



LEASE

THIS IS A LEASE AGREEMENT (hereinafter referred to as "**Lease**") made _____, 2022, ("**Effective Date**") by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as "**County**") and the CITY OF PLACENTIA, a municipal corporation (hereinafter referred to as "**Tenant**"). The County and Tenant may individually be referred to herein as a "**Party**" or collectively as the "**Parties**."

RECITALS

- A. County owns and operates Tri-City Regional Park, located at 2301 N. Kraemer Blvd. Placentia, CA 92870 ("**Park**"), as part of the County's regional park system.
- B. In 2012, due to ongoing funding and maintenance issues, the Tri-City Park Authority, of which Tenant was a member, requested that the County accept transfer of the Park. Thereafter, the County accepted ownership of the Park for the benefit of the public to be used specifically for County park purposes. Since the transfer of the Park to the County, the County has improved and operated the Park as a County regional park.
- C. The Tenant now desires to fund, construct, own and operate the Center (as defined below) as an amenity within the park for the benefit of the residents of the area.
- D. County is willing to lease property to the Tenant within the Park on the condition that the Tenant be responsible for all costs, including but not limited to entitlement, planning, design, construction, and all operations costs. The Parties intend the Center be operated by the Tenant separately from the Park and have its own utilities, access, parking and facilities.
- E. Prior to, and as a condition precedent to the commencement of this Lease and the Tenant taking a leasehold interest in the Premises, the Tenant shall fully fund, design, plan and entitle the Center.
- F. Based on the above, and as more fully set forth herein, the County has agreed to lease the Tenant certain property within the Park to construct, own and operate the Center.

1. DEFINITIONS (1.0 SR)

The following words in this Lease shall have the significance attached to them in this Clause 1 (DEFINITIONS), unless otherwise apparent from context:

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

"**Center**" means the City of Placentia Senior/Community Center, which will be approximately a 35,000 sq. ft. building with associated parking and site improvements and courtyard located at Tri-City Regional Park, 2301 N. Kraemer Blvd. Placentia, CA 92870.

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“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.

“Construction Budget” means the detailed line-item budget for all hard and soft costs to be incurred by Tenant in connection with the design and construction of the Initial Improvements and approved by Chief Real Estate Officer prior to the start of construction, a copy of which will be attached hereto as Exhibit E as a condition of the Commencement Date and through an amendment to this Agreement executed by the Parties, as same may be revised from time to time in accordance with this Lease.

“Construction Drawings” means the set of construction, landscaping and engineering drawings prepared by or for the architect of record for the Initial Improvements, approved by Chief Real Estate Officer prior to Tenant’s start of construction and to be attached hereto as Exhibit F as a condition of the Commencement Date and through an amendment to this Agreement executed by the Parties, as same may be revised from time to time in accordance with this Lease.

“Construction Schedule” means that certain schedule for construction of the Initial Improvements approved by the Chief Real Estate Officer prior to Tenant’s start of construction, a copy of which will be attached hereto as Exhibit D as a condition of the Commencement Date and through an amendment to this Agreement executed by the Parties.

“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.

“Initial Improvements” means the improvements first constructed by Tenant on the Premises for the Center at Tenant’s sole cost and expense as more particularly described in Exhibit C attached hereto and incorporated herein, as same may be revised from time to time in accordance with this Lease, which shall be finalized as condition of the Commencement Date and through an amendment to this Lease executed by the Parties.

“Specifications” means those certain specifications for the Initial Improvements, prepared by the architect of record for the Initial Improvements, approved by the Chief Real Estate Officer prior to the start of construction, which will be attached hereto as Exhibit G as a condition of the Commencement Date and through an amendment to this Lease executed by the Parties, as same may be revised from time to time in accordance with this Lease.

2. PREMISES (1.1 SR)

County leases to Tenant that certain property located at 2301 N. Kraemer Blvd., City of Placentia (**“Premises”**) and generally described in Exhibit A and shown on Exhibit B, which exhibits are

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attached hereto and by reference made a part hereof, as same may be revised from time to time in accordance with this Lease. The Premises are accepted “as is” and “where is” by Tenant subject to any and all existing easements and encumbrances.

The Center shall be located within the Premises, and shall have independent maintenance, operations, and parking separate from the County-managed portion of the Park. The Premises shall also be capable of being fully secured from the rest of the Park during non-park hours, which may be accomplished through a combination of various methods, including, but not limited to fencing, landscaping, barriers, buildings, or other reasonable methods. The Premises, or use thereof, shall not impede public use, public lake access, or Park operations. Any and all costs for fencing and securing the Premises shall be borne by the Tenant.

3. USE (1.2 N)

Tenant's use of the Premises shall be limited to designing, permitting, constructing, maintaining, and operating the Center and any of its appurtenant facilities and associated amenities, including, but not limited to parking, including ADA parking requirements and lighting pertaining to the Center, for use as a senior/community center for persons to gather for social, educational and recreational activities, and other related City community events and facility use rentals as permitted by the City. Tenant shall not have the right to use any Park facilities for the construction and/or operation of the Center, without the prior written consent of the Director of OC Parks. The Parties have agreed, and the County's willingness to enter into this Lease is premised upon the fact that the Center will have all of its own amenities and services, including utilities, parking and access.

Tenant agrees not to use the Premises for any other purpose, nor to engage in or authorize any other activity within or from the Premises, without County approval. Tenant shall not use the Premises or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance or waste to be created or maintained therein. If, at any time during the Term, the Premises ceases to be used by Tenant for the Center for the purposes described in this section, that shall constitute an event of default pursuant to which the County may terminate this Lease with proper notice and opportunity to cure, as set forth below in Clause 30 (DEFAULTS AND REMEDIES).

NO TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM OR USED WITHIN THE PREMISES. ALCOHOL IS PERMITTED ON THE PREMISES, SUBJECT TO CITY'S RULES AND REGULATIONS GOVERNING CITY FACILITIES AND ORDINANCES AND CONSISTENT WITH THE BOARD RESOLUTION ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF AS EXHIBIT H. SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

4. COUNTY'S USE RESERVATIONS AND RIGHT OF ENTRY (1.3 SR)

County reserves the right from time to time, without unreasonable interference, to access the Premises 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 of the Premises. County shall make best efforts to notify Tenant prior to accessing the Premises.

5. CONDITIONS PRECEDENT TO COMMENCEMENT DATE (N)

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The Commencement Date of this Lease shall not occur, and Tenant shall not have a leasehold interest in the Premises, until the following terms and conditions shall have been met:

A. Preliminary Plans

Within one hundred and eighty (180) days following the Effective Date of this Lease, Tenant shall submit preliminary plans for the development and use of the Premises (“**Preliminary Plans**”), as allowed under the terms of the Lease, for Chief Real Estate Officer’s approval. The preliminary plans shall be prepared by an architect licensed in the State of California and shall include:

- 1) A detailed thirty- five percent (35%) complete preliminary site plan of the Premises showing:
 - a. all improvements planned for the Premises
 - b. any existing and/or proposed easements affecting the Premises
 - c. ingress and egress to and from the Premises
 - d. parking
 - e. location of all utilities
 - f. drainage plan
 - g. grade elevations of all structures;
- 2) Landscape development plans including irrigation plans;
- 3) Structural, mechanical, and lighting systems;
- 4) Colored rendering or model of the planned development;
- 5) An Urban Runoff Management Plan;
- 6) A detailed cost estimate of all improvements; and
- 7) A detailed estimate of the construction schedule.

Within fifteen (15) days of receipt of the Preliminary Plans, the Chief Real Estate Officer will approve, rule on, reject or comment on the Preliminary Plans. The Chief Real Estate Officer’s review shall be limited only to reviewing plans for conformity with this Lease and shall not provide any representations or warranties regarding the sufficiency of the plans for the required land use approvals or for construction.

B. Environmental Requirements

Concurrently with or prior to the submission of the Preliminary Plans, Tenant shall prepare a draft Initial Study, prepared at Tenant’s expense, in order to determine whether a Negative Declaration or an Environmental Impact Report (“**EIR**”) will be necessary for the proposed development. Such determination will be made in accordance with the Tenant’s (as the permitting entity) normal procedures.

If a Negative Declaration is appropriate, Tenant shall submit all necessary documentation for such Negative Declaration and provide the Chief Real Estate Officer with written proof of environmental clearance on this project from the appropriate governmental authority.

If an EIR is required, Tenant shall obtain a screen check EIR and draft EIR at its own expense and shall process same in accordance with its’s procedure. Tenant shall, prior to commencement of any construction on the Premises, provide supporting documentation to

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Chief Real Estate Officer, evidencing that Tenant has received environmental clearance on this project from the appropriate authority governing this matter

C. General Plan Conformity

Tenant shall provide County a finding that the proposed development is in conformance with its' General Plan pursuant to Government Code Section 65402 and provide written evidence of such conformity to the Chief Real Estate Officer.

D. Construction Contract Documents

Within thirty (30) days following the date of the Chief Real Estate Officer's approval of the Preliminary Plans, Tenant shall submit to the Chief Real Estate Officer via the CPP process construction contract documents ("**Construction Contract Documents**") and cost estimates for development of the Premises. Such Construction Contract Documents shall consist of the following:

- 1) Complete architectural, landscape, and engineering working drawings;
- 2) Complete specifications;
- 3) Construction contract form; and
- 4) Construction schedule.

The Chief Real Estate Officer will approve, rule on, reject, or comment on the Construction Contract Documents within thirty (30) days following Chief Real Estate Officer's receipt of the Construction Contract Documents.

Within thirty (30) days following the Chief Real Estate Officer's review of the Construction Contract Documents as provided above, Tenant shall complete all corrections and adjustments to the Construction Contract Documents as required by the Chief Real Estate Officer, and resubmit the documents to Chief Real Estate Officer for approval. Within five (5) days following Chief Real Estate Officer's approval of the corrected Construction Contract Documents, Tenant shall submit the approved Construction Contract Documents for plan check with the applicable land use authority.

E. City and County Permits

Chief Real Estate Officer shall not unreasonably withhold consent to any application by Tenant with respect to any permits or approvals related to activities or development plans approved by County in accordance with this Lease which may be required by any governmental or regulatory agency.

Prior to the start of construction, tenant shall provide Chief Real Estate Officer with satisfactory evidence that Tenant has met all requirements and has obtained all necessary clearances and permits to commence construction of the planned development as preliminarily approved by the Chief Real Estate Officer.

Tenant acknowledges agrees that no grading, or other construction activities shall be permitted on the Premises until all applicable permits and clearances have been obtained.

F. Construction Funding

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Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for any and all hard and soft costs to be incurred by Tenant in connection with the Initial Improvements.

G. County Review

Tenant hereby acknowledges that the initial purposes of the execution of this Lease is to afford Tenant and County the opportunity to determine whether Tenant is able to meet the various conditions of this Lease and is able to obtain the required approvals as set forth in this Lease, and if not, this Lease will terminate prior to the Commencement Date, consistent with Clause 5(J), below. Several of those conditions involve obtaining reviews and approvals from officers, employees or agents of the County, and/or the Tenant. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review. Nothing contained in this Lease shall be deemed to imply that required approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of the County, and/or the Tenant shall not be deemed in any manner a breach of this Lease, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Lease or the attached Lease. No permit, approval, or consent given by the County, and/or the Tenant, or their officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit Tenant's obligations under this Lease or under the Lease, nor shall any approvals or consents given under this Lease by County, as a Party hereto, or by the Chief Real Estate Officer be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

H. Disclaimer of Representations and Warranties

Tenant agrees that County has made no representations, warranties, or agreements as to any matters concerning the Premises, including, but without being limited to, the land, marketability of title, topography, climate, air, water, water rights, utilities, present or future zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the Premises is suited, drainage, access to public roads, proposed routes of roads or extensions thereof or the availability of governmental permits or approvals of any kind. Tenant represents and warrants to County that it and its representatives and employees have made or will make their own independent inspection and investigation of such matters concerning the Premises.

I. Tenant's Right to Enter Premises Prior to Commencement Date

Subject to prior written approval and conditions as may be specified by the Chief Real Estate Officer, Tenant and its authorized representatives shall have the right to enter upon, to pass and to repass over and along said Premises, and to do the surveying and testing necessary for Tenant to prepare the hereinabove-described Preliminary Plans and Construction Contract Documents. Tenant hereby agrees to indemnify County and hold County, its officers, and employees harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation. Whether or not this Lease terminates or expires prior to the Commencement Date, Tenant agrees to repair any and all damages caused to the Premises by reason of any such investigation or investigations.

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J. Termination of Lease Prior to Commencement Date for Failure to Fulfill Conditions

Failure of Tenant to fully and satisfactorily meet the terms and conditions of this Clause 5 within six (6) years of the Effective Date shall absolutely and conclusively terminate Tenant's rights hereunder. Within thirty (30) days of the Effective Date, the Tenant shall execute, acknowledge, and deliver to the Chief Real Estate Officer a quitclaim deed, in a form as approved by the Chief Real Estate Officer, quitclaiming all right title and interest created by this Lease back to the County ("**Quitclaim Deed**"), which will be recorded if the conditions in this section have not been fulfilled in that time. The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the duration of this Lease and shall only be recorded in the event of the termination of this Lease for any reason to remove any cloud on title created by this Lease.

K. Notice to Adjacent City

To the extent that the Premises borders on a different city than the Tenant, Tenant shall notify such city in writing of the location of the Premises and Center and of the commencement of this Lease.

L. Outside Date

Tenant shall fulfill all of the conditions in this Clause 5 and the Initial Improvements as defined and described in Clause 17, prior to, and as a condition to the Commencement Date as set forth in Clause 7, below. In the event that the conditions herein are not fulfilled, and the Term has not commenced, within four (4) years of the Effective Date ("**Outside Date**"), this Lease shall terminate without further action of the Parties. The Outside Date will be confirmed in writing by either Party upon demand by the other.

6. TERMINATION OF PRIOR AGREEMENTS (1.5 SR) - *Intentionally Omitted*

7. TERM (1.6 SR)

The term of this Lease shall be seventy-five (75) years ("**Term**"), commencing the first day of the first full calendar month following the fulfilment of all of the conditions set forth in Clause 5 (CONDITIONS PRECEDENT TO COMMENCEMENT DATE), above ("**Commencement Date**"). In the event that the Commencement Date has not occurred on or before the Outside Date, this Lease shall terminate without further action of the Parties. Parties agree that the Commencement Date of this Lease will be confirmed in writing by either Party upon demand by the other.

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 one (1) additional term of twenty-four (24) years ("**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 one hundred and twenty (120) 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.

9. RENT (1.8 N)

In consideration for Tenant's valuable public services and benefits to the residents of the City, pursuant to this Lease described in Clause 3 (USE) above, there shall be no rent, so long as Tenant continues to provide the services and operations within the Center consistent with the use of the Center as a senior/community center for persons to gather for social, educational and recreational activities, and other related City community events and facility use rentals as permitted by the City.

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 SR) - *Intentionally Omitted*

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

A. Tenant shall, to the satisfaction of County, and at Tenant's sole cost, keep and maintain, or cause to be kept and maintained, the Premises and all Tenant Improvements (as defined in this Clause 16) of any kind in place and used, occupied, or otherwise operated or maintained by the Tenant on the Premises prior to the Commencement Date, or which may be erected, installed, or made thereon by Tenant, during the Term or Extension Term of this Lease ("**Tenant Improvements**"), 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 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. 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 Tri-City Regional Park.

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 fifteen

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(15) days after receipt of written notice specifying the condition to be corrected (provided that such 15-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 remove debris, or to maintain, repair, or replace improvements constructed within the Premises, except as otherwise provided by law. Tenant shall have no obligation to maintain, supervise, repair or replace any improvements installed by County.

17. CONSTRUCTION OF TENANT IMPROVEMENTS (N)

A. Construction of Improvements.

1. **Initial Improvements.** Tenant shall construct the “**Initial Improvements**” at its sole cost and expense (and at no cost to the County), as more particularly described in Exhibit C, in a first-class workmanlike matter, in accordance with the Construction Contract, Construction Drawings, Specifications (attached hereto as Exhibit G), Construction Schedule, Construction Budget (as such documents may be revised from time to time in accordance with this Lease) and all required permits and all applicable Laws. Tenant’s construction of improvements shall not impede public use of the Park or normal Park operations without prior written approval from the County.

2. **Changes to Construction Documents.** Tenant shall not make any material changes to the Construction Drawings, Specifications, Construction Schedule, Construction Budget, the contracts with the Construction and Architect (collectively, the “**Construction Documents**”) that materially alter the scope and scale of the facility without the prior written approval of the Chief Real Estate Officer. All requests for approval of material changes that alter the scope and scale of the facility to the Construction Documents shall be submitted by Tenant to the Chief Real Estate Officer together with a reasonably detailed explanation of the reasons for the requested change and any impact that such change may have on the Construction Budget and/or Construction Schedule, if any. If the Chief Real Estate Officer approves the requested change, then Tenant shall provide the Chief Real Estate Officer with a copy of the approved revised Construction Documents and the Tenant shall be obligated to complete the Work in accordance with such revised Construction Documents.

3. **Construction Schedule.** Tenant shall (i) commence construction of the Initial Improvements on or before the two (2) year anniversary of the Commencement Date of this Lease (“**Guaranteed Construction Commencement Date**”), and (ii) substantially complete

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construction of the Initial Improvements, as evidenced by issuance of Certificates of Occupancy for all buildings included in the Initial Improvements, on or before the four (4) year anniversary of the Commencement Date (“**Guaranteed Construction Completion Date**”). Following commencement of construction of the Initial Improvements, Tenant shall diligently continue performance of the Work through completion thereof in accordance with the Construction Schedule, a copy of which is attached hereto as Exhibit D, as same may be amended from time to time with the prior written approval of the Chief Real Estate Officer. The construction of the proposed facility will be delivered as a traditional public works design, bid, build project pursuant to the California Public Contract Code. Any compensable or non-compensable project time extensions provided to the contractor by the City shall be clearly documented pursuant to standard public project management procedures, and the contractor’s master project schedule shall be updated and shared with the Chief Real Estate Officer throughout the course of construction. Tenant acknowledges that a principal inducement to County to enter into this Lease, is the timely commencement, performance and completion by Tenant of the construction of the Initial Improvements. If Tenant fails to comply with its obligations under this Clause 17.1.3 including, without limitation, commencing and completing the Work of the Initial Improvements by the Guaranteed Construction Commencement Date and Guaranteed Construction Completion Date, respectively (as such dates may be changed pursuant to the provisions of this Lease), then such failure shall be deemed an Event of Default.

4. **Preconditions.** No Work for development of the Initial Improvements shall be commenced, and no building or other materials shall be delivered to the Premises, until Tenant has satisfied the following preconditions:

(a) If not previously obtained prior to Tenant’s exercise of the Lease, Tenant shall have received all applicable entitlements and approvals for the project from the City and other applicable government agencies with jurisdiction over the Premises;

(b) Written notice shall have been given by Tenant to County of the proposed commencement of construction of the Initial Improvements or the delivery of construction materials in order to permit County to take all necessary actions under California Civil Code section 3094, including posting of a notice of non-responsibility at the Premises;

(c) Tenant shall have provided to County (i) evidence that Tenant has entered into architect and construction contracts in the forms approved by Chief Real Estate Officer prior to Commencement Date of this Lease and with a general contractor (“**Contractor**”) and architect (“**Architect**”) licensed by the State of California, and who is adequately insured for the purposes of performing under this Lease, and approved by Chief Real Estate Officer prior to the Commencement Date of this Lease, and (ii) the written agreement of the Contractor and Architect that, in the event this Lease is terminated for any reason, then at County’s election, Architect and/or Contractor, as applicable, will recognize County as the assignee of the contracts with the Architect and/or Contractor, as applicable, and County may, upon such election, assume such contract with credit for payments made prior thereto;

(d) Tenant shall have secured the construction funding required under Clause 17.1.6 below, and provided County with evidence of assurance of construction completion in accordance with Clause 17.2 below; and

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(e) Tenant shall have delivered to County certificates of insurance evidencing that Tenant and Contractor have acquired all the insurance that they are obligated to carry pursuant to Clause 21.

5. **Utilities.** To the extent not already constructed, Tenant, at no cost to County, shall construct or cause to be constructed all water, gas, heat, light, power, air conditioning, telephone, and other utilities and services supplied to and/or used on the Premises at Tenant's sole cost and expense for the purposes of conducting Tenant operations thereon. All such utilities shall be separately metered from any utilities which may be used by County in conducting its operations, if any, on or about the Premises, and all taxes, connection fees, or service fees related to Tenant's operations on the Premises shall be Tenant's responsibility and shall be paid prior to the delinquency date. Tenant agrees to indemnify County against any liability for the late payment or non-payment of any such taxes, connection fees, or service fees. Nothing contained in this Clause is to be construed or implied to give Tenant the right or permission to install or to permit any utility poles or communication towers to be constructed or installed on the Premises.

Tenant shall be responsible for timely payment of all utilities, including water, gas, electricity, and sewer.

6. **Construction Funding.** Prior to commencement of construction of the Initial Improvements, Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for any and all hard and soft costs to be incurred by Tenant in connection with the design and construction of the Initial Improvements, as set forth in the Construction Budget, a copy of which is attached hereto as Exhibit E. Tenant may from time to time change any of the foregoing funding sources and the allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify County of any such change.

7. **Compliance with Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof. 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, or have any effect on approval rights that the County may have in its governmental capacity.

8. **Reports.** Not less than quarterly from the commencement of construction of the Initial Improvements, Tenant shall provide County with written construction status reports in the form of AIA No. G702, augmented by oral reports if so requested by County.

9. **Certificate of Occupancy.** Tenant shall provide County with a copy of the Certificate of Occupancy of the Initial Improvements promptly following issuance thereof.

10. **Mechanic's Liens.**

(a) **Payment of Liens.** Tenant shall pay or cause to be paid the total cost and expense of all "Work of Improvement," as that phrase is defined in the California Mechanics' Lien

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law in effect and as amended from time to time. Tenant shall not suffer or permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work of improvement, however it may arise. Tenant may, however, in good faith and at Tenant's sole cost and expense contest the validity of any such asserted lien, claim, or demand, provided Tenant (or the Contractor or subcontractor, as applicable) has furnished the release bond (if required by County or any construction lender) required in California Civil Code §3143 (or any comparable statute hereafter enacted for providing a bond freeing the Premises from the effect of such lien claim). 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:

- (1) Record a valid Release of Lien, or
- (2) Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the Premises from the claim of the lien or stop notice and from any action brought to foreclose the lien, or
- (3) Post such security or provide such alternative financial arrangements as shall be required by Tenant's title insurer to insure over such lien or stop-notice, or
- (4) Should Tenant fail to accomplish either of the three optional actions above within 30 days after Tenant receives notice of the filing of such a lien or stop notice, it shall constitute an Event of Default hereunder.

(b) Indemnification. 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.

(c) Protection against Liens. County shall have the right to post and maintain on the Premises any notices of non-responsibility provided for under applicable California law. During the course of construction, Tenant shall obtain customary mechanics' lien waivers and releases. Upon completion of the construction of any Improvements, Tenant shall record a notice of completion in accordance with applicable law. Promptly after the Improvements have been completed, Tenant shall (or shall cause Contractor to) record a notice of completion as defined and provided for in California Civil Code Section 3093.

(d) County's Rights. If Tenant (or the Contractor or subcontractor, as applicable) does not cause to be recorded the bond described in California Civil Code §3143 or otherwise protect the Premises and Improvements under any alternative or successor statute, and a final judgment has been rendered against Tenant by a court of competent jurisdiction for the foreclosure of a mechanic's, materialman's, contractor's or subcontractor's lien claim, and if Tenant fails to stay the execution of judgment by lawful means or to pay the judgment, County shall have the right, but not the duty to pay or otherwise discharge, stay or prevent the execution of any such judgment or lien or both. Upon any such payment by County, Tenant shall immediately upon receipt of written request therefor by County, reimburse County for all sums paid by County under this paragraph together with all County's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

11. **No Responsibility.** Any approvals by County with respect to any Improvements shall not make County responsible for the Improvement with respect to which approval is given, or the construction thereof. Tenant shall indemnify, defend and hold County harmless from and against all liability and all claims of liability (including, without limitation, reasonable attorneys' fees and costs) arising during the term of this Lease for damage or injury to persons or property or for death of persons arising from or in connection with such Improvement or construction.

B. **Tenant's Assurance of Construction Completion.** Prior to commencement of construction of the Initial Improvements by Tenant, Tenant shall furnish to County evidence that assures County that sufficient monies will be available to complete construction of the Initial Improvements prior to the Guaranteed Construction Completion Date and in accordance with the Construction Budget. Tenant's failure to complete construction of the Initial Improvements by the Guaranteed Construction Completion Date shall be deemed an Event of Default under this Lease. The amount of construction funds available to Tenant shall at least equal the budgeted hard and soft costs for the design and construction of the Initial Improvements as set forth in the Construction Budget. Such evidence may take one of the following forms:

1. A Completion or performance bond issued to County as obligee;
2. A Completion Guaranty, in form and substance acceptable to County, issued by a guarantor acceptable to County, and pursuant to which the guarantor thereunder will guarantee to County that construction of the Initial Improvements will be completed in accordance with the terms and conditions of this Lease;
3. Irrevocable letter of credit issued to County from a financial institution to be in effect until County acknowledges satisfactory completion of construction;
4. Cash deposited with the County (may be in the form of cashier's check or money order or may be electronically deposited); and
5. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Chief Real Estate Officer. All bonds and letters of credit shall be in a form acceptable to Chief Real Estate Officer and shall insure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises.

Prior to commencement of construction of approved facilities, or any phase thereof, within the Premises by Tenant, Tenant shall furnish to County a performance bond and labor and material bond or performance bond in a principal sum equal to the total estimated construction cost supplied by Tenant's contractor or contractors, provided said bonds are issued jointly to Tenant and County as obligees.

Tenant shall provide or cause its general contractor to provide payment and/or performance bonds in connection with the construction of the Initial Improvements, and shall name County as an additional obligee on, with the right to enforce, any such bonds

C. Ownership of Tenant Improvements.

1. During Term. Title to all Tenant Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the entire Term of this Lease, until the expiration or earlier termination thereof.

2. Upon Expiration of Term. All Tenant Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become County's property free and clear of all claims to or against them by Tenant and free and clear of any other liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or termination date. Tenant shall upon the expiration or earlier termination of the Term deliver possession of the Premises and the Improvements to County in a well-maintained condition consistent with the requirements of this Lease, taking into account reasonable wear and tear and the age of the Improvements.

(a) County retains the right to require Tenant, at Tenant's cost, to remove, demolish and clear all Improvements located on the Premises at the expiration or termination hereof. Said removal shall include leveling the Premises, the removal of any underground obstructions, and the compaction of filled excavations to ninety percent (90%) compaction.

(b) In order to ensure that Tenant has sufficient funds reserved for such removal, demolition and clearing County may, at any time during the last ten (10) years of the Term, request an estimate showing the then estimated costs for the removal, demolition and clearing of the Improvements. Tenant shall, within sixty (60) days following receipt of such notice, provide County a report prepared by a construction and demolition expert reasonably acceptable by County that details and estimates the cost and required time period for the demolition and removal of the Improvements at the expiration of the Term (the "**Demolition and Removal Report**"). If Tenant thereafter elects to exercise its option to extend the Term pursuant to Clause 8, then Tenant shall, following receipt of written notice from County at any time during the Extension Term, cause the Demolition and Removal Report to be updated to reflect the extended Lease Term. Tenant shall deliver a copy of the updated Demolition and Removal Report to the County within sixty (60) days following receipt of such notice from the County.

(c) Following County's receipt of such estimate, County may require Tenant to establish a separate account, in a bank or other financial establishment approved by Chief Real Estate Officer, for the deposit of funds to cover such estimated anticipated expense of demolition and clearing (the "**Demolition Security**"). The Demolition Security shall be maintained for the remaining duration of the Lease Term and expended solely for the demolition and clearing under this Clause. The Demolition Security shall also be explicitly available to the County for such removal in the event that Tenant does not comply with the terms of this Clause upon the time periods set forth herein. To the extent that Tenant does not comply with the terms of this Clause upon the time periods set forth herein and the County shall have the right to use the Demolition Security to pay the costs of demolition and removal and, to the extent that the amount of the Demolition Security exceeds the actual cost of such demolition and removal, the excess funds shall be delivered to Tenant within sixty (60) days after completion of such demolition and removal. Upon completion of all of Tenant's obligations under this Clause 17.3.2, the remaining balance of any Demolition Security (and to the extent not used by County pursuant this Clause) shall be returned to Tenant.

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D. **“AS BUILT” Plans.** Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the Chief Real Estate Officer a complete set of reproducible and two sets of prints of “As-Built” plans and a magnetic tape, disk or other storage device containing the “As-Built” plans in a form usable by County, to County’s satisfaction, on County’s computer aided mapping and design (“CAD”) equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be included on the disk or CD ROM. In addition, Tenant shall furnish Chief Real Estate Officer copy of the final construction costs for the construction of such improvements.

18. OWNERSHIP OF IMPROVEMENTS (2.7 SR) – *Intentionally Omitted*

19. MECHANICS LIENS OR STOP-NOTICES (2.8 SR) – *Intentionally Omitted*

20. OPERATIONAL REQUIREMENTS OF TENANT (2.9 SR)

A. **Quality and Service Standards.** Tenant shall at all times manage, operate, and staff the Premises and Center, at Tenant’s sole cost and expense, in a manner consistent with Clause 3 (USE) and consistent with the operations of other park center facilities in the area. The Parties agree that Tenant shall not use any Park facilities for the operation of the Center, without the prior written consent of the Director of OC Parks. The Parties have agreed, and the County’s willingness to enter into this Lease is premised upon the fact that the Center will have all of its own amenities and services, including, but not limited to, utilities, parking and access.

B. **Hours.** Regular hours of operation for the Center shall be no earlier than 7:00 am and no later than 10:00 pm. All Tenant events held at the Premises or Center shall not commence prior to 7:00 am and shall end by 10:00 p.m., except with the prior written consent of the Director of OC Parks, which shall be requested at least ten (10) business days in advance and shall not be unreasonably withheld.

C. **Standards of Operation.** Tenant shall operate the Center in a manner similar to other comparable facilities in Southern California which offer similar services and amenities. Tenant shall, at its sole expense, take reasonable steps to provide security measures for the protection of persons and property within the Center. In addition, Tenant shall not impede or block any public trail or accessway within the Park at any time or for any reason.

D. **Park Access.** Center activities and operations shall not interfere with Park activities and operations, and Tenant shall design and construct the Center in such a way that all operations are separable from the Park, including, but not limited to, utilities, parking and access. The County shall retain rights of access through the Premises in order to conduct maintenance, patrol, operations, or public safety activities related to the Park. Tenant shall be able to fully secure the Premises from the rest of the Park, such that the Park can be closed to the public completely during Park non-operating hours; which may be accomplished through a combination of various methods, including, but not limited to fencing, landscaping, barriers, buildings, or other reasonable methods. Any and all costs for securing the Premises shall be borne by the Tenant.

E. **Protection of Environment.** Tenant shall not permit:

1. Littering within the Premises.
2. Excessive noise emanating from the Premises.
3. Excessive light and glare from light fixtures within the Premises that could impact the safe operation of automobiles, watercraft and aircraft in the area.

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4. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source on the Premises into the waters within or adjacent to the Premises or other activities that are harmful to water quality.
5. Tenant shall immediately report any spillage, leakage, or discharge of any toxic, hazardous or polluting materials to the proper authorities.

Failure by Tenant to comply with A, B and C of this Clause shall result in Tenant Default (as further defined in Clause 30 (DEFAULTS AND REMEDIES)) and County shall have the right to exercise any remedy available to it by virtue of such Tenant Default in addition to any County Remedies defined in Clause 30 (DEFAULTS AND REMEDIES).

F. On-Site Management.

1. 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 the Clause 62 (NOTICES) below.
2. Tenant 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.

G. Interior Improvements, Additions and Reconstruction of Improvements. Following completion of construction of the Initial Improvements, Tenant shall not commence construction of any work or series of works on the Improvements, other than routine maintenance and repairs, without the prior written approval of the Chief Real Estate Officer. Tenant shall provide the Chief Real Estate Officer with written notice of all such intended work, which notice shall include copies of (I) all required permits, (II) architectural, engineering and landscaping drawings for such work, (III) Tenant’s contracts with its general contractor and architect for such work, (IV) Tenant’s budget for such work, (V) the construction schedule for such work, and (VI) such other documentation and information regarding such intended work as the Chief Real Estate Officer may reasonably request. Notwithstanding the foregoing, following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time, without the Chief Real Estate Officer’s prior written consent, to perform the following alterations or renovations to the Improvements (“**Permitted Alterations**”): (i) to make any interior improvements to the Improvements required for tenant improvements to the extent same are consistent with the Permitted Uses; and (ii) following any damage to or destruction of the Improvements, to restore and reconstruct the Improvements (interior and exterior) in accordance with the Construction Drawings, a copy of which is attached hereto as Exhibit F. Tenant shall perform all work authorized by the Chief Real Estate Officer pursuant to this Clause at its sole cost and expense and in compliance with all applicable Laws in all material respects.

H. All Other Construction, Demolition, Alterations, Improvements and Reconstruction. Following the completion of construction of the Initial Improvements, and except as specified in Clause 17.1 and Subsection E above, any construction, alterations, additions, repairs, maintenance,

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demolition, improvements or reconstruction of any kind shall require the prior written consent of the County, which consent shall not be unreasonably conditioned, delayed or withheld and may require Board of Supervisors approval. Tenant shall perform all work authorized by this Clause at its sole cost and expense and in compliance with all applicable Laws in all material respects.

21. INSURANCE (3.0 SR)

Tenant agrees to maintain a program of self-insurance or purchase commercial insurance and 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

Tenant agrees that Tenant shall not operate on the Lease Area 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 Lease Area until such time as the County 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 Lease Area, and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Lease Area 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 \$750.00 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 including policy endorsements. 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 Lease

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Area. 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 (“SIR(s)”) shall be clearly stated on the Certificate of Insurance. Any 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 Lease, 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

County acknowledges that Tenant is a self-insured public entity. PARTIES agree that Tenant may satisfy its insurance requirements through a program of self-insurance or commercial insurance. County shall not be obligated to maintain any insurance for improvements installed by and which are the property of the Tenant. In the event Tenant discontinues its policy of self-insurance, Tenant agrees to procure and continue in force and effect insurance coverage for bodily injury and property damage liability and fire and extended coverage for vandalism and malicious mischief for the Tenants’ fixtures, furniture and improvements. Tenant will provide coverage in equivalent amounts as set forth below through Tenant’s public entity self-insurance program.

In the event that Tenant chooses not to self-insure to the full limits herein, Tenant’s commercial Insurance 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 self insurance or commercial insurance maintained by the Tenant shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Sexual Misconduct including Abuse and Molestation	\$1,000,000 per occurrence \$2,000,000 aggregate

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Liquor Liability (if applicable) Umbrella/Excess Liability with Follow Form Coverage	\$1,000,000 per occurrence \$2,000,000 aggregate \$25,000,000
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	100% of the Replacement Cost Value and no coinsurance provision
Contractor's Pollution Liability	\$1,000,000 per claims made or per occurrence

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 Contactor's Pollution Liability policies shall contain the following endorsements, which shall accompany the Certificate of Insurance:

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

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2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by County 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.

If Contractor's Pollution Liability is a claims-made policy, Contractor shall agree to maintain coverage for two (2) years following completion of contract

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).

Insurance certificates should be forwarded to the County address provided in the Clause 62 (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)

A. **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 in writing by County, which approval shall not be unreasonably withheld, conditioned or delayed, 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 or willful misconduct of County, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

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In the event County is named as co-defendant, Tenant shall notify County of such fact and shall represent County, with counsel approved in writing by County, which approval shall not be unreasonably withheld, conditioned or delayed, 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.

B. 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 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.

C. 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 SR)

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 or 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. Notwithstanding the foregoing, Tenant shall have no obligation to indemnify the County or any other party in connection with any Claim arising from Hazardous Materials on or under the Premises prior to the commencement of the term of the Lease.

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

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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)**”), 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 on OCPW/OC Environmental Resources website found at:

<https://occrws.ocpublicworks.com/service-areas/oc-environmental-resources/oc-watersheds/documents/best-management-practices-bmp>. 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 regard to Tenant Improvements, Tenant

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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

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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 or Center 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, if applicable.

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 N)

A. **Premises.** In the event the whole or any part of the Tenant Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall (except as provided in Clause 26.B below) with all due diligence, at Tenant’s sole cost and expense, repair, restore and rebuild the Tenant Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the

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Premises to accommodate such changed use after approval of such change of use by the County pursuant to Clause 3 (USE) above.

B. Damage During Last 10 Years. If the Tenant Improvements are destroyed or damaged during the last ten (10) years of the Term, and provided further that the extent of such damage or destruction is twenty percent (20%) or more of the replacement value of the Tenant Improvements immediately prior to the occurrence of such damage or destruction, then Tenant may cancel this Lease by giving written notice of its election to do so to County within sixty (60) days after such damage or destruction, in which event Tenant need not restore or rebuild the Tenant Improvements provided Tenant complies with all the following conditions: (i) Tenant pays all Rent due hereunder through the date of termination of this Lease, (ii) Tenant delivers possession of the Premises to County and quitclaims by deed or such other instruments as County's title insurer may require, all right, title and interest in the Premises and remaining Tenant Improvements if, and promptly after, ceasing to do business on the Premises; (iii) Tenant causes to be discharged all liens and claims arising from Tenant's use and occupancy of the Premises, and with Taxes paid current as of the expiration or termination date; and (iv) Tenant razes and removes the damaged Tenant Improvements and any other Tenant Improvements designated by the County for removal and delivers the Land to County in the same condition pre-Improvements, provided that County may elect by written notice to Tenant to instead have Tenant deliver the Tenant Improvements to County in their then existing damaged condition.

C. Restoration. In the event of any restoration or reconstruction pursuant to this Clause, all such work performed by Tenant shall be constructed in a good and workmanlike manner according to and in conformance with the laws, rules and regulations of all governmental bodies and agencies and the requirements of this Lease applicable to the construction of the Tenant Improvements.

D. Application of Insurance Proceeds. If following the occurrence of damage or destruction to the Premises or Tenant Improvements, Tenant is obligated to or otherwise elects to restore the Premises and Tenant Improvements pursuant to this Clause 26, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the Tenant Improvements shall be applied to fully restore the same, and any excess proceeds shall be paid to Tenant and any deficit in necessary funds plus the amount of any deductible shall be paid by Tenant. If the insurance proceeds shall be insufficient to pay all costs to fully restore the Tenant Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of the Tenant Improvements and pay the cost thereof. Upon lien free completion of the restoration, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be paid to Tenant .

27. ASSIGNMENT AND SUBLETTING (3.6 SR)

Subject to prior review and approval by County, which approval shall not be unreasonably withheld, conditioned or delayed, 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) – *Intentionally Omitted*

30. DEFAULTS AND REMEDIES (3.9 SR)

A. **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 twenty (20) 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 twenty (20) 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 twenty (20) day period, or such additional time as agreed to by the Parties, and thereafter diligently pursued to completion (each, a “**Tenant Default**”).

B. **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 thirty (30) 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 thirty (30) 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 thirty (30) day period and thereafter diligently pursued to completion (each, a “**County Default**”).

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C. **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.

D. **County Remedies:** If the Tenant Default is a result of a monetary breach by Tenant in the payment of the Rent or Additional Rent, if any such amounts are due at that time, 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 Tenant 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, upon request Tenant shall provide Director of OC Parks with the applicable 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.

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

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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 SR)

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.

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 Tenant 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 (N)

In the event Tenant shall continue in possession of the Premises after the Term of this Lease, Tenant shall become a Tenant as sufferance only, at a monthly rental rate of ten thousand dollars (\$10,000.00), increased annually commencing with commencement of the hold over period by an amount equal to the greater of (i) three percent (3%) for each year of the Term, or (ii) a percentage equal to the percentage increase from the Base Period of the Consumer Price Index ("CPI") for Los Angeles- Riverside-Orange County [All Urban Consumers-All Items, not seasonally adjusted (Base Period 1982-84=100)]. Said CPI for the month of December for the second year of the Term shall be considered the "Base Period." Said adjustment shall be made by comparing the CPI for the Base Period to the CPI for the month of December immediately preceding each such adjustment. If at any time there shall not exist the CPI, County shall substitute any official index published by the Bureau of Labor Statistics, or successor or similar governmental agency, as may then be in existence, and shall be most nearly equivalent thereto. If Tenant fails to surrender the Premises and the Tenant Improvements as stated herein, and County shall take legal action to cause Tenant's eviction from the Premises and is successful in such action, Tenant shall be responsible for all costs and expenses, including reasonable attorney's fees and costs, incurred by County in connection with such eviction action; Tenant shall also indemnify and hold County harmless from all loss or liability or reasonable attorney's fees and costs, including any claim made by any succeeding tenant, incurred by County founded on or resulting from such failure to surrender.

41. EARTHQUAKE SAFETY (5.0 SR)

Tenant accepts the Premises "as is" and "where is" and County offers no warranties or

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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 Lease 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 Lease, 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)

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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. Tenant 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 useable 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 the ability to reasonably 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. Condemnation awards and/or payments in regard to the County’s fee interest in the leasehold premises 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 unless such award is specifically related to the improvements constructed by the Tenant on the Premises.

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) - *Intentionally Omitted*

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.

Attachment B

To: Tenant

City of Placentia
City Administrator/City Clerk
401 E. Chapman Avenue
Placentia, CA 92870

To: County

County of Orange
OC Parks
13042 Old Myford Road
Irvine, CA 92602
Attn: Director

With a copy to:

County Executive Office Real Estate
400 West Civic Center Dr., 5th Floor
Santa Ana, CA 92701
Attention: Chief Real Estate Officer

In regards to insurance, Tenant shall ensure that any and all insurance related mail includes the Lease number and project name and Tenant shall mail all insurance certificates and insurance related correspondence to: insurance.ceore@ocgov.com.

63. SURVEY AND RELATED COST (N)

County shall perform a field survey to establish Premise boundaries. OCPW/OC Survey will provide cost of such survey which will include a legal description and plot map of the Premises. Said cost is approximately twenty thousand dollars (\$20,000.00) shall be paid by the Tenant. Upon Tenant written request, CEO Real Estate will obtain a written estimate from OCPW/OC Survey for exact survey cost.

64. FUTURE COST (N)

Under no circumstance shall this transaction incur any current or future costs to the County or OC Parks. Should the Tenant terminate this Lease or vacate the Premises for whatever reason, the Tenant, at its sole cost and expense, shall return the Premises, at County's sole discretion, in its original condition prior to any construction.

65. OPTION TO PURCHASE (N)

At any time during the Term of this Lease, Tenant shall have the optional right to purchase the Park from the County for one dollar (\$1.00), for continuing use as a City park, in the Tenant's sole discretion.

66. ATTACHMENTS TO LEASE (7.2 SR)

This Lease includes the following, which are attached hereto and made a part hereof:

I. EXHIBITS

- Exhibit A – Description of Premises
- Exhibit B – Depiction of Premises

Attachment B

- Exhibit C - Initial Improvements
- Exhibit D - Construction Schedule
- Exhibit E - Construction Budget
- Exhibit F - Construction Drawings
- Exhibit G - Specifications
- Exhibit H - Board Resolution

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Attachment B

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

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: Lauren Kramer
Deputy

TENANT

CITY OF PLACENTIA
a municipal corporation

By: [Signature]
Damien R. Arrula
City Administrator

Date: 10/27/22

By: [Signature]
Robert S. McKinnell
City Clerk

Date: 31 Oct 22

COUNTY

COUNTY OF ORANGE

Thomas A. Miller, Chief Real Estate Officer,
Orange County, California, pursuant to Minute Order
dated _____.

EXHIBIT A

DESCRIPTION OF PREMISES

PROJECT NO:
PROJECT:

DATE:
VERIFIED BY:

All the Premises shown crosshatched on a plot plan marked Exhibit B, attached hereto and made a part hereof, being.

NOT TO BE RECORDED

EXHIBIT B

DEPICTION OF PREMISES



Attachment B
EXHIBIT C

INITIAL IMPROVEMENTS

The Project envisioned, as of the Effective Date of this Lease, entails the construction of an approximate 30,000 square foot public facility to be used as a Senior and Community Center as well as host special events. City has contracted with architectural firm to prepare a 35% preliminary architectural and engineering design of the building through close consultation with an appointed Blue Ribbon Committee consisting of City residents. The 35% preliminary basis for architectural and engineering design as well as the 100% complete construction documents as approved by the County shall be attached to this Lease upon completion and approval by the Parties, and as a condition to the Commencement Date.

EXHIBIT D

CONSTRUCTION SCHEDULE

As of the Effective Date of this Lease the Construction Schedule is still being developed as the construction documents have yet to be prepared and bids solicited from contractors. The City's contractor will be required to provide a Construction Schedule prior to the commencement of construction activities and that schedule shall be attached hereto as Exhibit D, and as a condition to the Commencement Date.

EXHIBIT E

CONSTRUCTION BUDGET

As of the Effective Date of this Lease, a Construction Budget and financing plan has yet to be established. Should the 35% Preliminary Architectural and Engineering Basis of Design be approved by the City Council and County, the associated preliminary construction cost estimate may be attached to this Lease to be followed by the final architect's project estimate once the final Construction Documents have been prepared and approved by the County. The approval and attachment of the Construction Budget hereto, by amendment executed by the Parties, shall be a condition to the Commencement Date.

EXHIBIT F

CONSTRUCTION DRAWINGS

As of the Effective Date of this Lease, the project Construction Drawings have yet to be prepared. Once prepared and approved by the County, said drawings shall be attached hereto this Lease, and such approval shall be a condition to the Commencement Date.

EXHIBIT G

SPECIFICATIONS

[To be attached prior to, and as a condition to, the Commencement Date]

EXHIBIT H

BOARD RESOLUTION

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

December 6, 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 the City of Placentia to design, permit, construct, maintain, and operate a Senior/Community Center (Center) at Tri-City Regional Park, 2301 N. Kraemer Blvd., Placentia, CA 92870 (Park); and

WHEREAS, the Park is not a location currently authorized by the Board for alcoholic beverage service; and

WHEREAS, the Board has authorized alcoholic beverage service at other County recreational facilities.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:
Authorize alcoholic beverage service at the Center pursuant to the terms of the Lease with the City of Placentia.