lease for additional term of ten (10) years (the “**Extension Term**”). A request from the Tenant for an extension shall be in writing and must be made no earlier than one hundred and eighty (180) days prior to the expiration of this Lease and no later than sixty (60) days prior to the expiration of this Lease. County shall have the sole discretion to extend the Term of this Lease under such terms and conditions as the Parties mutually agree upon and as executed by the Chief Real Estate Officer.

## **9. RENT (1.8 N)**

This Lease is at a rate of One Dollar (\$1.00) per year and is based on TENANT’s non-profit status from its organization under the Internal Revenue Code Section 501(c)(3). Termination of qualified non-profit status of TENANT by Federal or State action shall be considered a material default of the terms, covenants, and conditions of this Lease. In the event of a default of this kind occurs, COUNTY shall have the right, at its sole and absolute discretion, to negotiate with TENANT reasonable modifications to the Lease to accommodate TENANT’s change in organizational status and provide adequate compensation to COUNTY, or if the negotiations of reasonable modifications to the Lease are not possible, terminate the Lease.

Additionally, as consideration, COUNTY may conduct tours or offer interpretative programs, in conjunction with TENANT, and TENANT shall not withhold any request by COUNTY for such tours or interpretative programs without reasonable cause, which tours include, but are not limited to, the viewing, interpretative, or amphitheater area of the facility. COUNTY’s use shall be in accordance with the Operating Plan herein defined below.

TENANT, at TENANT’S option, may pay the Rent due for the entire initial ten (10) year term of this Lease as set forth in this Section of this Lease, in the amount of Ten Dollars (\$10.00) within thirty (30) calendar days following the Effective Date of this Lease.

## **10. RENT ADJUSTMENT (1.9 SR) -*Intentionally Omitted***

## **11. RENT PAYMENT PROCEDURE (2.0 SR) – *Intentionally Omitted***

## **12. CHARGE FOR LATE PAYMENT (2.1 SR) – *Intentionally Omitted***

## **13. LEASE ADMINISTRATIVE COST (2.2 SR) – *Intentionally Omitted***

## **14. SECURITY DEPOSIT (2.3 SR) – *Intentionally Omitted***

## 15. RECORDS AND ACCOUNTS (2.4 N)

A. Records. Tenant shall, at all times during the Term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted on the Premises in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. Copies of voided documents should be retained, along with the reasons for voiding and signature of person approving the void.

B. The Accounting Year. The accounting year shall be twelve (12) full calendar months commencing on January 1 and ending on December 31 each year. The accounting year may be established by Tenant, provided Tenant notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to Tenant's selection in writing within sixty (60) days of Tenant's written notification.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the Term of the Lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the Tenant or Lessor, and not because of mere convenience or inconvenience.

C. Federal Income Tax Returns. Within one hundred fifty (150) days after the end of each accounting year, Tenant shall submit to the Director of OC Parks at its own expense a copy of Tenant's Federal Income Tax Returns including all schedules, which must be audited and certified by a Certified Public Accountant, in accordance with generally accepted accounting principles reflecting business transacted on or from the Premises during the preceding accounting year.

Tenant acknowledges its understanding that any and all of the federal income tax returns submitted to the County pursuant to this Lease become Public Records and are subject to public inspection pursuant to §§ 6250 et. seq. of the California Government Code

D. Failure to Submit Federal Income Tax Returns. In addition to any other remedies available to County at law or in equity under this Lease, including but not limited to those enumerated in Clause 30 (DEFAULTS AND REMEDIES), in the event that Tenant fails to submit the required federal income tax returns within thirty (30) business days following the due date listed in this Clause 15, County may require Tenant to submit the greater of:

- 1) \$500 fine; or
- 2) Any and all costs incurred by County for a Certified Public Accountant hired by the County to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.

E. Non-Profit Confirmation. Within one hundred twenty (120) days after the end of each accounting year, Tenant shall submit to the Director of OC Parks, confirmation that Tenant is in good standing as a non-profit organization with the California Secretary of State and a tax-exempt organization with the Internal Revenue Service.

**16. MAINTENANCE OBLIGATIONS OF TENANT – CONDITIONS AND CARE OF PREMISES (2.5 SR)**

A. Tenant shall, to the satisfaction of County, keep and maintain, or cause to be kept and maintained, the Premises and all Tenant Improvements (as defined below in Clause 18), during the Term or Extension Term of this Lease, in good condition and in substantial repair, provided that in the event (i) of substantial damage to any such Tenant Improvements it shall be at Tenant's option whether to repair or replace such improvements (provided that if the improvements are not to be repaired or replaced, then they shall be placed into a safe condition or removed), as provided in Clause 20 (OPERATIONAL REQUIREMENTS OF TENANT) below or (ii) Tenant or its Licensee(s) ceases to use any improvements, it shall be at Tenant's option to not repair or replace any such improvement so long as the improvement is maintained in a safe condition or removed. Subject to the foregoing, it shall be Tenant's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

B. Tenant shall keep the Premises clean and in good repair during any time which Tenant, its agents, or employees use the Premises at its sole cost and expense. Except as otherwise expressly set forth in this Lease, Tenant shall be responsible for all costs relating to the operation and maintenance of the Premises.

C. Tenant shall be solely responsible for all costs and expenses for any maintenance and repairs necessitated by the actions of Tenant, or Licensee(s), resulting in an extraordinary load imposed on underground utilities outside the Premises or contamination of Common Areas and Harbor waterways.

D. If Tenant fails to maintain or make repairs or replacements as required herein, County shall notify Tenant in writing of said failure. Should Tenant fail to correct the situation within five (5) days after receipt of written notice specifying the condition to be corrected (provided that such 5-day period may be extended accordingly if a longer time is necessary to correct the condition and Tenant promptly commences such cure and diligently prosecutes it to completion), County may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment, and an administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by Tenant within ten (10) days of receipt of a statement, including reasonable supporting documentation, of said cost from County. County may, at its sole option, choose other remedies available herein, or by law.

E. If Tenant receives an inspection notice or a deficiency notice following an inspection by any public or regulatory agency having jurisdiction, Tenant agrees to make any and all corrections in the manner required immediately upon receipt of by such notice. Tenant's failure to comply with the provisions of this Clause 16 shall constitute a Tenant Default and the County may proceed with

any and all County Remedies as defined in Clause 30 (DEFAULTS AND REMEDIES) and this Lease shall be subject to termination at County's option.

F. County shall have no obligation or responsibility to maintain, repair, or replace improvements constructed within the Premises, except as otherwise provided by law. Tenant shall have no obligation to maintain, repair or replace any improvements installed by County or any other party (other than Tenant's Licensees) nor for debris or materials which are not deposited by Tenant or its Licensees and which comes onto or out of the Premises.

## **17. CONSTRUCTION AND/OR ALTERATIONS BY TENANT (2.6 N)**

A. Tenant Alterations. Tenant shall design, construct, and install within the Premises, at no cost to County, appropriate improvements to adequately accommodate the uses approved pursuant to the Clause 3 (USE). Additionally, Tenant shall be solely responsible for payment of any and all improvements made to County's adjacent parking lot and entrance road that are necessary to accommodate Tenant's use of the Premises. Tenant is required to obtain the written consent of County by means of obtaining an Access Permit with OC Parks Permit Department, prior to the Tenant's commencement of any construction within the Premises.

B. County's Consent. No structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without prior written consent of County. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by the County as a condition to granting such consent, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and replace business fixtures and equipment constructed by Tenant, within the Premises.

C. Strict Compliance with Plans and Specifications. All improvements constructed by Tenant within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by County and to the extent applicable, in compliance with the requirements of California Public Contract Code Section 22000 *et seq.*, and Labor Code Sections 1720-1824, which require those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of County.

D. Permits. All County approved improvements to the Premises shall be constructed in accordance with valid permits and all applicable laws and in a good and workmanlike manner, including, but limited to, (a) Tenant shall be required to secure the faithful performance of construction and completion of construction of the improvement by appropriate contractor's bonds as required by the California Public Contracts Code and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided in Clause 31 (LABOR CODE COMPLIANCE) of this Lease; and (b) Tenant shall publicly advertise for bids for such improvements, as provided in Orange County Codified Ordinances 1-8-1 *et seq.*, and shall provide County a list of all bids received for the contract; and (c) thereafter, with the prior written approval of County as to the winning bid, Tenant shall award the contract or contracts for such improvements.

All preparation and processing for environmental clearance shall be at Tenant's sole cost and expense. In the event that the environmental process results in any required mitigation measures, performance of such mitigation measures, including all associated costs and expenses shall be the sole responsibility of Tenant.

County has no obligation to notify Tenant regarding requirements for permits, licenses, approvals or other consents from governmental agencies, including the County of Orange in its regulatory capacity, nor shall County have any obligation to obtain permits, licenses, approvals or other consents from governmental agencies on behalf of Tenant. County agrees to give its consent as property owner to any application made with regard to any such permits, licenses, approvals or other consents which may be required by any governmental agency or by the County of Orange in its regulatory capacity related to activities or design and construction of improvements approved by County in accordance with this Lease. Any such consent given by County as the property owner is not to be interpreted to obligate County to pay any fees related to the application or issuance of any such permit, license, approvals or other consents, nor shall such consent be deemed a waiver of any fee which may be charged by County's Property Permit department. Any conditions placed on Tenant's design and construction or operation of the Premises as a result of the issuance of permits, licenses, approvals or other consents shall be the sole obligation of Tenant with regard to performance responsibilities, cost and expense.

Any approvals or consents given by County under this Lease, as a party to this Lease, shall not be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules and/or regulations or approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements nor shall County, as a party to this Lease be responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of Tenant's construction and/or maintenance plans.

All planning and architectural/design costs required to accomplish the construction shall be Tenant's responsibility and shall be approved by the Director. Such approvals will not be unreasonably withheld or delayed and shall not relieve Tenant of the responsibility for complying with all applicable codes and construction requirements, nor of obtaining necessary permits or approvals from the authorities of proper jurisdiction.

## **18. OWNERSHIP OF IMPROVEMENTS (2.7 SR)**

Tenant shall provide all equipment necessary for use of the Premises consistent with this Lease. All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Tenant ("**Tenant Improvements**") must, upon completion, be free and clear all liens, claims, or liability for labor or material and at County's option shall be the property of County at the expiration of this Lease or upon earlier termination hereof. County retains the right to require Tenant, at Tenant's cost, to remove all Tenant Improvements located on the Premises at the expiration or termination hereof. In the event that Tenant fails to remove said Tenant Improvements within fifteen (15) days following receipt of written notice from County to do so, such Tenant Improvements will be deemed abandoned and Tenant shall lose all right, title and interest in and thereto, and County may elect (i) at Tenant's cost, to remove, demolish, or otherwise dispose of some or all of such items or (ii) sell or make use of any or all such items.

**19. MECHANICS LIENS OR STOP NOTICES (2.8 SR)**

Tenant shall at all times indemnify, defend with counsel approved in writing by County and save County harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 8424 or 9000 et seq. of the Civil Code, which frees the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should Tenant fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Tenant shall be in Tenant Default and shall be subject to immediate termination.

**20. OPERATIONAL REQUIREMENTS OF TENANT (2.9 N)**

- A. Tenant shall operate the Premises for the uses stated in Clause 4 above.
- B. Tenant shall provide, at its sole cost and expense, its own security service for said Premises. County will not provide any security for Tenant anywhere on the Premise.
- C. Tenant shall provide rodent control services at Tenant's sole cost and expense if needed. Should County notify Tenant of rodents, Tenant must provide rodent control services within forty-eight (48) hours and continue rodent services on a monthly basis until County is satisfied rodents have been eliminated for the safety of Tenant, Tenant's employees and general public.
- D. Tenant shall take all commercially reasonable measures to prevent:
  - (1) Littering of land or water caused by or originating in, on, or about the Premises.
  - (2) Excessive vehicle traffic.
  - (3) Excessive noise emanating from the Premises.
  - (4) Discharging of pollutants, including petroleum products and waste from any source within the Premises.

Failure by Tenant to comply with A, B, C, and D of this Clause shall result in Tenant Default (as further defined in Clause 30 (DEFAULTS AND REMEDIES)).

## 21. INSURANCE (3.0 SR)

Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this Lease. Tenant shall deposit the Certificate of Insurance with CEO Real Estate, consistent with the Notice clause, through electronic correspondence on or before the Effective Date of this Lease and annually throughout the Term, as necessary to: [insurance.ceore@ocgov.com](mailto:insurance.ceore@ocgov.com)

Tenant agrees that Tenant shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director of OC Parks. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director of OC Parks will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Tenant also agrees that upon cancellation, termination, or expiration of Tenant's insurance, County may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Director of OC Parks reinstates the Lease.

If Tenant fails to provide Director of OC Parks with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as Director of OC Parks is provided with adequate evidence of insurance required herein. Tenant further agrees to hold County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the County's action.

Tenant may occupy the [Premises] only upon providing to County the required insurance stated herein and maintain such insurance for the entire term of this Lease. County reserves the right to terminate this Lease at any time Tenant's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. Tenant shall pay County a fee of one thousand dollars (\$1,000.00) for processing the reinstatement of the Lease. Tenant shall provide to County immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant. Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the Tenant under this Lease. It is the obligation of the Tenant to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Tenant through the entirety of this Lease and be available for inspection by a County representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Tenant's current audited financial report. If Tenant's SIR is approved, Tenant, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Tenant's, its agents, employee's or subcontractor's performance of this Agreement, Tenant shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Tenant's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Tenant's SIR provision shall be interpreted as though the Tenant was an insurer and the County was the insured.

### ***Qualified Insurer***

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Tenant shall provide the minimum limits and coverage as set forth below:

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

<u>Coverages</u>	<u>Minimum Limits</u>
Pollution Liability	\$1,000,000 per claims-made or per occurrence
Sexual Misconduct	\$1,000,000 per occurrence

Commercial Property Insurance on an “All Risk” or “Special Causes of Loss” basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

### **Required Endorsements**

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Tenant’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.

- 2) A primary and non-contributing endorsement evidencing that Tenant's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees*. Blanket coverage may also be provided which will state- *As Required By Written Agreement*.

All insurance policies required by this lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

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

If Tenant's Pollution Liability policy is a claims-made policy, Tenant shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the County address provided in the Clause (NOTICES) below or to an address provided by Director of OC Parks. Tenant has ten (10) business days to provide adequate evidence of insurance, or this Lease may be cancelled.

County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Tenant in writing of changes in the insurance requirements. If Tenant does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to Tenant, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

## **22. INDEMNIFICATION (3.1 SR)**

Tenant's Indemnity. Tenant hereby agrees to indemnify, hold harmless, and defend County, its elected and appointed officials, officers, agents, employees, and those special districts and agencies which the Board of Supervisors acts as the governing board, with counsel approved by County, against any and all claims, loss, demands, damages, costs, expenses or liability arising out

of the ownership, maintenance, or use of the Premises, except for liability arising out of the negligence of County, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event County is named as co-defendant, Tenant shall notify County of such fact and shall represent County, with counsel approved by County, in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event Tenant shall pay to County its litigation costs, expenses and attorneys' fees. In the event judgment is entered against County and Tenant because of the concurrent negligence of County and Tenant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

County's Non-liability. County shall not be liable to Tenant and Tenant hereby waives all claims against County, its employees and agents for loss of or damage to any property, or any injury to any person, resulting from any condition including, but not limited to, acts or omissions (criminal or otherwise) of third parties, or their agents, employees or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Premises, regardless of the negligence of County, its agents or any and all affiliates of County in connection with the foregoing. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Premises. Should Tenant elect to receive any service from a concessionaire, licensee or third-party tenant of County, Tenant shall not seek recourse against County for any breach or liability of that service provider. Notwithstanding anything to the contrary contained in this Lease, in no event shall County be liable for Tenant's loss or interruption of business or income (including without limitation, Tenant's consequential damages, lost profits or opportunity costs), or for interference with light or other similar intangible interests. Tenant shall immediately notify County in case of fire or accident in the Premises and of defects in any improvements or equipment within the Premises.

Waiver of Subrogation. County and Tenant each hereby waives all rights of recovery against the other on account of loss and damage occasioned to the Premises of such waiving Party to the extent that the waiving Party is entitled to proceeds for such loss and damage under any property insurance policies carried or otherwise required to be carried by this Lease; provided however, that the foregoing waiver shall not apply to the extent of Tenant's obligation to pay deductibles under any such policies and this Lease. By this waiver it is the intent of the Parties that neither County nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage insured against under any property insurance policies, even though such loss or damage might be occasioned by the negligence of such Party, its agents, employees, contractors or invitees.

Tenant acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542, which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and**

**that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Tenant, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

### **23. HAZARDOUS MATERIALS (3.2 N)**

A. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, County, acting in its governmental capacity, the State of California or the United States government.

B. Use of Hazardous Materials. Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or authorize any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, Tenant and Tenant Parties may keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and business operations on the Premises. Said permitted Hazardous Materials shall be stored in a safe location and shall be disposed of in a manner provided by law.

C. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any such cleanup or remedial work performed on, under, or about the Premises as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or authorized by Tenant or Tenant Parties to be introduced on, under or about the Premises. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Director, which consent shall not be unreasonably withheld, conditioned or delayed. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

E. Regulatory Agency Permits. At all times during the Term of this Lease agreement, Tenant shall be required to maintain all required Regulatory Agency (as defined below) permits for the

care, treatment, housing, and release of wildlife as well as for possession of medications and anesthetics for the care, treatment, and release of wildlife, and to make the permits available for inspection. County may request to view, inspect, or have a copy made of said permits at any time during the Term of this Lease. A “**Regulatory Agency**” includes, but is not limited to, California Department of Fish and Wildlife; U.S. Fish and Wildlife and any local agency having jurisdiction over the possession and care of wildlife.

#### **24. BEST MANAGEMENT PRACTICES (3.3 SR)**

A. Tenant shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that pollutants do not directly impact Receiving Waters (as used herein, “**Receiving Waters**” include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

B. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“**NPDES**”) permits (“**Stormwater Permits**”) to the County, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge of urban runoff from areas within the County, including the Premises leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

C. To assure compliance with the Stormwater Permits and water quality ordinances, the County have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMP(s)**”) as provided in Exhibit C, and which may change from time to time, that tenants using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost-effective manner. These BMPs are found within County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “**BMP Fact Sheets**”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

D. BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as Exhibit C. These BMP Fact Sheets may be modified during the term of the Lease; and County shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its subtenants, agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

E. Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to County for review and approval prior to implementation.

F. County may enter the Premises and/or review Tenant's records at any time to assure that activities conducted on the Premises comply with the requirements of this clause. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this clause.

G. Among other requirements, the industrial NPDES permit requires periodic stormwater inspections by the State and/or County OC Watersheds staff to ensure facility compliance, which may include annual inspections of the Premises, with follow up inspections as a result of observed violations requiring corrective actions.

H. Dependent upon the reuse of the Premises, the Premises shall have a clarifier drain that captures low flow runoff from throughout the site, which ensures all flows are properly drained without any unacceptable runoff. Tenant shall conduct their work throughout the site and any resultant low flow discharges shall work their way to the clarifier. In regards to Tenant Improvements, Tenant shall designate operational zones minimally affected by storm flows that allow drainage to the clarifier, and the non-operational portions of the site are to have normal storm discharges going through the storm drain system. As the site undergoes a new NPDES Industrial Permit application process, these conditions may get re-examined.

I. The BMP's shall stipulate the process for the Tenant to take corrective actions, and state the consequences of non-compliance or County options under the Lease to self-remedy the matter. The Santa Ana and San Diego Regional Water Quality Control Boards have established penalties/consequences for non-compliance and those are to be included in this Lease. County to have the option to terminate the Lease if the Tenant does not correct a non-compliance situation in a timely manner and that the security deposit reflects this circumstance.

J. Environmental Indemnification language may be added or amended from time to time.

K. Work activities are to be conducted in a controlled area where pollutants shall be contained, and any heavy metals detected at significantly higher levels than the benchmarks set by the Regional Board shall be addressed. All applicable BMPs are to be properly implemented, including any and all future modifications, updates, or replacement BMPs that may be issued from time to time, shall be used by Tenant.

L. Site modifications, such as distinctly designated work areas with controls to prevent pollutants from escaping and wastewater drain, will be required to be segregated from stormwater drain.

M. In the event Tenant fails to comply with all applicable BMPs, County, in addition to any and all remedies available in Clause 30 (DEFAULTS AND REMEDIES), shall have the right to self-help remedies or terminate the Lease as follows:

1. Terminate the Lease due to non-compliance with the BMPs incorporated in the Lease and as BMPs may change from time to time, or;
2. Remedy a non-compliance situation with a chargeback to the Tenant for the cost. The details regarding notification, timeline, and procedure are to be drafted and mutually agreed upon by both Parties to ensure all water quality issues are addressed within the Lease. In the event the Tenant's BMP implementation is lacking or if the Tenant allows a prohibitive discharge to occur, then the Regional Board will only take enforcement action against County. Therefore, this Lease must establish a BMP compliance partnership with the Tenant and the Lease must ensure the protection of water quality is inherent in the Tenant's day-to-day operations.

## **25. BUILDING AND SAFETY REQUIREMENTS (3.4 SR)**

During the Term and any Extension Term(s) of this Lease, Tenant, at Tenant's sole cost, agrees to maintain the Premises in compliance with all applicable laws, rules, regulations, building codes, statutes, and orders as they are applicable on the date of this Lease, and as they may be subsequently amended, including but not limited to the California Building Code, Title 24, Seismic Code, Fire and Life Safety requirements and, if applicable, California Green Building Standard Code.

Included in this provision is compliance with the Americans with Disabilities Act ("ADA") and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the dates of this Lease, and as they may be subsequently amended, and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA. However, Tenant shall not be responsible for any ADA violations resulting from alterations made by County or the placement of fixtures or equipment by County.

Tenant shall use commercially reasonable efforts to repair and maintain the Premises as a "safe place of employment," as defined in the California Occupational Safety and Health Act (California Labor Code, Division 5, Part 1, Chapter 3, beginning with Section 6400) and the Federal Occupational Safety and Health Act, where the provisions of such Act exceed, or supersede, the California Act, as the provisions of such Act are applicable on the date of this Lease, and as they may be subsequently amended. County agrees to notify Tenant of any repair or maintenance necessary within the Premises to comply with such Act and Tenant agrees to diligently act to repair or maintain appropriately.

In the event Tenant neglects, fails, or refuses to maintain said Premises as aforesaid, following thirty (30) days after written notice from County to Tenant providing notice of such neglect, failure or refusal, County may, notwithstanding any other termination provisions contained herein:

- A. Thirty (30) days following a second written notice of such neglect or failure or refusal, County may terminate this Lease with written notice to the Tenant; or

- B. At County's sole option, cure any such Tenant Default by performance of any act, including payment of money, and add the cost thereof plus reasonable administrative costs (ten percent (10%)) to the Rent.

Tenant agrees to reimburse and indemnify, and defend County for any expenses incurred because of the failure of the Premises to conform with any and all applicable laws, rules, regulations, building codes, statutes, and orders, including the costs of making any alterations, renovations, or accommodations required by the ADA, or any governmental enforcement agency, or any court, any and all fines, civil penalties, and damages awarded against County resulting from a violation or violations of the above-cited laws, rules, regulations, building codes, statutes, and orders and regulations, and all reasonable legal expenses incurred in defending claims made under the above-referenced laws, rules, regulations, building codes, statutes, and orders, including reasonable attorneys' fees. Should Tenant fail to comply with the provisions of this Clause 25 Tenant may be found in Tenant Default and the County may exercise those remedies set forth in Clause 30 (DEFAULTS AND REMEDIES).

## **26. DAMAGE TO OR DESTRUCTION OF PREMISES AND/OR TENANT IMPROVEMENTS (3.5 SR)**

Premises. In the event of any damage to or destruction of the Premises or in the event the Premises or improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, County shall have the immediate right to terminate this Lease effective upon providing written notice to Tenant. In the event of said termination, County shall be entitled to receive and retain any and all insurance proceeds resulting from or attributable to such casualty, except for those proceeds payable under any separate policy maintained by Tenant which specifically insures Tenant's personal property and trade fixtures. In the event that County does not elect to terminate this Lease following said casualty, County, at County's expense, may rebuild, reconstruct and restore the Premises, excluding Tenant's personal property and trade fixtures, which shall be the responsibility of Tenant. Tenant understands and acknowledges that County shall be free to make such changes and modifications to the Premises as County deems appropriate in the exercise of its good faith discretion. During any period when County determines that there is substantial interference with Tenant's use of the Premises by reason of such casualty, the monthly Rent payable hereunder shall be temporarily abated in proportion to the degree of such substantial interference. With respect to damage or destruction which County elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932 (2) and 1933 (4).

Tenant Improvements. In the event of damage to or destruction of Tenant Improvements located within the Premises or in the event Tenant Improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of Tenant Improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Premises for the purposes required by the Lease. Repair, replacement, or reconstruction of Tenant Improvements within the Premises shall be accomplished in a manner

and according to plans approved by the Director of OC Parks. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify Tenant's obligation under this paragraph.

County shall not be liable for any damage to Tenant Improvements or Tenant personal property or of others located on the Premises, nor for the loss of or damage to any property of Tenant or others by theft or otherwise, unless such damage or loss is caused by the willful misconduct or gross negligence of the County. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant.

## **27. ASSIGNMENT AND SUBLETTING (3.6 SR)**

Subject to prior review and approval by County, Tenant may allow for the rental, licensing, permitting, or subletting, etc. of the Premises when doing so results in providing for the uses permitted in Clause 3 (USE) above. Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, license, permit, or assignment (hereinafter in this clause referred to collectively as “**Encumbrance**”) of Tenant’s interest in the Premises, or any part or portion thereof without the prior written approval of County is prohibited. All Encumbrances are subject to County’s review and approval, including those Encumbrances that result in providing for the uses permitted in Clause 3 (USE) above. County approval is subject to negotiation by the Parties and may result in additional charges for Rent and/or Additional Rent as those terms are defined and used in Clause 9 (RENT) and/or Clause 10 (RENT ADJUSTMENT), above. County may reasonably withhold such approval.

Should County consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as County's consent to any further Encumbrance. Such terms, covenants or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

Tenant may, with prior notice, engage the services of a professional management company and such employment shall not be construed to be an assignment or transfer of the Lease. Any license, sublease, permit, etc. issued by Tenant shall be consistent with and subject to the terms and conditions of this Lease and shall be subject to review and approval by the County, whose approval shall not be unreasonably withheld. Each license, sublease, permit, etc. issued by Tenant shall require adequate insurance, as determined by the County, with the County of Orange named as additional insured, and shall indemnify the County of Orange, its elected officials, agents, officers, and employees.

## **28. TAXABLE POSSESSORY INTEREST ASSESSMENTS (3.7 SR)**

Should this Lease create any possessory interest, which is subject to the payment of taxes levied on such interest, it is understood and agreed that all assessments associated with said taxable possessory interest shall be the full responsibility of the Tenant, and Tenant shall cause said assessments to be paid promptly.

## 29. ESTOPPEL CERTIFICATE (3.8 SR)

Tenant shall furnish upon receipt of a written request from County an estoppel certificate on County's standard form *Estoppel Certificate* (attached hereto in Exhibit F containing information as to the current status of the Lease. Said standard form *Estoppel Certificate* shall be completed by Tenant in a timely manner. The *Estoppel Certificate* shall be approved by Chief Real Estate Officer and County Counsel.

## 30. DEFAULTS AND REMEDIES (3.9 SR)

**Tenant Default:** Tenant shall be deemed in default of this Lease if: a) in the event of any monetary breach of this Lease by Tenant, County shall notify Tenant in writing of such breach, and Tenant shall have three (3) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, Tenant fails within fifteen (15) days after receipt by Tenant of written notice specifying wherein such obligation of Tenant has not been performed; provided however, that if the nature of Tenant's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then Tenant shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a “**Tenant Default**”).

**County Default:** County shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by County, Tenant shall notify County in writing of such breach, and County shall have ten (10) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, County fails within fifteen (15) days after receipt by County of written notice specifying wherein such obligation of County has not been performed; provided however, that if the nature of County's obligation is such that more than fifteen (15) days after such notice are reasonably required for its performance, then County shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a “**County Default**”).

**Tenant Remedies:** Tenant's sole remedy for a County Default shall be against the County's interest in the Premises (including, without limitation, proceeds from the sale of the Premises, condemnation awards to which County is entitled under the terms of the Lease and proceeds from insurance policies that County maintains under the Lease) and includes only the right to damages and/or injunctive relief (collectively, “**Tenant Remedies**”), and in no event shall Tenant have the right to terminate this Lease or to rent abatement hereunder.

**County Remedies:** If the Tenant Default is a result of a monetary breach by Tenant in the payment of the Rent or Additional Rent, pursuant to Clause 9 (RENT), County may, at the County's sole discretion, a) declare all Rent payments to the end of Tenant's current fiscal year to be due, including any delinquent rent from prior budget years or b) terminate the Lease. County's remedies as the result of Tenant Default for monetary or non-monetary breach shall be the right to damages, injunctive relief, and/or any other rights at law or in equity. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or of any Tenant Default hereunder.

### **31. LABOR CODE COMPLIANCE (4.0 SR)**

Tenant acknowledges and agrees that any and all improvements or modifications required to be performed by Lessor at the request of County shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.), as applicable. These provisions may be applicable to improvements or modifications costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under § 1720.2.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Orange County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations or Chief Real Estate Officer.

Tenant hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all improvements or modifications to be completed for Tenant within the Premises, and Tenant herein agrees that Tenant shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the improvements or modifications are performed.

Prior to commencement of any improvements or modifications, Tenant shall provide Director of OC Parks with the applicable certified payroll records for all workers that will be assigned to the improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. Tenant shall provide Director of OC Parks, bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

If Tenant fails to comply with this clause, such occurrence may constitute an event of default of this Lease and County may, notwithstanding any other termination provisions contained herein:

- A. Terminate this Lease upon written notice to Tenant; or
- B. At County's sole option, County may deduct from Tenant's Security Deposit, as a penalty for such non-compliance of paying prevailing wage, which Security Deposit deduction would be County's estimate, in its sole discretion, of such prevailing wage rates not paid by Tenant.

Except as expressly set forth in this Lease, nothing herein is intended to grant authority for Tenant to perform improvements or modifications on space currently leased by County or for which County has entered into a lease or lease amendment.

### **32. RIGHT TO WORK AND MINIMUM WAGE LAWS (4.1 SR)**

In accordance with the United States Immigration Reform and Control Act of 1986, Tenant shall require its employees that directly or indirectly service the Premises or terms and conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United States. Tenant shall also require and verify that its contractors or any other persons servicing the Premises or terms and conditions of this Lease, in any manner whatsoever, verify the identity of their employees and their eligibility for employment in the United States.

Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of California Labor Code, Section 1178.5, Tenant shall pay no less than the greater of the Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises, in any manner whatsoever. Tenant shall require and verify that all its contractors or other persons servicing the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.

Tenant shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.

Notwithstanding the minimum wage requirements provided for in this clause, Tenant, where applicable, shall comply with the prevailing wage and related requirements, as provided for in Clause 31 (LABOR CODE COMPLIANCE) of this Lease.

### **33. SIGNAGE (4.2 N)**

Subject to prior review and approval by County, Tenant may install and maintain signs or displays on the Premises. Such signage must comply with all applicable laws and zoning and site plan requirements. Unapproved signs, awnings, banners, flags, etc., may be removed by County without prior notice to Tenant.

Specifically, Tenant agrees to submit for review and approval by County if an entrance sign is to be placed at the Los Alisos entrance facing a direction that can be seen by both lanes of traffic.

### **34. AUTHORITY (4.3 SR)**

The persons executing this Lease on behalf of County or Tenant warrant that they have the power and authority to bind County or Tenant to this Lease.

### **35. LEASE ORGANIZATION (4.4 SR)**

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

**36. SUCCESSORS IN INTEREST (4.5 SR)**

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.

**37. AMENDMENTS (4.6 SR)**

This Lease sets forth the entire agreement between Lessor and County and any modification must be in the form of a written amendment.

**38. PARTIAL INVALIDITY (4.7 SR)**

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

**39. WAIVER OF RIGHTS (4.8 SR)**

The failure of Tenant or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Tenant or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

**40. HOLDING OVER (4.9 SR)**

In the event Tenant shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

**41. EARTHQUAKE SAFETY (5.0 SR)**

Tenant accepts the Premises “as is” and “where is” and County offers no warranties or representations whatsoever that the Premises is or has been in compliance with applicable seismic safety regulations and building codes at the time of construction. All such seismic, safety and building regulation compliance is the responsibility of the Tenant.

**42. QUIET ENJOYMENT (5.1 SR)**

County agrees that, subject to the terms, covenants and conditions of this Lease, Tenant may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

#### **43. GOVERNING LAW AND VENUE (5.2 SR)**

This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

#### **44. ATTORNEYS' FEES (5.3 SA)**

In the event of a dispute between Tenant and County concerning claims arising out of this Lease, or in any action or proceeding brought to enforce or interpret any provision of this Lease or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

#### **45. TIME OF ESSENCE (5.4 SR)**

Time is of the essence of this Lease. Failure to comply with any time requirements of this Lease shall constitute a material breach of this Lease.

#### **46. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (5.5 SR)**

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Pursuant to California Civil Code 1938, County hereby represents that the Premises has not undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards. If it is determined during this tenancy that a violation of handicapped access laws (including the Americans with Disabilities Act) exists at the Premises, Tenant shall correct such non-compliance at Tenant's cost.

#### **47. FORCE MAJEURE (5.6 SR)**

For purposes of this Lease, the term "**Force Majeure**" means any of the following events which are beyond the control of either Party: act of God, unavailability of equipment or materials (but only if such equipment and materials were ordered in a timely fashion), enemy or terrorist act, act of war, riot or civil commotion, strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including nonstandard delays in issuance of any permit or other necessary governmental approval or the scheduling of any inspections or tests), nonstandard

delays by third party utility providers, or any other matter of any kind or character beyond the reasonable control of the Party delayed or failing to perform under this Lease despite such Party's best efforts to fulfill the obligation. "**Best Efforts**" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure shall not include inability to obtain financing or other lack of funds. Lessor and County shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control.

#### **48. CONDEMNATION (5.7 SR)**

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If all or a material portion of the rentable area of the Premises are taken by Condemnation, Tenant may, at Tenant's option, to be exercised in writing within ten (10) days after County shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. County shall also have the right to terminate this Lease if there is a taking by Condemnation of any portion of the building or property which would have a material adverse effect on County's ability to profitably operate the remainder of the building. If neither Party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of County, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken or for severance damages. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

#### **49. CONSENT OR APPROVAL (5.8 SR)**

Unless expressly stated otherwise, where the consent or approval of a Party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

#### **50. UNENFORCEABLE PROVISIONS (5.9 SR)**

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable, it is the express intention of the Parties hereto that the remainder of the Lease shall not be affected thereby, and it is also the express intentions of the Parties hereto that in lieu of each paragraph or clause of this Lease which may be determined to be illegal, invalid or unenforceable, there may be added as a part of this Lease a paragraph or clause as similar in terms to such illegal or invalid or unenforceable paragraph or clause as may be possible and may be legal, valid and enforceable.

**51. CONTROL OF HOURS, PROCEDURES, AND PRICES (6.0 SR) – *Intentionally Omitted***

**52. LIMITATION OF THE LEASEHOLD (6.1 SR)**

This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein. Tenant has accepted the Premises in its "as is" / "where is" condition.

**53. PERMITS AND LICENSES (6.2 SR)**

Tenant shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by County, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

**54. PAYMENT CARD COMPLIANCE (6.3 SR) – *Intentionally Omitted***

**55. NONDISCRIMINATION (6.4 SR)**

Tenant agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease. Tenant shall make its accommodations and services available to the public on fair and reasonable terms.

**56. CONDITION OF PREMISES UPON TERMINATION (6.5 SR)**

Except as otherwise agreed to herein or in subsequent approval in writing by County, upon termination of this Lease, Tenant shall re-deliver possession of said Premises to County in substantially the same condition that existed immediately prior to Tenant's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. It is agreed that any Tenant Improvement on the Premises may be considered the personal property of County at County's sole discretion. Upon termination, County will notify Tenant if any such Tenant Improvements need to be removed at Tenant's sole cost and expense. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the lease term.

**57. DISPOSITION OF ABANDONED PERSONAL PROPERTY (6.6 SR)**

If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such

event shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor.

#### **58. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (6.7 SR)**

Upon termination of this Lease for any reason, including but not limited to termination because of Tenant Default, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County. Should Tenant fail or refuse to deliver the required deed to County, County may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of Tenant or those claiming under Tenant in and to the Premises.

#### **59. PUBLIC RECORDS (6.8 SR)**

Any and all written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at the option of County, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and Tenant hereby waives, for itself, its agents, employees, subtenants, and any person claiming by, through or under Tenant, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold County harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by Tenant or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

#### **60. RELATIONSHIP OF PARTIES (6.9 SR)**

The relationship of the Parties hereto is that of Lessor and Tenant, and it is expressly understood and agreed that County does not in any way or for any purpose become a partner of or a joint venturer with Tenant in the conduct of Tenant's business or otherwise, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

#### **61. NO BROKERS USED (7.0 SR)**

Neither Party has employed any broker or finder or incurred any liability for any brokerage fee, commission, finder's fee, or reimbursement expenses in connection with the transactions contemplated by this Lease.

**62. NOTICES (7.1 SR)**

All written notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed received upon personal delivery, delivery by facsimile machine, electronic mail, or seventy-two (72) hours after deposit in the United States Mail.

<p><b>TO: TENANT</b></p> <p>Orange County Bird of Prey Center                  ATTN: Executive Director                  25422 Trabuco Road # 105-541                  Lake Forest, CA 92630</p> <p><u>with a copy to:</u></p> <p>Atkinson, Andelson, Loya, Ruud &amp; Romo                  Kenneth L. Perkins, Jr.   Partner                  20 Pacifica, Suite 1100                  Irvine, California 92618</p>	<p><b>TO: COUNTY</b></p> <p>County of Orange                  OC Parks                  Attn: Real Estate Department                  13042 Old Myford Road                  Irvine, CA 92602</p> <p>With a copy to:</p> <p>County Executive Office                  333 W. Santa Ana Boulevard, 3rd Floor                  Santa Ana, CA 92701                  Attention: Thomas A. Miller, Chief Real Estate Officer</p> <p>Certificate of Insurance/Other Insurance:                  Certificate of Insurance or other insurance related correspondence shall be mailed or emailed as below:</p> <p>Project: PR51A-1053                  Location: Bird of Prey Lease</p> <p>Email: <a href="mailto:insurance.ceore@ocgov.com">insurance.ceore@ocgov.com</a></p>
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Any and all insurance related mail shall include the Lease number and project name and Lessor shall mail all insurance certificates and insurance-related correspondence to: [insurance.ceore@ocgov.com](mailto:insurance.ceore@ocgov.com).

**63. ENTRANCE ACCESS ROAD (N)**

Tenant will use as the primary access road to the Premises, the entrance on Los Alisos Blvd, with an address of 21131 Los Alisos Blvd., Rancho Santa Margarita, CA 92688, as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof.

Tenant will NOT use the access road located at 20431 Meadow Ridge Drive as the primary access to Tenant’s Premises, instead this road will only be used as an emergency exit from the Premises.

#### **64. ON-SITE TENANT MANAGER AND SECURITY GUARD (N)**

A. On-Site Tenant Manager. Tenant shall employ and designate to County a competent manager (“**Tenant Manager**”) who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order of the Premises. Tenant Manager shall be vested with the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant’s agents, employees, subtenants, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Tenant shall notify County in writing of the name of the manager currently so employed, as well as successor managers, in the manner as provided in Clause 62 (NOTICES). The Tenant Manager agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations, now or hereafter promulgated, concerning operations on the Premises.

B. Security Guard. Tenant may hire an on-site security guard that will provide 24/7 security services on the Premises (“**Security Guard**”). The Security Guard may provide security services from a single recreational vehicle (“**RV**”). The RV will solely facilitate better onsite maintenance, security, and control of the Premises. It is Tenant’s sole responsibility to maintain the condition of the RV.

It is Tenant’s sole responsibility to conduct its own due diligence in the hiring of the Security Guard(s), which may include conducting background checks. Tenant must maintain, and provide to County when requested, any records in connection to the hiring of the Security Guard(s).

#### **65. BEER AND WINE SALES (N)**

Subject to OC Parks Permit Coordinator prior approval, Tenant may host limited fundraising events, while serving beer and wine within the Premises (“**Events**”). Prior to hosting any such Event, Tenant shall complete the following:

- a. Tenant shall apply for a special event permits through OC Parks Permit Coordinator, which will authorize the sale and consumption of beer and wine at the Events.
- b. OC Parks Permit Coordinator will provide bartending companies who are on the County’s insured vendor list. The cost of the permit and bartending services shall be the sole responsibility of Tenant.
- c. County authorizes alcohol consumption within the Premises consistent with the resolution, which is attached hereto and by this reference made a part hereof as Exhibit E. The proposed resolution, with Board approval, will allow the Premises to be included as a designated area for alcohol consumption during Events at O’Neill Regional Park and as further authorized by OC Parks Permit Coordinator. Alcohol will not be allowed outside of the permitted area.
- d. Attendance for such Events must be by invitation or hard ticket only and controlled access must be provided by Tenant.



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

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: Ray Diaz Ray Diaz Feb 2, 2023  
Deputy

RECOMMENDED FOR APPROVAL:

County Executive Office

By: RONALD INOUCHE  
Real Estate Manager

**TENANT**

ORANGE COUNTY BIRD OF PREY CENTER

Signature: scott weldy  
scott weldy (Feb 17, 2023 20:30 PST)

By: \_\_\_\_\_  
Email: scottw@ocbpc.org  
Scott Weldy  
Chairman, Board of Directors

By: Peggy Chase  
Peggy Chase  
Executive Director

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

**COUNTY**

COUNTY OF ORANGE

Attest:

\_\_\_\_\_  
ROBIN STIELER  
Clerk of the Board of Supervisors  
of Orange County, California

\_\_\_\_\_  
Chair of the Board of Supervisors  
Orange County, California

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

PROJECT NO: PR51A-1053  
PROJECT: Orange County Bird of Prey Center

DATE: May 5, 2022  
VERIFIED BY: Casey Czapski

**Legal Description**

**O'Neill Regional Park – Birds of Prey Lease**

Facility No.: PR51A  
Parcel No.: 1053

That certain portion of land in the City of Rancho Santa Margarita, County of Orange, State of California, being a portion of the land described as Parcel A of the Irrevocable Offer of Dedication to the County of Orange recorded May 27, 1988 as Instrument No. 88-251665 of Official Records in the office of the County Recorder of said County, more particularly described as follows:

**Beginning** at the Southeasterly terminus of that certain course described as "North 65°33'08" West, 270.00 feet" on the generally southerly boundary line of said Parcel A; Thence, along said boundary line, North 65°33'08" West, 270.00 feet; thence, leaving said boundary line, North 40°49'13" East, 151.70 feet; Thence North 29°51'03" East, 81.39 feet to the beginning of a curve, concave southeasterly and having a radius of 195.00 feet; thence Northeasterly, 108.22 feet along said curve through a central angle of 31°47'56"; thence South 46°32'27" East, 183.65 feet; thence South 29°20'05" West, 76.44 feet to the beginning of a curve, concave easterly and having a radius of 55.00 feet; thence Southerly and Southeasterly, 89.49 feet along said curve through a central angle of 93°13'15" to a point on aforesaid generally southerly boundary line of said Parcel A; thence along said boundary line South 41°19'00" West, 136.33 feet to the **Point of Beginning**.

Containing 1.624 acres, more or less.

See EXHIBIT B attached hereto and by reference made a part hereon.

APPROVED

Kevin Hills, County Surveyor, L.S. 6617

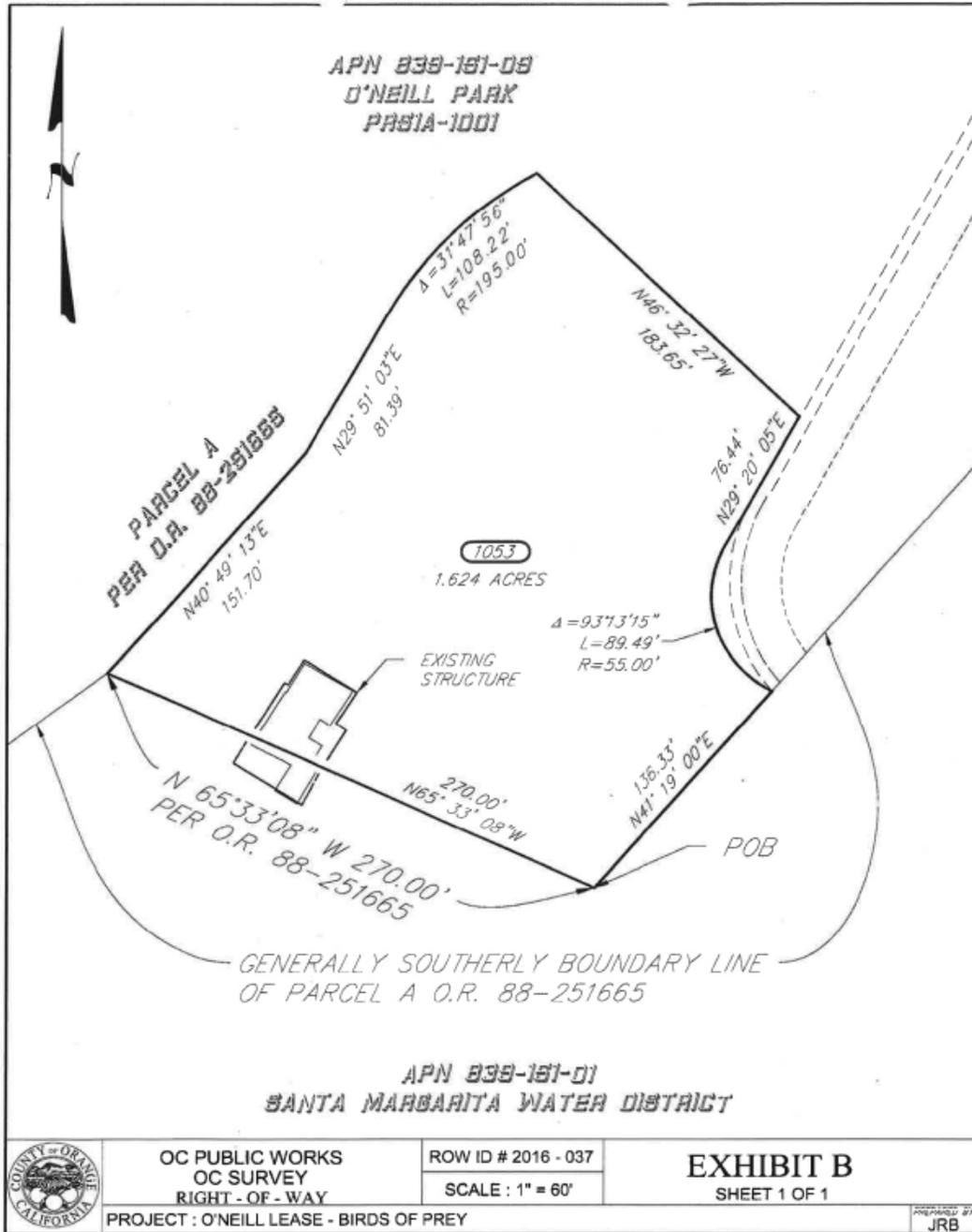
  
By: Raymond J. Rivera, L.S. 8324

Date: *May 1, 2018*



**EXHIBIT B**

**DEPICTION OF PREMISE**



## **EXHIBIT C**

### Best Management Practices ("BMPs" Fact Sheets)

Tenant shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Tenant's operations. Tenant is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at: <http://ocwatersheds.com/documents/bmp> (website may change from time to time):

- IC3 Building Maintenance
- IC4 Carpet Cleaning
- IC5 Concrete & Asphalt Production, Application, & Cutting
- IC6 Contaminated or Erodible Surface Areas
- IC7 Landscape Maintenance
- IC9 Outdoor Drainage from Indoor Areas
- IC10 Outdoor Loading/Unloading of Materials
- IC11 Outdoor Process Equipment Operations & Maintenance
- IC12 Outdoor Storage of Raw Materials, Products, & Containers
- IC13 Over Water Activities
- IC14 Painting, Finishing, & Coatings of Vehicles, Boats, Buildings, & Equipment
- IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention & Cleanup
- IC21 Waste Handling & Disposal
- IC22 Eating & Drinking Establishments
- IC23 Fire Sprinkler Testing/Maintenance
- IC24 Wastewater Disposal Guidelines

**EXHIBIT D**

**LOS ALISOS ACCESS ROAD**



**EXHIBIT E**

**ALCOHOL RESOLUTION**

**RESOLUTION OF THE BOARD OF SUPERVISORS OF  
ORANGE COUNTY, CALIFORNIA**

August \_\_\_\_, 2022

WHEREAS, Orange County Codified Ordinance 2-5-35 prohibits possession or consumption of alcoholic beverages at County recreational facilities unless authorized by Board of Supervisors (Board) Resolution or at County-implemented events approved by the OC Parks Director; and

WHEREAS, a Lease Agreement (Lease) has been negotiated with Orange County Bird of Prey Center to operate and maintain the Premises located within O'Neill Regional Park.

WHEREAS, the proposed Lease will allow Tenant to serve alcohol which shall include beer and wine at limited fundraising special events. Tenant shall apply and obtain a special event permit from OC Parks Permit Department. The special event permit allows Tenant to choose County-approved bartending companies, which companies are on the County insured vendor list.

WHEREAS, the special event permit allows possession, sales, and consumption only at the Nature Center/Conference Center Complex at O'Neill Regional Park during the approved fundraising special events.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

Authorize possession, sale, and consumption of alcoholic beverages at the Bird of Prey Center during approved fundraising special events pursuant to the terms of the Lease Agreement with Orange County Bird of Prey Center.

**EXHIBIT F**

Project/Parcel No.:

Project Name:

**ESTOPPEL CERTIFICATE**

TO:

As of the date of this Estoppel Certificate the undersigned, as a "tenant" under that lease dated \_\_\_\_\_, between \_\_\_\_\_ ("Lessor") and the County of Orange, a political subdivision of the State of California ("County"), does hereby acknowledge the following:

1. The aforesaid lease, subject to article 2 below, constitutes the entire agreement between Lessor and County and is in full force and effect.
2. (Check One)
  - The aforesaid lease has not been modified, altered, or amended.
  - The aforesaid lease has been modified pursuant to that document(s) attached hereto.
3. The term of the lease is \_\_\_\_\_ years. The lease commenced on \_\_\_\_\_ and will expire on \_\_\_\_\_.
4. The term of the lease is subject to County's option to terminate/extend as follows:
5. The lease rental rate is \$\_\_\_\_\_ per month, no rent has been paid in advance except as set forth in the lease, and County (in its capacity as "tenant," and not as a governmental agency) has received no notice of a prior assignment, hypothecation, or pledge of the lease from Lessor.
6. County has accepted and is now in possession of the leased premises.
7. The addresses for notices to be sent to County are set forth in Clause \_\_\_\_ (\_\_\_\_\_) of the lease.
8. County has no charge, lien, or claim of offset under this lease against rents or other charges due or to become due and, to the actual knowledge of County, Lessor is not now in default under the lease.

APPROVED AS TO FORM  
OFFICE OF COUNTY COUNSEL

COUNTY  
COUNTY OF ORANGE

By  
Deputy

By:  
Thomas A. Miller, Chief Real Estate Officer  
County Executive Office/Real Estate

Date:

Certificate Date: