DISPOSITION AND DEVELOPMENT AGREEMENT

FOR

THE MASTER PLANNING, ENTITLEMENT AND DEVELOPMENT OF A PORTION OF THE FORMER EL TORO MARINE CORPS AIR STATION IN THE CITY OF IRVINE, CALIFORNIA

BY AND BETWEEN

THE COUNTY OF ORANGE

AND

LOWE ENTERPRISES REAL ESTATE GROUP

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DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE MASTER PLANNING, ENTITLEMENT AND DEVELOPMENT OF A PORTION OF THE FORMER EL TORO MARINE CORPS AIR STATION IN THE CITY OF IRVINE, CALIFORNIA BETWEEN THE COUNTY OF ORANGE AND LOWE ENTERPRISES REAL ESTATE GROUP

This Disposition and Development Agreement for the Master Planning, Entitlement and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California (hereinafter referred to as "**DDA**" or "**Agreement**") is made and entered into as of the date fully executed by and between **Lowe Enterprises Real Estate Group**, a California corporation (hereinafter referred to as "**Developer**") and the **County of Orange**, a political subdivision of the State of California (hereinafter referred to as "**County**"). County and Developer are hereafter sometimes collectively referred to as the "**Parties**" and individually as "**Party**."

RECITALS:

WHEREAS, the County owns certain vacant real property in the southwest corner of the former Marine Corps Air Station at El Toro ("**MCAS El Toro**"), in the City of Irvine, California ("**City**"), as more particularly depicted/described on **Exhibit A**, attached hereto and incorporated herein ("**Property**"); and

WHEREAS, the County is pursuing development of the Property for its highest, best, and most economically viable use in conjunction with the development of the neighboring Great Park, being developed by the City; and

WHEREAS, the County desires in Phase 1 (as hereinafter defined) to obtain entitlements ("**Entitlements**") which will permit the development of an economically viable, mixed use development for the Property ("**Project**"); and

WHEREAS, the County desires to cause the Developer to perform the pre-development work required for development of the Property and to master lease or sell a portion of the Property to Developer ("**Conveyance**") in accordance with the terms and procedures set forth herein; and

WHEREAS, the Developer responded to a Request for Statements of Qualifications ("**SOQ**") for a developer to Assist with the Master Planning, Entitlement, and Development of the Property; and

WHEREAS, the Developer responded and represented that its proposed services shall meet or exceed the requirements and specification of the SOQ; and

WHEREAS, in providing such professional services, Developer shall serve as the "applicant" and the "face" of the Project while the County shall retain its discretion and authority with respect to the County Land Use Approvals and, in its capacity as an owner of the Property, retain decision making authority with respect to issues such as the Master Land Use Plan and Entitlements unless and until the Conveyance occurs; and

WHEREAS, Developer and County shall work cooperatively to achieve the objectives of the County, which include:

a. To retain, at reasonable costs, the services of a developer with extensive experience obtaining approvals for and developing economically viable developments like the Project;

b. To secure for the Project required Entitlements from relevant public agencies;

c. To minimize risks to the County, to the maximum extent reasonably feasible; and

d. To maximize the potential for an extremely favorable financial return to the County from the Property; and

WHEREAS, the Parties now desire to enter into this DDA for the purposes set forth more fully herein.

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES:

ARTICLE 1
DEFINITIONS

1.1 "**Acquisition Notice**" shall have the meaning set forth in Section 8.4.

1.2 "**Agreement**" means this DDA.

1.3 "**Alton Parcels**" shall mean that portion of the Property more particularly described in **Exhibit B** hereto.

1.4 "**Applicable Laws**" shall mean all standards, laws, statutes, restrictions, ordinances, requirements, and regulations applicable to the Entitlements, the Property, the Phase 2 Improvements and the Project at the applicable times.

1.5 "**Appraisal**" means an MAI appraisal for determining the Ground Rent.

1.6 "**Auditor-Controller**" means the Auditor-Controller (from time to time) of the County.

1.7 "**Board**" means the Board of Supervisors of the County of Orange, the governing board of the County.

1.8 "**business days**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

1.9 "**Business Plan(s)**" mean(s) generically the Phase 1 Business Plan, the Phase 2 Business Plan, or both, as the context requires.

1.10 "**City**" means the City of Irvine, California.

1.11 "**Claim(s)**" shall have the meaning set forth in Section 11.18.

1.12 "**Communications**" shall have the meaning set forth in Section 2.8.

1.13 "**Construction Budget**" means the aggregate budget for construction of any portion of the Phase 2 Improvements.

1.14 "**Consultants**" means the third party professionals, companies, design consultants, marketing and public relations firms, and service providers engaged by Developer to perform services pursuant to this DDA. The initial Consultants are listed on **Exhibit C** hereto.

1.15 "**Consultant Agreements**" means the term defined in Section 2.4.1.

1.16 "**Consultant Fees**" shall mean amounts owed to Consultants pursuant to their respective Consultant Agreements for work on the Project performed pursuant to this DDA.

1.17 "**Contractor**" means a person or entity duly licensed by the State of California, Contractors State License Board, and retained by Developer as an independent contractor to provide labor, materials, equipment and/or services necessary to construct a specific portion of the Phase 2 Improvements. Contractor includes subcontractors of any tier.

1.18 "**Conveyance**" shall mean the execution of the Master Ground Lease, a Ground Lease, or the transfer of a leasehold or fee title interest in a portion of the Property.

1.19 "**County**" means the County of Orange, California, the Project Lead, County Counsel or designee and/or the Third District Supervisor, or designee.

1.20 "**County Land Use Approvals**" shall mean any land use or other approvals issued or required by the County in its governmental capacity as the land use and/or planning authority for the Property or the Project.

1.21 "**County's Maximum Phase 2 Costs**" means the term defined in Section 5.10.

1.22 "**DDA**" refers to this Disposition and Development Agreement for the Master Planning, Entitlement and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California.

1.23 "**Developer**" means Lowe Enterprises Real Estate Group, a California corporation.

1.24 "**Development Agreement**" refers to a development agreement to be entered into with the City or County or both pursuant to Government Code section 65864 et seq. granting vested rights to develop the Project or a portion thereof.

1.25 "**Developer Party**" means Developer or any entity (i) that is controlled by Developer or Robert J. Lowe or his family; or (ii) whose managing member, manager or general partner that has control over the entity is controlled by Developer or Robert J. Lowe or his

family, and in either (i) or (ii) that entity has a minimum net worth (excluding any interest in the Property) at all times of at least Twenty Million Dollars ($20,000,000) and it employs the Key People to work on the Project as required by this Agreement. For purposes of this definition, (i) the term "family" means the spouse and descendants of Robert J. Lowe, each of their respective spouses and descendants and any trusts established for the benefit of the same; and (ii) the term "control" means the power to direct and have final approval of the day to day decision-making, management and policies of the entity subject to limited customary arms-length approval rights of the members set forth in a governing document, which governing document is consistent with the Developer's obligations under this Agreement, and the terms "controlling" or "controlled" have meanings correlative to the foregoing.

1.26 "**Developer Phase 2 Improvement Costs per Net Acre**" means the dollar figure determined by the County immediately prior to execution of the Master Ground Lease by subtracting the County's Maximum Phase 2 Costs from the cost of the Phase 2 Improvements as identified by the Phase 2 Budget and then dividing that resulting number by the Net Acreage of the Property.

1.27 "**Draft EIR**" refers to the draft environmental impact report to be prepared for the Project and processed with the County.

1.28 "**Effective Date**" refers to the date this DDA becomes fully executed.

1.29 "**Entitlement Team**" refers to the persons that will prepare and process the Entitlements as defined in Section 4.3 hereof.

1.30 "**Entitlement(s)**" refers collectively (or individually as the case may be) to the County, City and other governmental entity approvals required to develop the Property and/or the Project, which as currently anticipated include, without limitation, a Specific Plan, General Plan Amendment, Zoning Change, Draft EIR, Final EIR, Master Land Use Plan, vesting Tentative Map, and Development Agreement; however, the specific nature of the required approvals and documents to be prepared by the Developer may change from time to time as set forth in the most recent Business Plan Update as approved by the Project Lead.

1.31 "**Final Map**" refers to a final vesting subdivision tract map, or similar subdivision map suitable for conveyance purposes for the Property which has received Final Approval.

1.32 "**Final Approval**" means approval by the County, City or other governmental agency and expiration of any applicable appeals period or statute of limitations and no appeal or challenge having been filed, or, if an appeal or challenge is filed, such appeal or challenge has been finally and successfully resolved to the satisfaction of the County.

1.33 "**Final Approval of Phase 1**" means the date both conditions specified in Section 1.61 hereof have been satisfied.

1.34 "**Final EIR**" refers to a final environmental impact report for the Project certified by the County which has received the Final Approval.

1.35 "**Financial Management Manual**" shall have the meaning set forth in Section 2.18.

1.36 "**Force Majeure**" means acts of God, strikes, boycotts, lock outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Applicable Laws enacted after Final Approval of the Entitlements which would prevent the Project from being developed in accordance with the Entitlements, or other reasons of a like nature not within a Party's control.

1.37 "**General Plan Amendment**" refers to an amendment to the County of Orange General Plan, and if necessary, the City of Irvine General Plan, required for the Project.

1.38 "**GMP Proposal**" shall have the meaning set forth in Section 5.9.6.

1.39 "**Gross Acreage**" means the actual gross acreage included in the Property, or portion thereof as applicable, which is subject to this DDA as it may be supplemented or decreased by the County from time to time.

1.40 "**Ground Lease**" shall mean a ground lease substantially in the form of **Exhibit D** hereto for the leasing of a Ground Lease Parcel. If Developer proposes to enter into a Ground Lease for a use for which the County would generally enter into a gross receipts rental structure, the County shall notify Developer and the form Ground Lease shall be modified to incorporate the County's gross receipts rental structure.

1.41 "**Ground Lease Parcel**" shall mean a specific portion of the Master Ground Lease Parcel which is subject to an individual Ground Lease.

1.42 "**Ground Lease Preconditions**" means the term defined in Section 8.4 hereof.

1.43 "**Ground Rent**" means the base rental amount the lessee must pay pursuant to the terms of any Ground Lease.

1.44 "**Ground Rent Appraisal**" means the valuation for purposes of establishing the Parcel Value and Ground Rent in accordance with Sections 8.2 and 8.7 hereof, as determined by the Appraisal process described in Article 9 hereof, for the portion of the Master Ground Lease Parcel described in a proposed Ground Lease.

1.45 "**Guaranteed Maximum Price**" shall mean the guaranteed maximum price set forth in each contract with a Contractor.

1.46 "**Initial MGL Parcel**" means the term defined in Article 7 hereof.

1.47 "**Key People**" shall mean Michael W. McNerney as the Project Executive and Robert R. Reitenour as the Project Manager. Developer shall not substitute either of the Key People without the prior written consent of the Project Lead, which consent may be withheld in the County's sole and absolute discretion. Upon the death, disability or leaving Developer's employment of either of the Key People, Developer shall propose new personnel to fill the vacancy so caused. Such new personnel shall be subject to Project Lead's consent, which consent may be withheld in the County's sole and absolute discretion. Upon the approval of a substitute person for an original "Key Person", the term Key People shall mean the Key People as so substituted.

1.48 "**Leasable Master Ground Lease Area**" means the entire Net Acreage of the Property, excluding the Alton Parcels, that the County may ultimately subject to the Master Ground Lease, pursuant to the terms of this Agreement, as conceptually depicted in **Exhibit A-1** hereto.

1.49 "**Management Account**" shall mean the account established by County in accordance with Section 3.1.1 and used by Developer to pay the Consultant Fees and Third Party Costs as described herein.

1.50 "**Master Ground Lease**" means a ground lease for the Master Ground Lease Parcel substantially in the form of **Exhibit E** hereto. The Master Ground Lease has a term of ten (10) years with three (3) five (5) year options, as more particularly set forth therein.

1.51 "**Master Ground Lease Parcel**" means the portion of the Property defined from time to time in the Master Ground Lease as the "Premises." The Parties acknowledge that the Master Ground Lease Parcel shall exclude the Alton Parcels, and shall initially exclude any other portion of the Property not yet owned in fee by the County as of the date the Parties enter into the Master Ground Lease; provided, however, that as such other portion of the Property is acquired in fee by the County, if at all, it shall be added to the Master Ground Lease Parcel to the extent provided for in the Master Ground Lease.

1.52 "**Master Land Use Plan**" refers to a plan prepared by Developer, subject to Board approval, proposing a development plan for the Project, which will describe, among other things, a mix of proposed land uses, a projected density and intensity range, a proposed circulation plan, proposed development standards and guidelines, and a preliminary infrastructure phasing and financing plan. It is currently anticipated by the Parties that such Master Land Use Plan (along with the Specific Plan, as necessary) will also be presented to the City for adoption as the underlying City zoning for the Property.

1.53 "**MCAS El Toro**" means the former Marine Corps Air Station at El Toro.

1.54 "**Net Acreage**" means the number that results from subtracting from the Gross Acreage the number of net acres within the Property, or portion thereof as applicable, allocated in the approved Specific Plan to be used for infrastructure and therefore not available for sale or lease.

1.55 "**net worth**" means total assets minus total liabilities of a person or entity as determined by using U.S. Generally Accepted Accounting Principles.

1.56 "**Operating Funds**" means the funds deposited into the Management Account for purposes of reimbursing Developer for the County's share of the Consultant Fees and Third Party Costs in this DDA.

1.57 "**Parcel Value**" means, for any individual parcel within the Master Ground Lease Parcel, the value determined by the Appraisal for purposes of establishing the Ground Rent to be paid for that parcel.

1.58 "**Phase Budget(s)**" mean(s) generically the Phase 1 Budget, the Phase 2 Budget, or both, as the context requires.

1.59 "**Phase Schedule(s)**" mean(s) generically the Phase 1 Schedule, the Phase 2 Schedule, or both, as the context requires.

1.60 "**Phase 1**" means the period commencing on the Effective Date and ending on the date as of which both the following have occurred: (i) the Final Approval of Entitlements that the County approved in accordance with Section 4.7 hereof, other than Final Approval of the Final Map or Maps; and (ii) the Board has approved the Phase 2 Business Plan including, without limitation, a plan for financing and construction of the Phase 2 Improvements consistent with the Phase 2 Budget. Final Approval of the Final Map or Maps shall occur during Phase 2.

1.61 "**Phase 1 Budget**" shall have the meaning set forth in Section 4.5.

1.62 "**Phase 1 Business Plan**" or "**Phase 1 Business Plan Update**" shall have the meaning set forth in Section 4.5.

1.63 "**Phase 1 Outside Date**" means the date that is four (4) years after the Effective Date of this Agreement.

1.64 "**Phase 1 Project Management Fee**" shall have the meaning set forth in Section 6.1.

1.65 "**Phase 1 Schedule**" shall have the meaning set forth in Section 4.4.

1.66 "**Phase 2**" means the period commencing the day after the last day of Phase 1, and ending on the date as of which the Phase 2 Improvements have been completed. Phase 2 Improvements may be completed in phases to allow different portions of the Project to proceed at different times consistent with the Phase 2 Business Plan.

1.67 "**Phase 2 Budget**" shall have the meaning set forth in Section 5.4.

1.68 "**Phase 2 Business Plan**" shall have the meaning set forth in Section 5.1.

1.69 "**Phase 2 Construction Documents**" shall have the meaning set forth in Section 5.9.2.

1.70 "**Phase 2 Improvements**" means all necessary on- and off-site improvements, on and off-site infrastructure, demolition, environmental clean-up, tests and studies only on any portion of the Property which is not initially owned in fee title by the County as of the Final Approval of Phase 1, grading and other on-site work that is necessary to prepare all of the Leasable Master Ground Lease Area for development, as defined in the Entitlements.

1.71 "**Phase 2 Outside Date**" means the date that is five (5) years after the Final Approval of the Entitlements. If the Phase 2 Schedule provides for phasing of the Phase 2 Improvements, the Phase 2 Outside Date for a phase shall be the date that is one hundred twenty (120) days after the date provided for in the Phase 2 Schedule for completion of same.

1.72 "**Phase 2 Plans**" means the County approved plans for the Phase 2 Improvements.

1.73 "**Phase 2 Project Management Fee**" shall have the meaning set forth in Section 6.2.

1.74 "**Phase 2 Savings Bonus**" shall have the meaning set forth in Section 3.2.2.

1.75 "**Phase 2 Schedule**" shall have the meaning set forth in Section 5.3.

1.76 "**Project**" refers to an economically viable mixed use development to be developed on the Property (and any other real property addressed in the Entitlements) in accordance with the Entitlements.

1.77 "**Project Costs**" means collectively, and to the extent applicable, all Consultant Fees and Third Party Costs incurred by Developer during Phases 1 or 2 pursuant to this DDA.

1.78 "**Project Executive**" refers to Michael W. McNerney or another person selected by Developer and approved by County to lead the Project.

1.79 "**Project Lead**" refers to James Campbell or another person selected by the County to lead the County's entitlement team for the Project at County's sole and absolute discretion.

1.80 "**Project Management Fee**" refers generically to the project management fee to be earned by Developer for providing development management services during Phase 1 and development and construction management services during Phase 2, and paid to Developer by the County, as further defined in Sections 6.1 and 6.2 hereof.

1.81 "**Project Manager**" refers to Robert R. Reitenour or another person selected by Developer and approved by County to lead the Entitlement Team.

1.82 "**Property**" refers to that certain real property owned in fee by the County and located in the City of Irvine, as more particularly described on **Exhibit A** to this DDA. The Developer acknowledges that, as of the date of this Agreement, the County does not own in fee all the property that may be addressed in the Entitlements, including without limitation approximately forty (40) acres still owned by the United States Navy as depicted on **Exhibit A**. **Exhibit A** shall be revised as necessary to reflect any changes to the Property mutually agreed to by the Parties and the revised **Exhibit A** shall be attached hereto by a supplement hereto.

1.83 "**Proportionate Share**" means the percentage arrived at by dividing the net acreage of the lot or parcel of the Project at issue into the Net Acreage.

1.84 "**Purchase Agreement**" means a purchase agreement acceptable to County and the identified buyer pursuant to which the buyer will purchase from County any portion of the Property which is designated by the County, in its sole and absolute discretion, as a "for sale" parcel pursuant to Section 8.1.

1.85 "**SIR**" means any self-insured retention of the insured party in connection with any insurance policy.

1.86 "**SOQ**" means the Request for Statement of Qualifications issued by County for the Property.

1.87 "**Specific Plan**" refers to the specific plan as defined in the California Government Code to be approved for the Project by the County and the City, as necessary, which shall govern, among other things, use and development of the Project.

1.88 "**Status Meetings**" means the term defined in Section 2.15.1.

1.89 "**Subsidiary**" means the term defined in Section 11.8.

1.90 "**Tentative Map**" refers to the vesting tentative map to be processed with the City or the County for the Property.

1.91 "**Third Party Costs**" refers to all application fees, deposits and all other third party costs, as approved by the County in the Phase 1 Business Plan for work during Phase 1 and in the Phase 2 Business Plan for work during Phase 2, in each case that are reimbursable by the County pursuant to Section 6.1 hereof.

1.92 "**Zoning Change**" means a change in the zoning for the Property approved by the County (and the City if necessary) permitting development of the Project.

ARTICLE 2
GENERAL RESPONSIBILITIES OF PARTIES

2.1 **General Responsibilities of Developer**. Developer, as the anticipated future lessee of the Property and for and on behalf of the County, shall provide management services hereunder to County, contract with and manage the Entitlement Team and Consultants and Contractors (as appropriate) for the master planning and Entitlement of the Property during Phase 1, and for the design, plan check, permitting and construction of the Phase 2 Improvements in a manner designed to meet the requirements of this DDA, and fulfill all other Developer obligations under this DDA. Developer acknowledges that County is relying on Developer to act in compliance with this Agreement, all County requirements and Applicable Laws. The requirements of this Section and the DDA shall also be specifically imposed upon and apply to any subcontractors and subconsultants hired by Developer for purposes of complying with the obligations of Developer under this DDA. The Developer shall perform all work under this DDA, and coordinate work of all subcontractors and consultants, in accordance with the Business Plan, taking all necessary steps and precautions to perform the work to County's satisfaction. Developer shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Developer under this DDA. Developer shall perform and shall take reasonable steps to cause all Consultants and Contractors to perform, all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefor, and shall at its sole expense obtain and maintain all permits and licenses required of it by public authorities.

2.2 **Conditions Affecting Developer's Work**. The Developer shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this DDA and to know the general conditions which can affect the work or the

cost thereof. Any failure by the Developer to do so will not relieve Developer from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions of the Property made by any of its officers or agents prior to the execution of this DDA. The requirements of this Section shall also be specifically imposed upon and apply to any subcontractors and subconsultants hired by Developer for purposes of complying with the obligations under this DDA.

2.3 **Supervision**. Developer agrees to furnish Developer's professional skill, efforts, supervision and judgment in overseeing the Entitlement Team and in processing and obtaining Entitlements in accordance with the terms of this DDA. The performance of this DDA shall be a high priority of Developer, and Developer will commit the resources and experienced personnel reasonably required to achieve County's goals and objectives with respect to the Project. Developer shall ensure that the Key People are actively and substantially involved in the performance of the DDA, and that the Project Manager and appropriate personnel are assigned to work on the same as needed for the duration of this DDA.

2.4 **Contracting with Consultants**.

2.4.1 Developer shall retain, supervise and oversee all Consultants in the preparation and processing of the Entitlements and the Phase 2 Improvements pursuant to written contracts between Developer and such Consultants (collectively, "**Consultant Agreements**").

2.4.2 To the extent possible, the rates charged by the Consultants shall be equal to or less than the lesser of the most favorable rates (i) Developer pays the Consultants for similar work undertaken under similar circumstances on Developer's other projects in Southern California, or (ii) the Consultant informs Developer, after reasonable inquiry by Developer, it charges to others for similar work in Southern California, without any mark up by the Developer. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, if applicable, the Developer shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this DDA. The rates are available from the Director of the Department of Industrial Relations at the following website: http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm. If applicable, the Developer shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. If applicable, the Developer shall comply with the provisions of Sections 1775 and 1813 of the Labor Code. The contract amounts individually and in total shall not exceed the budgeted amounts set forth in the Business Plans and Budgets, provided, however, the Project Lead may approve increases in the individual contract amount if the total amount of the contracts for the applicable phase will not exceed the budgeted amount. Developer shall be responsible for reviewing Consultant invoices to confirm that invoices are appropriate, reasonable, accurate and in conformance with the Business Plans and the Phase Budgets for that Consultant's work.

2.4.3 County shall establish and replenish a Management Account in accordance with Article 3 from which Developer can draw down funds to pay for Consultant Fees and Third Party Costs (subject to retention only in the event that the Consultant Agreements provide for a retention).

2.4.4 All Consultant Agreements shall be private contracts between Developer and the Consultants, and the County shall not be a party to such contracts. Notwithstanding the foregoing, the County shall be an express third party beneficiary to such Consultant Agreements and all such Consultant Agreements shall contain the provisions required of Consultants under this DDA, including a third party beneficiary provision.

2.5 **Project Administration**. The Developer shall appoint Robert R. Reitenour as Project Manager and Michael W. McNerney as the Project Executive to direct Developer's efforts in fulfilling Developer's obligations under this DDA. The County shall appoint James Campbell as Project Lead. The Project Lead may be replaced upon notice to the Developer from the County Executive Officer. The Project Lead shall act as liaison between the County and the Developer during the term of this DDA. Any approvals required herein of the County may be provided by the Project Lead unless the authority is expressly assigned to a different decision-maker by the express terms of this DDA, or by law, or the Project Lead notifies the Developer that a different decision-maker has such authority, and, in appropriate circumstances, such approvals may be provided as part of the Business Plan Update process. All approvals or consents of the County and the Project Lead must be in writing to be effective. The Project Lead shall coordinate the activities of the County staff assigned to work with the Developer. The Project Lead shall have the right to require the removal and replacement of the Project Manager and the Project Executive. The Project Lead shall notify the Developer in writing of such action. The Developer shall accomplish the removal within five (5) business days after written notice by the Project Lead. The Project Lead shall review and approve the appointment of the replacement for the Project Manager and Project Executive.

2.6 **Decision Making**. Developer has valuable and substantial expertise with entitling and developing real property in the City and County. As such, County is relying on Developer to provide advice regarding the Entitlements, the Project, the Property, the Phase 2 Improvements, and the other issues addressed in this DDA. Nevertheless, final decision making authority as to the Entitlements, the Project, the Property and the Phase 2 Improvements shall remain with County. Outside the County Land Use Approval context, where the County is acting solely in its capacity as an owner of the Property, that authority is hereby delegated to the Project Lead or designee unless the decision would result in a material inconsistency with this DDA, the Project Lead notifies the Developer in writing otherwise, or this DDA designates another decision-maker. With respect to any approval or consent given by the Project Lead, the Developer may rely on any such written approvals and consents unless this Agreement dictates otherwise or the County notifies Developer in writing that the Project Lead is not authorized to, or does not wish to, grant certain approvals and consents. As a guiding principle for administration of this DDA, County through the Project Lead shall have the absolute right to fully participate in all aspects of the matters addressed in the Business Plan and in implementation of the Business Plan.

2.7 **Submittals**. Developer shall not submit any written applications or materials for a County Land Use Approval to the County or for other approvals to the City, other governmental agencies, or stakeholders, regarding the Project, Property or the Entitlements without obtaining County's prior consent for such submittal from the Project Lead, which consent may be withheld in County's sole and absolute discretion.

2.8 **Communications With Third Parties**. Developer shall establish a calendaring system accessible on-line to the Project Lead and shall schedule all meetings (including, without limitation, telephone and virtual meetings) through that system. County shall have the right and opportunity to be present at all scheduled meetings (including, without limitation, telephone and virtual meetings) and shall be copied on all material correspondence (including e-mail) (collectively, "**Communications**") concerning the Property, the Entitlements or otherwise concerning the Project. Developer shall provide prior notice of at least two (2) business days through the calendaring system of scheduled meetings concerning the Project, the Property or the Entitlements. No Developer or Entitlement Team Communications regarding the Property, the Entitlements or otherwise concerning the Project shall occur without the consent or participation of the Project Lead. In the event that the Project, Property or Entitlements are discussed at a meeting that was scheduled for another purpose, Developer will refrain from making decisions or commitments at that meeting, and, following its conclusion, shall promptly notify County about, and provide a summary of, discussions that occurred during such meeting. Similarly, if the County authorizes Developer to engage in a Communication without the County, Developer shall provide County with a copy of all such written Communications (including any responses to the same) and a summary of events for all other forms of Communications. All Communications may be made through email or by on-line posting in a manner that is accessible to the Project Lead. Notwithstanding this Section 2.8, County understands that Developer will be meeting frequently with its own personnel and that such meetings shall not be deemed to be Communications nor shall Developer be required to provide prior notice or follow-up summaries for such meetings.

2.9 **Media Contact; News and Information Release**. Developer agrees that, absent the written consent of the Project Lead (which may be provided as part of the Business Plan process through an approved marketing plan), Developer and the Entitlement Team shall not contact the media or respond, either verbally in writing or 'off the record,' to any media source or outlet. Any media inquiries must be referred to the Project Lead and the County's Third Supervisorial District. The Developer agrees that it (and its subcontractors) will not issue any news releases in connection with either the award of this DDA or any subsequent amendment of or effort under this DDA without first obtaining review and written approval of said news releases from the Project Lead. The provisions of this Section shall be specifically imposed upon any subcontractors and included in any subcontracts concerning the Project.

2.10 **Development Management Services**.

2.10.1 Developer shall perform development management services in accordance with the terms of this DDA, including, without limitation, the following:

2.10.1.1 Investigation and analysis of the Property;

2.10.1.2 Scheduling and coordinating with the Project Lead;

2.10.1.3 Identification, analysis and compliance with Applicable Laws;

2.10.1.4 Processing and obtaining Entitlements;

2.10.1.5 Compliance with the terms of the Business Plan;

2.10.1.6 Risk management, including cost control and insurance analysis;

2.10.1.7 Integration with, and monitoring and facilitating design and construction of, the Great Park and other adjacent developments and infrastructure that benefit the Project, including, without limitation, the design, planning and construction by others of Marine Way;

2.10.1.8 Selection of, negotiation of contracts with, and coordination of the efforts (including scheduling) of all Consultants and Contractors throughout Phase 1 and Phase 2;

2.10.1.9 Management of the Consultants and Contractors, monitoring of the Entitlements for the purpose of facilitating the planning, design, construction and completion of the Project in a good, workmanlike and expeditious manner;

2.10.1.10 Maintenance at Developer's offices of books and records, information, and reports of architects, appraisers, engineers, attorneys, accountants, or other professionals in any fashion relating to the Project, the Property and the Entitlements, all of which items shall at all reasonable times during normal business hours be open to the inspection of County upon at least twenty-four (24) hours' advance notice;

2.10.1.11 Enforcing compliance with the Phase Schedules and Budgets;

2.10.1.12 Manage the preparation, implementation, and enforcement of Property-wide safety plans and procedures, including all appropriate measures to maintain safe working conditions on the Project for the public, County, Developer and construction personnel, traffic, visitors, pedestrians, and others; coordinate safety plans and procedures with City and County public safety and emergency agencies;

2.10.1.13 Timely preparing and filing, following approval by Project Lead, of any documents required for Developer to comply with its obligations hereunder;

2.10.1.14 Obtain and manage on- and/or off-site parking facilities to accommodate Developer's employees and construction workers; and

2.10.1.15 Other services required by this DDA, the Phase Schedules and the Business Plans as requested by the Project Lead.

2.10.2 Subject to County's obligations to fund particular parts of the Project as set forth in this DDA, Developer shall be responsible for the performance and payment of all such employees, managers, consultants and independent contractors retained by Developer. It is agreed that all such managers and other employees, for all purposes, are independent contractors or employees of Developer. Developer shall be solely responsible for all compensation, care and benefits payable to its employees, and all benefits payable on behalf of such employees, including social security taxes. In no event shall any such employees, managers or independent contractors have the right to participate in any employee benefits of County.

2.10.3 Developer shall comply and shall take all reasonable steps to cause all Consultants to comply with all Applicable Laws regarding the employment of aliens and others. The Developer shall obtain, from all persons performing work hereunder for Developer, all verification and other documentation of employment eligibility status required by Applicable Laws. The Developer shall retain all documentation for persons performing work hereunder for Developer for the period prescribed by the law. The Developer shall indemnify, defend with counsel reasonably approved in writing by County, and hold harmless, the County, its agents, officers, and employees from all Claims, including, without limitation, employer sanctions and any other liability, which may be assessed against the County in connection with any alleged violation by Developer of any Applicable Laws pertaining to the eligibility for employment of any persons performing work for Developer under this DDA. Developer's obligations hereunder shall survive termination of this Agreement.

2.10.4 During the performance of this DDA, Developer and/or anyone acting under the supervision of Developer, including Consultants and Contractors, shall comply with the California Labor Code and shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, marital status, age, medical condition, physical handicap, or national origin; and Developer warrants that employees shall be treated during employment, without regard to their race, color, religion, ancestry, sex, marital status, age, medical condition, physical handicap, or national origin; and Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, sex, marital status, age, medical condition, physical handicap or national origin. Developer acknowledges that a violation of this provision shall subject Developer to all the penalties imposed for a violation of the California Labor Code. All agreements with Consultants shall include the substance of this Section 2.10.4. Violation of this provision may result in the imposition of penalty referred to in California Labor Code section 1735 or other applicable State and Federal regulation. The County shall have the right to annul this DDA without liability in the event Developer violates these nondiscrimination provisions. The Developer shall indemnify, defend with counsel approved in writing, and hold the County and the County Indemnitees harmless from all Claims arising from or related to allegations of Developer's violation of this Section 2.10.4. Developer's obligations under this Section 2.10.4 shall survive termination of this Agreement.

2.11 **Construction Management Services**.

2.11.1 Developer shall procure and manage all construction services reasonably necessary for the Phase 2 Improvements. All construction services will be performed by well qualified Contractors duly licensed by the State of California, Contractors State License Board to perform the work assigned to them, and to whom County has no reasonable objection.

2.11.2 Developer shall comply with all Applicable Laws, including without limitation, Public Contracting Code requirements, in the selection of Contractors and implementing the Phase 2 Improvements. To the extent possible, contracts with Contractors shall be entered into on a Guaranteed Maximum Price basis.

2.11.3 Developer shall require all Contractors to comply with Applicable Laws, including but not limited to SWPPP, and storm water control best management practices, and shall monitor contractors' compliance therewith.

2.11.4 Developer shall maintain at the construction office at the Property one record copy of the Project documents, product data, samples, shop drawings, change orders and other modifications, in good order and regularly updated to record the completed construction.

2.11.4.1 Such record copies shall be delivered to County upon completion of the Project and prior to final payment, upon earlier termination of this Agreement, or as otherwise requested by Project Lead.

2.11.4.2 Record drawings shall be provided for all work performed by Developer and its contractors and shall include, without limitation, concealed pipes, drains, mains, conduit, raceways, temperature control piping or wiring, post-tensioning and all like equipment or devices. Record drawings shall include electronic files and comply with County's general conditions for post-construction documentation.

2.11.5 Developer shall provide construction job cost accounting, including review and verification of contractor payment applications.

2.12 **Permits, Approvals, Licenses and Notices**.

2.12.1 Developer shall obtain all permits, approvals, licenses and easements for the Project and shall pay (out of the Management Account) for all Third Party Costs payable hereunder.

2.12.2 Developer shall give all notices required under, and comply with, all Applicable Laws relating to the Project.

2.13 **Safety and Security**.

2.13.1 Developer shall have overall responsibility for safety precautions and programs in the performance of the Project including but not limited to access control and security.

2.13.2 Developer shall seek to avoid injury, loss or damage to persons or property by taking or causing all contractors to take all steps required by Applicable Laws or good industry practice to protect:

2.13.2.1 employees and other persons at the Property;

2.13.2.2 materials and equipment stored on-site or off-site locations for use in the Project; and

2.13.2.3 the Project and all property located at the Property, whether or not the property or structures are part of the Project.

2.13.3 Developer shall designate an individual in the employ of Developer or a Contractor who shall act as Developer's designated safety representative with a duty to enforce site safety and prevent accidents. Developer's safety representative shall coordinate all safety and emergency procedures with the appropriate public safety officials and organizations.

2.13.4 Developer shall provide the Project Lead with copies of all notices required of Developer by Applicable Laws. Developer's safety program shall meet the requirements of governmental and quasi-governmental authorities having jurisdiction.

2.14 **Records**.

2.14.1 Developer, Contractors and Consultants shall keep full and detailed accounts, maintain records, and exercise such controls as may be necessary for proper financial management under this DDA and to permit audits pursuant to Section 3.5, herein. The accounting and control systems shall be satisfactory to the Project Lead and the County Auditor Controller. Developer's accounting systems shall conform to generally accepted accounting principles, and all records shall provide a breakdown of total costs charged under this DDA, including properly executed payrolls, time records, utility bills, invoices and vouchers. Project Lead and County's other representatives and accountants shall be afforded prompt access upon reasonable notice to these records. Developer, Contractors and Consultants shall preserve such records for a minimum of three (3) years after final payment, or for such longer period as may be required by law or this DDA.

2.14.2 Developer, Contractors and Consultants shall deliver to Project Lead a copy of all books of account, computer files and other records including, but not limited to, records relating to the approved plans and permits and costs of construction upon completion of Phase 1 and Phase 2, the termination of this DDA for any reason, or within fifteen (15) business days of a written request from County.

2.15 **Project Meetings**.

2.15.1 Developer shall establish a schedule for regular project status meetings ("**Status Meetings**") as appropriate in light of the work being performed by Developer from time to time, or as reasonably requested by Project Lead, with Project Lead, the appropriate Consultants and Contractors, and such other personnel whose attendance Developer or Project Lead may deem appropriate, to discuss the following matters:

2.15.1.1 The progress of the Entitlement and the design and construction of the Phase 2 Improvements compared to the then-current approved Phase Schedule;

2.15.1.2 Upcoming work that will be performed in the next twenty five (25) business days;

2.15.1.3 Milestones which have not been met, or delays based on the then-current approved Phase Schedule, together with the reason for such delay and the best estimate when such milestone is to be accomplished;

2.15.1.4 Specific milestones scheduled for completion before the next scheduled Status Meeting;

2.15.1.5 Status of long lead-time items and materials;

2.15.1.6 Any material change in any aspect of the Project;

2.15.1.7 Any problems being encountered in the Project and any contingency plans being used or proposed to be used;

2.15.1.8 The status of any problems previously reported;

2.15.1.9 Any other information pertinent to the Project that has come to the attention of Developer, Contractors, Consultants and/or the County since the previous Status Meeting.

2.15.2 Unless the Project Lead directs the Developer otherwise, Developer shall prepare and distribute no later than five (5) business days after each Status Meeting a written record of all issues addressed at the Status Meeting, the date each issue arose, the party designated as responsible for taking action on each issue, the date each issue was resolved, and the agreed resolution of each issue. Developer shall incorporate comments received from the Project Lead or others into these records.

2.16 **Monthly Reports**.

2.16.1 Within fifteen (15) business days after the end of each calendar month, unless the Project Lead directs the Developer otherwise, Developer shall prepare and submit to Project Lead a written report for the preceding month containing at least the following information:

2.16.1.1 progress on the Project achieved during the preceding month;

2.16.1.2 a comparison of actual progress to scheduled progress for the same period;

2.16.1.3 the disbursements made during the preceding month and to date, by category of expenditure, and a comparison thereof to the Phase Budget;

2.16.1.4 Developer contingency funds theretofore committed or proposed to be committed;

2.16.1.5 funds included in the Phase Budget that Developer is requesting approval to transfer from one line item or category to another;

2.16.1.6 the estimated cost of completing the Entitlements and/or Phase 2 Improvements; and

2.16.1.7 an explanation of cost overruns or construction delays encountered during the preceding month and recommendations with respect thereto, together

with the Phase Budget and Phase Schedule marked to show variances, if any, from the originals, with notations of the cause of the variances, if any.

2.16.2 The monthly report may be combined with any report Developer is required to submit as part of its progress payment application.

2.17 **Monthly Invoices and Monthly Statements**. Each month during the term of this DDA, on or before the fifteenth (15th) day of each month, Developer shall prepare the following documentation for the previous calendar month and notify County when completed and ready for review:

2.17.1 A detailed monthly invoice, showing all actual Consultant Fees and Third Party Costs approved (consistent with the Business Plan and Phase Budget) and paid from the Management Account during the previous calendar month listing each check, amount paid, and payee and the monthly invoicing for the applicable Project Management Fee. Required supporting documentation for each check, including copies of original receipts and invoices, must accompany the monthly invoice for County to review and approve. Developer shall retain all supporting documentation;

2.17.2 A copy of the monthly bank statement and reconciliations for the Management Account;

2.17.3 A monthly budget to actual expense report in a manner acceptable to the Project Lead and Auditor-Controller;

2.17.4 A report on the monthly and cumulative to date expenses for the applicable fiscal year compared to the Business Plan and Phase Budget, in a format as approved by the County;

2.17.5 Developer is responsible to ensure delivery of all statements to County at locations designated in writing by Project Lead.

2.18 **Financial Management**. Developer shall prepare and submit to the Project Lead for approval a set of policies and procedures (the "**Financial Management Manual**") for cash handling, purchasing/account payable, invoicing, bank reconciliation, financial controls, income statements, preparation of financial reports and any other information required by the Auditor-Controller and the County of Orange's Director of Internal Audit to ensure adequate financial and accounting practices are observed by Developer. At any time during the term of this DDA, the Project Lead may require revisions of the policies and procedures set forth in said Financial Management Manual. Developer may also request the Project Lead to approve changes in said Financial Management Manual at any time during the term hereof.

2.19 **Review of Invoices/Reports**. Upon notification to County by Developer that the above documents have been completed and are ready for review, Project Lead and/or Auditor-Controller may meet with Developer at the County's office (or other mutually agreed upon location), as promptly as County deems necessary, to review and approve the monthly invoice, barring scheduling conflicts. This meeting may occur during regularly scheduled Project meetings. The monthly statement provided for herein shall be delivered to Project Lead. In the

event that the Project Lead determines a meeting is not necessary such monthly invoices and statements shall be delivered to the Project Lead by the twentieth (20th) day of that month.

2.20 **County Land Use Approval**. Notwithstanding anything in this DDA to the contrary, nothing in this DDA shall be construed as a wavier or delegation of or limitation on the County's discretion, authority and responsibility to review, consider, approve or deny a County Land Use Approval under the Applicable Laws. No County Land Use Approval given hereunder by County, in its governmental capacity, shall be deemed or treated as an approval of the County under the DDA in its capacity as an owner of the Property. Similarly, no County approval in its capacity as an owner of the Property under the DDA shall be deemed or treated as a County Land Use Approval.

ARTICLE 3
COUNTY OBLIGATIONS RE PAYMENTS

3.1 **Cash Management and Payment Procedure**. County shall fund a Management Account (defined below) that Developer can draw from to pay Consultant Fees and Third Party Costs in accordance with the terms of this Agreement. All such County funds shall be managed and properly safeguarded by Developer in accordance with the County's internal policies and procedures for cash handling. Developer's cash handling and other financial management requirements are subject to modification of any or all policies and procedures by the Auditor-Controller. All monetary funds deposited by County and handled by Developer in accordance with this DDA shall be managed, deposited, disbursed in a manner as shall be set forth by the County at the County's sole discretion. County will promptly provide any applicable policies and procedures to Developer.

3.1.1 Management Account. Developer shall establish a checking account (the "**Management Account**") in a form and at a local bank or financial institution approved by County. The Management Account shall be a separate account held in trust for the County. The sole purpose of the Management Account is to provide a depository for the County funds to be advanced by the County, which are to be used by Developer for the payment of Consultant Fees and Third Party Costs following receipt of a written request from Developer.

3.1.1.1 County shall deposit all required Operating Funds into the Management Account in accordance with the terms of this DDA. In no event shall any funds of Developer or any other entity be deposited in, or commingled with, the Operating Funds in the Management Account. At the termination of this DDA, County and Developer shall determine if the Management Account has Operating Funds in excess of permitted expenditures, and, if so, Developer shall pay the excess Operating Funds to County within five (5) business days. Any interest earned on the Operating Funds in the Management Account shall be credited to the Management Account and shall be treated as Operating Funds and used as set forth herein.

3.1.1.2 Auditor-Controller shall initially deposit funds into the Management Account, in an amount equal to the first three (3) months of the costs in the Phase 1 Budget. Thereafter, Auditor-Controller shall replenish Operating Funds upon review and approval of monthly invoice statements submitted by Developer.

3.1.2 Payment of Costs. Developer shall promptly pay all County approved costs from the Management Account in accordance with the terms of this DDA. If at any time Developer in good faith estimates that the funds in the Management Account will be insufficient to pay the reasonably anticipated costs, Developer shall notify the Project Lead and Auditor-Controller promptly of said anticipated shortfall of funds and advise the Project Lead of any available alternatives to reduce or eliminate said shortfall. If deemed prudent or necessary by Developer under the circumstances, Developer may either concurrently with said notice or separately make a written request to the Project Lead for additional Operating Funds. Any additional Operating Funds approved by the County pursuant to such a request shall be deposited by the County into the Management Account within ten (10) business days of the County's approval of said written request. The Management Account shall be reviewed by the County as needed and on a semiannual basis. Based upon review of the Management Account balance the Project Lead may reduce the Management Account upon ten (10) business days written notice to the Developer. The Developer will have five (5) business days from the date of the written notice to return the reduced amount to the County.

3.1.3 Replenishment of Management Account.

3.1.3.1 Within ten (10) business days of the invoice review by County and approval of all or part of said invoice by County, County shall deposit into the Management Account an amount equal to the approved reimbursement or such other amount as may be required by the Phase Budget.

3.1.3.2 Any items County considers to be questionable shall not be approved until County and Developer can meet to resolve all questioned expenses, and/or Developer submits proper documentation to support such questioned expenses. In the event that a questioned expense ultimately is not supported by the Business Plan or Phase Budget, or otherwise approved by the Project Lead, Developer shall remit such amount to the County or deposit such amount into the Management Account, as directed by the Project Lead.

3.1.3.3 Developer may prepare an invoice for reimbursement of any and all non-reimbursed expenses at any time during the month, if necessary, to maintain sufficient funds in the Management Account. Developer shall promptly notify Project Lead, provide a partial monthly invoice statement and related documentation as applicable, and advise of any potential proposed alternatives to reduce or eliminate the estimated shortfall. Any additional Operating Funds shall be deposited by County into the Management Account within ten (10) business days of County's approval of said request.

3.1.3.4 If applicable Developer and Project Lead shall consult on potential changes to the Phase Budget and level of funds in the Management Account; and Project Lead may authorize said Phase Budget or level of funds in the Management Account as necessary.

3.1.4 Place of Payment and Filing. In the event Developer is required to make any payment to County hereunder or deliver a required statement via mail, such payments shall be delivered to, and statements required by this Section shall be filed with the Project Lead and the Auditor-Controller. The designated place of payment and filing may be changed at any time

by County upon ten (10) business days written notice to Developer. Payments may be made by check payable to the County. Developer assumes all risk of loss if payments are made by mail.

3.1.5 Payment in Lawful Monies. All payments made hereunder shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Developer or receipt by County of a lesser amount than the monies due shall be deemed to be other than on account of the monies due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of said monies or pursue any other remedy in this DDA.

3.1.6 Revision of Cash Management and Payment Procedure. The form and substance of this payment procedure may be modified as part of the Business Plan Update process with approval of the Project Lead and the Auditor-Controller.

3.2 **Maximum Payments**.

3.2.1 Phase 1. The Phase 1 Business Plan will include Developer's assumptions for the relevant tasks described therein, including (in the Phase 1 Schedule) the anticipated time frames for approval of submittals and the taking of actions by the County, the City or other governmental agencies. Except as provided in Sections 3.2.4 and 3.2.5, in the event that the actual Phase 1 costs exceed the amount set forth in the Phase 1 Budget approved at the same time as this Agreement, then County shall pay fifty percent (50%) and Developer shall pay fifty percent (50%) of such excess costs until the Developer has paid the maximum aggregate amount of Two Hundred Thousand Dollars ($200,000.00). To the extent the County's share of Phase 1 excess costs exceeds five percent (5%) of the Phase 1 Budget approved in conjunction with this Agreement plus the excess cost contribution of $200,000 identified herein, and Developer does not pay such additional costs within ten (10) business days of written notice from County, without reimbursement from the County, either Party may in writing terminate this Agreement for cause. In no event shall Developer pay more than the sum of Two Hundred Thousand Dollars ($200,000) to cover Developer's 50% share of the excess costs unless Developer agrees in writing as described in this paragraph.

3.2.2 Phase 2. The Phase 2 Budget will include a contingency line item in an amount equal to ten percent (10%) of the budgeted amount plus an amount to cover cost escalation reasonably anticipated because of the phasing schedule. In the event that the actual Phase 2 Improvement costs exceed the amount set forth in the Phase 2 Budget approved in conjunction with Final Approval of Phase 1, after use of all of the contingency line item, then County and Developer shall each pay fifty percent (50%) of such excess costs until the Developer has paid a maximum aggregate amount of Five Hundred Thousand Dollars ($500,000.00); thereafter, County shall pay all Phase 2 Improvement excess costs up to the County's Maximum Phase 2 Cost. Notwithstanding anything to the contrary herein, in no event shall the County's share of the Phase 2 Improvement costs in the aggregate exceed the County's Maximum Phase 2 Costs. Developer shall pay all of its fifty percent (50%) share of excess costs as specified above and any and all excess costs incurred in excess of the County's Maximum Phase 2 Costs. To the extent that the Phase 2 Improvement costs exceed five percent (5%) of the Phase 2 Improvement costs identified in the Phase 2 Budget approved in conjunction with the Final Approval of Phase 1 or the County's Maximum Phase 2 Cost, whichever is greater, plus

the excess contribution of $500,000 identified herein, and Developer does not pay such additional costs within ten (10) business days of notice from the County, without reimbursement from the County, either party may in writing terminate this Agreement for cause. In the event that the actual Phase 2 Improvement costs are less than the amount set forth in the Phase 2 Budget approved in conjunction with the Final Approval of Phase 1 (excluding the amount in the contingency line item), then fifty percent (50%) of the amount of the savings compared to that Budget shall be paid to Developer as a bonus ("**Phase 2 Savings Bonus**"). In no event shall the Phase 2 Savings Bonus exceed the sum of Five Hundred Thousand Dollars ($500,000.00).

3.2.3 Scope Changes. If a change in the scope of the work which will impact the cost or time required for completion of the Project is proposed after adoption of the Phase 1 Budget or Phase 2 Budget and County requires or approves such change in scope, including, without limitation, a decision to revise or recirculate or amend any Draft EIR, then the Developer shall prepare a proposed revision to the applicable Budget and County shall, in its sole and absolute discretion, determine whether to amend the applicable Budget and Schedule to reflect the costs and time attributable to such change in scope. Review of whether cost overruns or savings have occurred shall be measured against the Phase Budget which reflects the final scope of work agreed to by County and Developer.

3.2.4 County Delays. The Developer shall not be responsible for any increases in costs (i) solely attributable to a delay in meeting the time frames, as compared to the approved Phase 1 Schedule, attributable to County inactions, actions and approvals in its capacity as an owner of the Property; and (ii) associated with or resulting from legal action to challenge any County, City or other governmental approval of the Entitlements or the Phase 2 Improvements.

3.2.5 Developer Delays. The Developer shall be responsible for any increases in costs solely attributable to a delay in meeting the time frames, as compared to the approved Phase Schedule, attributable to Developer inactions, actions and approvals, including, but not limited to, inadequate submittals prepared by the Developer.

3.3 **Contingency of Funds**. The Developer acknowledges that, in addition to other bases provided for in the DDA or in law or equity, funding or portions of funding for this DDA may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the City or the State of California to County. If funding and/or appropriations are not forthcoming, or are otherwise limited in a way that directly or adversely affects the County ability to perform its obligations under this DDA, the Board may terminate this DDA or the Board and Developer may agree to modify this DDA. In the event the Board terminates this DDA pursuant to this Section prior to Final Approval of Phase 1, the Board shall pay the unpaid and earned Consultant Fees and Third Party Costs and the portion of the Phase 1 Project Management Fee earned as of the termination date as Developer's sole and exclusive remedy. Following Final Approval of Phase 1, the Board may terminate this Agreement pursuant to this Section and Developer's sole and exclusive remedies shall be as specified in Section 10.1.2 and Section 10.3 hereof, as applicable.

3.4 **Fiscal Appropriations**. This DDA is subject to and contingent upon applicable budgetary appropriations being approved by the Board for each fiscal year during the term of this DDA. If such appropriations are not approved, then prior to the date that is sixty five (65) business days prior to the scheduled date in the Phase 1 Business Plan for Final Approval of

Phase 1, the County may terminate this Agreement pursuant to this Section and pay the unpaid and earned Consultant Fees and Third Party Costs and the portion of the Phase 1 Project Management Fee earned as of the termination date as Developer's sole and exclusive remedy. Thereafter, the DDA may be terminated by the County pursuant to this Section and Developer's sole and exclusive remedies shall be as specified in Section 10.1.2 and Section 10.3 hereof, as applicable.

3.5 **Audit/Inspections**. The Developer agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including accounts payable/receivable records, and other papers or property of Developer for the purpose of auditing or inspecting any aspect of performance under this DDA (including to verify that there has been no mark-up to Project Costs, which may require review of other contracts and documentation the Developer has with Consultants). The inspection and/or audit may include all matters connected with the performance of the DDA including, but not limited to, the costs of administering the DDA. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Developer's records before any payment (including final payment) is made, but such audit may not delay the payment of sums owed any Consultant or Contractor that is consistent with the Phase Budget.

Developer agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Developer agrees to include a similar right to the County to audit records and interview staff of any Consultant or Contractor related to performance of this DDA, or for Developer to conduct such audit, if requested, on behalf of County.

Should the Developer cease to exist as a legal entity, or if this DDA is terminated, the Developer's records pertaining to this DDA shall be forwarded to the surviving entity in a merger or acquisition and to the County's Project Lead.

3.6 **Bills and Liens**. So long has County has timely made the payments required pursuant to this DDA, Developer shall not permit any lien or charge to attach to the Property or the Project, but if any does so attach, Developer shall promptly procure its release and, in accordance with the requirements of Section 11.18, herein, indemnify, defend with counsel approved in writing, and hold County harmless and be responsible for payment of all Claims related to or arising from or related thereto. The obligations in this Section shall also be specifically imposed upon any subcontractors, be included in any and all subcontracts entered into by the Developer concerning the Project, and survive termination of this Agreement.

ARTICLE 4
PHASE 1
MASTER PLANNING, ENTITLEMENT AND INFRASTRUCTURE PLANNING

4.1 **Preparation of Master Plan**. Developer shall diligently prepare two or three potential Master Land Use Plan concepts for review, comment and conceptual approval by the Project Lead and the Board in its capacity as owner of the Property. Upon obtaining the Project

Lead's conceptual approval of the preferred Master Land Use Plan, Developer shall diligently prepare and process County Land Use Approvals with the County and, as required, approvals from the City, for the Entitlements in accordance with the terms of this DDA and in compliance with all Applicable Laws. Developer's responsibilities shall include assisting County in coordinating with the City on the approval and adoption of the Master Land Use Plan (or Specific Plan) as the underlying City zoning for the Property, as necessary.

4.2 **Preparation of Infrastructure Phasing and Financing Plan**. Within the time frame required by the Phase 1 Schedule, Developer shall prepare a preliminary infrastructure phasing and financing plan for County review and approval. The approved infrastructure phasing and financing plan shall then be utilized by Developer in Phase 1 to prepare the Phase 2 Budget for Project Lead and Board approval prior to Final Approval of Phase 1.

4.3 **Entitlement Team**. Developer shall retain the Consultants identified in **Exhibit C** attached hereto and incorporated herein and such other Consultants as Developer may request and Project Lead shall approve as part of the Entitlement Team to prepare and process the Entitlements. In addition to the Consultants identified in **Exhibit C**, the Entitlement Team shall specifically include the Key People.

4.4 **Phase 1 Schedule**. Developer shall prepare and process the Entitlements, including drafts for County review, pursuant to the schedule set forth in the Phase 1 Business Plan (the "**Phase 1 Schedule**"). The Phase 1 Schedule may be revised outside the Phase 1 Business Plan Update process in writing, at the option of the Project Lead with the Developer's concurrence. The Developer shall be responsible for Phase 1 Schedule adherence.

4.5 **Phase 1 Business Plan**. Developer has prepared an initial draft business plan specifying a strategy for processing and obtaining Entitlements to complete the Project in accordance with the County's objectives, containing a list of Consultants with their proposed scope of work and an estimated budget for such Consultant work, and a proposed Phase 1 Schedule, a copy of which is attached hereto as **Exhibit F** ("**Phase 1 Business Plan**"). Such Phase 1 Business Plan also contains a draft of the Phase 1 Budget described below. Within sixty five (65) business days of the Effective Date, Developer shall update the Phase 1 Business Plan to provide Developer's proposal for a more complete and detailed strategy for obtaining all necessary Entitlements to complete the Project, which shall identify, among other things (and based on Developer's then current knowledge), all entitlements, permits and approvals required to complete the Project, including from agencies other than the County, if any; a mix of proposed land uses; a projected density and intensity range; the studies and analyses to be completed; a detailed cost estimate for completing the Project and processing and obtaining the Entitlements, including, without limitation, all Project Costs necessary to process and obtain Final Approval of Phase 1 (when approved by the Project Lead, the "**Phase 1 Budget**"); and the Phase 1 Schedule for processing and obtaining Final Approval of the Entitlements. Each Phase 1 Business Plan update shall include an updated detailed Phase 1 Schedule ("**Phase 1 Business Plan Update**") (the Phase 1 Business Plan Update may be referred to herein as the "**Phase 1 Business Plan**"). The Phase 1 Business Plan Update shall be updated on an annual basis or sooner as County may otherwise require, however, the prior Phase 1 Business Plan will remain in effect until the approval of a new Phase 1 Business Plan Update by the Project Lead, so that at no time will there not be a Phase 1 Business Plan in effect. Each Phase 1 Business Plan Update shall be subject to Project Lead approval, in its sole and absolute discretion, and shall be prepared in close

coordination with County. Each component of the Phase 1 Business Plan may be revised outside the Phase 1 Business Plan Update process, in writing, with the approval of the Project Lead or the Board as dictated by this DDA.

4.6 **County Review of Entitlements**. Developer shall obtain the Project Lead's approval of, and allow the Project Lead to fully participate in, all material decisions relating to the scope, substance, preparation and processing of the proposed Entitlements, including without limitation, matters such as proposed land uses, density and intensity of development, development criteria, phasing, infrastructure requirements and environmental analyses. Among other things, Developer shall seek Project Lead's input and obtain Project Lead's approval in writing in connection with the Master Land Use Plan and each of the Entitlements before submitting the same for a County Land Use Approval and/or approval by the City or other governmental agencies. Developer shall request input, approval and consent from the Project Lead in writing and the Project Lead shall use commercially reasonable efforts to respond promptly, but in any event within thirty (30) business days of actual receipt of such notice or as the Parties may otherwise agree. Notwithstanding the foregoing, the failure of Project Lead to respond within such thirty (30) business day period shall not be construed to mean that the Project Lead has no input concerning the matter or as consent to or approval of any matter. However, Developer shall not be in default under this DDA if the sole reason Developer is prevented from taking the next action in compliance with the Phase 1 Schedule is the Project Lead's failure to timely approve or deny a: (a) scheduled action, or (b) submittal that must be made to secure a County Land Use Approval or other governmental agency approval on which such scheduled action is to be based. If Project Lead withholds approval or consent of a matter, Project Lead will describe in writing, with specificity, the reasons for withholding approval or consent and the modifications/actions required to obtain Project Lead's approval or consent.

4.7 **County Approval or Disapproval of Entitlements**. In its capacity as an owner of the Property, separate and distinct from its governmental capacity as the land use authority, the County shall have the right to approve or disapprove of the Entitlements following Final Approval. The County's review and approval or denial in this capacity shall be made in its sole and absolute discretion; provided, however, the County shall not disapprove the Entitlements if (i) the primary reason for the disapproval is an adverse condition or modification of the Project imposed by the County in its governmental capacity despite the commercially reasonable efforts of Developer; or (ii) the Entitlements substantially conform to the initially identified, preferred Master Land Use Plan conceptually approved by the Project Lead pursuant to Section 4.1. The County shall have the right, in its sole and absolute discretion, to terminate this Agreement for cause if the County disapproval is for reasons other than those described in subparagraphs (i) and (ii) above. If the County exercises the right to terminate as provided for in this Section 4.7, and within twenty four (24) months of the date of that termination the Board votes to proceed with development of the Property using the Entitlements the County disapproved pursuant to this Section, or with a development substantially similar to the development permitted pursuant to those Entitlements, the County shall promptly give Developer written notice and ten (10) business days within which to notify the County in writing if Developer wishes to negotiate an agreement for the development of the Property using those Entitlements. If the Developer timely provides the written notice, the County and Developer shall have sixty five (65) business days from the date of the County's written notice to negotiate a mutually acceptable disposition and development agreement, which shall, to the extent consistent with the County's decision to proceed with the development, mirror the provisions of this Agreement. If the County and

Developer cannot negotiate a mutually acceptable disposition and development agreement within the required time, neither County nor Developer shall have any further rights or obligations hereunder.

ARTICLE 5
PHASE 2 IMPROVEMENTS/FINAL MAP/PHASE 2 BUSINESS PLAN

5.1 **Phase 2 Business Plan**. At least six (6) months prior to the date provided for in the Phase 1 Schedule for Final Approval of the Entitlements, Developer shall submit to the Project Lead for review and comment a Phase 2 Business Plan that, at a minimum, describes a strategy for financing and constructing the Phase 2 Improvements, financing and constructing the portion of the Project located on the Leasable Master Ground Lease Area and securing tenants and other users for the Project, identifies a phasing plan and schedule for when each specific parcel within the Leasable Master Ground Lease Area will be conveyed via a Ground Lease, and maximizes the return on the County's investment in the Project ("**Phase 2 Business Plan**"). Prior to the end of Phase 1, the Project Lead and Developer shall present the Phase 2 Business Plan to the Board for consideration. Board approval of the Phase 2 Business Plan, in its sole and absolute discretion, is required prior to Final Approval of Phase 1.

5.2 **Phase 2 Improvements**. Developer shall complete the design, plan check, permitting and construction of the Phase 2 Improvements.

5.3 **Phase 2 Schedule**. At the same time Developer is required to submit the Phase 2 Business Plan, Developer shall prepare and submit to the County a schedule for the design, plan check, permitting, construction and completion of the Phase 2 Improvements and the Final Map (the "**Phase 2 Schedule**").

5.4 **Phase 2 Budget**. At the same time Developer is required to submit the Phase 2 Business Plan, Developer shall prepare and submit to the County an estimated budget for the physical construction costs of the Phase 2 Improvements ("**Phase 2 Budget**") for review and approval by the Project Lead.

5.5 **Updating of Phase 2 Business Plan, Budget and Schedule**. The Phase 2 Business Plan, Phase 2 Schedule and Phase 2 Budget shall be regularly updated by Developer, at the option of the Project Lead. In addition, no later than twenty five (25) business days following the Final Approval of the Entitlements, Developer shall submit an updated Phase 2 Business Plan, Phase 2 Budget and Phase 2 Schedule for the Phase 2 Improvements to the Project Lead for approval.

5.6 **Design and Estimating of Phase 2 Improvements**.

5.6.1 Developer shall arrange for architectural and engineering design and estimating services for the Phase 2 Improvements.

5.6.2 The standard of care for all architectural and engineering services performed under this DDA shall be the standard of care and skill ordinarily used by members of the architectural and engineering professions with expertise in the design and construction of public facilities, practicing under similar conditions in the greater Orange County Area and at the same time as the services performed hereunder.

5.6.3 Developer shall prepare and submit to the County project cost estimates for the Phase 2 Improvements in order to allow for evaluation, financing and budgeting confirmation. Such cost estimates shall be updated as required to account for material changes in design in order to confirm that the Phase 2 Improvements can be completed within the Phase 2 Budget. In the event that any such cost estimate exceeds the previous estimate, Developer shall make appropriate recommendations to the County for reducing the cost.

5.6.4 Developer shall provide the County with reproducible electronic copies of all design and other documents prepared in connection with the design and estimating of the Phase 2 Improvements.

5.7 **Schematic Design for Phase 2 Improvements.**

5.7.1 Developer shall cause to be prepared, and furnish to the Project Lead for review, schematic design documents for the Phase 2 Improvements. Such documents may be delivered to the Project Lead separately for each segment of the Phase 2 Improvements.

5.7.2 Developer shall furnish to the Project Lead for review a detailed updated, Phase 2 Budget based on the Schematic design for the Phase 2 Improvements.

5.7.3 The Project Lead shall review and provide written comments to Developer within ten (10) business days of receipt of a complete package of schematic design documents. Developer may continue with design, at its own risk, during County's review period.

5.8 **Design Development for Phase 2 Improvements**.

5.8.1 Upon the Project Lead's written approval of a schematic design, and written authorization from the Project Lead, Developer shall address all of the Project Lead's comments on the schematic design documents to the Project Lead's satisfaction, and shall cause to be prepared more detailed development plans for the Phase 2 Improvements. These plans shall be based on the schematic design documents approved by the Project Lead, and shall provide the basis for the final design and construction of the Phase 2 Improvements.

5.8.2 Developer shall furnish to the Project Lead for review a detailed updated, Phase 2 Budget based on the design development plans for the Phase 2 Improvements.

5.8.3 Developer shall furnish to the Project Lead for review development plans for the Phase 2 Improvements.

5.8.4 The Project Lead shall review and provide written comments to Developer within ten (10) business days of receipt of a complete package of development plans for the Phase 2 Improvements. Developer may proceed with design, at its own risk, during the County's review period.

5.9 **Construction Documents and GMP Proposal for Phase 2 Improvements**. Developer shall comply with all Applicable Laws, including without limitation, Public Contracting Code requirements, in the selection of Contractors and implementing the Phase 2 Improvements. To the extent of any conflict between the following and the Applicable Laws, the Applicable Laws shall control.

5.9.1 Upon written approval of the development plans for a segment of or all of the Phase 2 Improvements, and written authorization from the Project Lead for such Phase 2 Improvements, Developer shall cause to be prepared construction documents. The construction documents shall address County-requested changes to the Project Lead's satisfaction.

5.9.2 The construction documents shall consist of drawings, specifications, and other documents including both paper and electronic data necessary to reproduce such documents (the "**Phase 2 Construction Documents**"). The Phase 2 Construction Documents shall be consistent with the approved design development documents, provide information for the use of those in the building trades; and include all documents required for regulatory agency approvals.

5.9.3 When the Phase 2 Construction Documents are at least 75% complete, Developer shall submit them to County for plan check as a County Land Use Approval and solicit bids from contractors for the performance of the work in accordance with Applicable Laws. Developer shall provide County with pricing information received from the contractors or a third party construction cost estimator based on the 75% Phase 2 Construction Documents.

5.9.4 Developer will revise the Phase 2 Construction Documents to address any plan check comments and issues raised by the County, and will resubmit the Phase 2 Construction Documents for review.

5.9.5 When the Phase 2 Construction Documents are complete, including all plan check comments and issues raised by the Project Lead, Developer shall to the extent consistent with Applicable Laws, rebid the revised Phase 2 Construction Documents to the selected Contractor and submit plans to the Project Lead for final review.

5.9.6 Developer shall then prepare and submit a Guaranteed Maximum Price Proposal ("**GMP Proposal**") to the Project Lead for all or any portion of the Phase 2 Improvements for review and approval. Each GMP Proposal shall include the following:

5.9.6.1 Developer's project cost spending plan Excel spreadsheet, including a detailed estimate of the pre-development, off-site, direct and indirect costs showing all labor, materials, equipment and services required to construct the Phase 2 Improvements;

5.9.6.2 Contractors' cost estimates including a detailed estimate of the direct costs of work that a Contractor proposes to perform with its own forces, and a summary of the bids received for work to be performed by subcontractors or other Contractors that sets forth each bid received and identifies the bid used in computing the Construction Budget;

5.9.6.3 a detailed estimate of the general conditions for the Phase 2 Improvements, for the duration as shown on the then-current Phase 2 Schedule;

5.9.6.4 a summary of the anticipated indirect costs related to the Phase 2 Improvements;

5.9.6.5 a cash-flow projection showing how the proposed GMP Proposal will be expended, month-by-month;

5.9.6.6 a list of the assumptions on which the GMP Proposal is based;

5.9.6.7 a list of items Developer proposes to carry as allowances, if any, the amount proposed for each allowance, and the basis on which the allowances will be expended;

5.9.6.8 all contingencies included in the GMP Proposal, including a contingency for development of the construction documents, and the basis on which the contingencies may be expended;

5.9.6.9 all escalation included in the GMP Proposal;

5.9.6.10 a list of the exceptions, if any, to the GMP Proposal;

5.9.6.11 a construction schedule, showing any proposed adjustment to the Phase 2 Schedule associated with the GMP Proposal;

5.9.7 If the Project Lead discovers any inconsistencies or inaccuracies in the information presented by Developer, it shall notify Developer, who shall make appropriate revisions to the GMP Proposal;

5.9.8 Developer and Project Lead will meet to review the GMP Proposal and the supporting documents;

5.9.9 Upon acceptance by the Project Lead of the GMP Proposal, the Guaranteed Maximum Price and its basis shall be set forth and appended to this agreement; and

5.9.10 Developer shall provide all plans and other documents required to apply for and obtain approval of the Phase 2 Construction Documents by the local and state authorities as may be required for the initiation, prosecution and construction of the Phase 2 Improvements.

5.10 **County's Maximum Phase 2 Cost**. Prior to the Final Approval of Phase 1, the Board, in its sole and absolute discretion, shall determine the amount of the County's maximum contribution to the Phase 2 Improvements ("**County's Maximum Phase 2 Costs**"). Within ten (10) business days of the Board determining the County's Maximum Phase 2 Costs, Developer shall notify County in writing whether the County's Maximum Phase 2 Costs are acceptable to Developer, in Developer's sole and absolute discretion. If Developer does not timely deliver the notice or the notice is anything other than an unconditional acceptance of the County's Maximum Phase 2 Costs, this Agreement shall be deemed terminated for cause and Developer shall have no further rights and the County shall have no further obligations under this Agreement as specified in Section 11.31. Subject to satisfaction of the terms set forth below and otherwise in this DDA, if the Developer timely delivers the written notice of unconditional acceptance of the County's Maximum Phase 2 Costs, and the Parties enter into the Master Ground Lease and throughout the term of the Master Ground Lease, the County's percentage share of the overall and monthly costs of the Phase 2 Improvements identified in the Phase 2 Budget shall be determined prior to execution of the Master Ground Lease by (i) dividing the County's Maximum Phase 2 Costs by the costs of the Phase 2 Improvements identified in the Phase 2 Budget; and (ii) multiplying the resulting number by 100. Subject to the terms of this DDA, Developer shall be responsible for all costs associated with the Phase 2 Improvements not

paid for by County, including, without limitation, those greater than the County's Maximum Phase 2 Costs as specified in Section 3.2.2. By way of example only, if the County's Maximum Phase 2 Costs are Twenty Million dollars ($20,000,000) and the cost of the Phase 2 Improvements identified by the Phase 2 Budget is Forty Million dollars ($40,000,000), then the County's share is fifty percent (50%) and the Developer's share is fifty percent (50%) of the respective costs of the Phase 2 Improvements identified in the Phase 2 Budget. Upon entry into the Master Ground Lease and notice from Developer that it intends to commence construction of the Phase 2 Improvements within thirty (30) days, the Parties shall establish a management account under the same terms, safeguards, procedures and conditions as specified in Section 3.1 hereof but that management account shall be solely for Developer to utilize to pay the County's percentage share, as defined herein, of the cost associated with the Phase 2 Improvements on a monthly basis.

5.11 **Construction of Phase 2 Improvements**.

5.11.1 Developer shall direct Contractor to commence construction of the Phase 2 Improvements as provided in a written Notice to Proceed issued by the Project Lead.

5.11.2 Developer shall furnish to the Project Lead such drawings and other descriptive material as are reasonably required to establish the kind and quality of materials, fixtures and equipment to be provided. The submittals will be made in accordance with the Phase 2 Construction Schedule. Such submittals shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the Project Lead to determine compliance with the Phase 2 Construction Documents. Developer shall furnish and complete its submittals so as not to delay the work.

5.11.3 When Developer considers that all or a portion of the Phase 2 Improvements are substantially complete, Developer shall prepare and submit to Project Lead a preliminary punch list which shall be comprised of items of work that, in Developer's opinion, need to be completed or corrected.

5.11.4 Upon receipt of the preliminary punch list and written notice from Developer that the work is ready for review, Project Lead shall, within ten (10) business days of receipt of such notice, review the work to identify any additions to the preliminary punch list and prepare a final punch list. Developer shall have the right to accompany Project Lead in making this review.

5.11.5 When the Project Lead determines that the work on the final punch list has been completed, Developer shall then prepare the final billings to close out the work.

5.11.6 Upon substantial completion of any portion of the Phase 2 Improvements, Developer may pay the Contractor the unpaid balance of the contract price for such work less 150% of the reasonably estimated cost of completing or correcting items of work on the final punch list. Payment of any sum withheld on account of items of work on the punch list shall be made monthly, through progress payments, as the punch list items are completed.

5.12 **Final Map**. Prior to the earlier of the Phase 2 Outside Date or the date required for the conveyance of a portion of the Property consistent with Section 8.3 hereof, Developer shall secure Final Approval of the Final Map that substantially conforms to the Entitlements.

Developer shall submit, at regular intervals acceptable to the Parties, the maps, plans and other documentation required to secure Final Approval of the Final Map to the Project Lead for review and approval.

ARTICLE 6
COMPENSATION

The County and Developer have developed a compensation program for preparing and processing the Entitlements and performing the other responsibilities imposed by this Agreement during Phase 1, the Final Map during Phase 2, securing the Final Approval of Phase 1 and Phase 2, and the design, management and construction of the Phase 2 Improvements. The compensation program takes into account the administrative and billing responsibilities taken on by Developer pursuant to the DDA as well as the commitment of time by Developer's management and ownership.

6.1 **Phase 1 Project Management Fee**.

6.1.1 Payment of Phase 1 Project Management Fee. Developer, on behalf of the County, is obligated to undertake the development management services for Phase 1 as described in this Agreement ("**Phase 1 Project Management Fee**"). Developer will receive compensation for such work in accordance with this Section. County shall pay to Developer the Phase 1 Project Management Fee in a fixed fee amount equal to One Million Two Hundred Thousand Dollars ($1,200,000) to secure Final Approval of Phase 1. The $1,200,000 shall be paid in equal monthly installments based on the length of time provided for in the Phase I Schedule for securing Final Approval of Phase 1. Prior to the fifteenth (15^{th}) of the month, Developer shall submit an invoice for the monthly installment and County shall make the individual installment payments within twenty five (25) business days of County approval of that invoice. County shall in good faith approve or reject the costs set forth on the above referenced invoice within twenty (20) business days from receipt if the above referenced invoice is timely received.

6.1.2 Phase 1 Success Fee. If Developer secures Final Approval of Phase 1 on or prior to the date that Final Approval of Phase 1 is scheduled to occur in the Phase 1 Schedule, County shall pay Developer an additional Three Hundred Thousand Dollars ($300,000). The additional payment specified in the proceeding sentence shall be paid to Developer solely in the form of a credit against the rent payable to the County under the Master Ground Lease. To the extent that Developer engages a Consultant to assist Developer in the development management services for Phase 1, the fees of such Consultant shall be paid for by Developer as part of the services Developer must perform to earn the Phase 1 Project Management Fee and not paid for by the County as an additional Project Costs.

6.2 **Phase 2 Project Management Fee**. Developer, on behalf of the County, is obligated to undertake the design, plan check, permitting, project management and construction of all Phase 2 Improvements and performance of the other Phase 2 obligations as described in this Agreement ("**Phase 2 Project Management Fee**"). Developer will receive compensation for such work in accordance with this Section. During Phase 2, County shall pay to Developer the Phase 2 Project Management Fee in an amount equal to four percent (4%) of the Project Costs for Phase 2, which costs exclude the Phase 2 Project Management Fee. Subject to the invoicing procedure described herein, Developer shall be paid the Proportionate Share of the

Phase 2 Project Management Fee on a monthly basis. Developer shall deliver to the County, prior to the 15th of each month, an invoice that includes the Developer approved invoices for Project Costs for Phase 2 (excluding retainer amounts withheld and the Phase 2 Project Management Fee) incurred between the first and last day of the prior month, an accounting summary of the same and the applicable calculations used to arrive at the amount of the requested monthly Phase 2 Project Management Fee. County shall pay the Phase 2 Project Management Fee set forth in the above referenced statement within twenty five (25) business days from the date the statement is approved by County. County shall in good faith approve or reject the costs set forth on the above referenced invoice within twenty (20) business days from receipt if the above referenced invoice is timely received. To the extent that Developer engages a Consultant to assist Developer in providing project, development or construction management services, the fees of such Consultant shall be paid for by Developer as part of the services Developer must perform to earn the Phase 2 Project Management Fee and not paid for by the County as an additional Project Costs.

ARTICLE 7
MASTER GROUND LEASE OF MASTER GROUND LEASE PARCEL

Prior to the Final Approval of Phase 1, the Board shall approve County execution and delivery of the Master Ground Lease by the County. The Master Ground Lease contemplates Developer master ground leasing the entire Leasable Master Ground Lease Area, but it will provide for an initial master ground leasing of the approximately forty (40) acres conceptually depicted in the Master Ground lease as the "**Initial MGL Parcel**." Ten (10) business days following the date the Board determines the County's Maximum Phase 2 Costs, Developer shall execute the Master Ground Lease for the Initial MGL Parcel and deliver the same to the County. If Developer fails to timely execute and deliver the Master Ground Lease, County may terminate this Agreement for cause and Developer shall have no further rights and the County shall have no further obligations under this Agreement as specified in Section 11.31. If Developer timely executes and delivers the Master Ground Lease and the Developer has timely delivered to the County the notice of acceptance identified in Section 5.1, County shall execute the Master Ground Lease and deliver a fully executed copy to Developer within the later of fifteen (15) business days following execution of the Master Ground Lease by Developer or Final Approval of Phase 1. If the Board does not approve County execution and delivery of the Master Ground Lease following Final Approval of Phase 1, or the County does not timely execute and deliver the Master Ground Lease following Board approval of the delivery of the Master Ground Lease and timely execution and delivery of the Master Ground Lease by Developer, this Agreement shall terminate and Developer shall be paid the applicable damages as set forth in Section 10.1.2. The Master Ground Lease will address the extent to which property included in the Entitlements and acquired in fee title by the County within the term of the Master Ground Lease shall be added to the Master Ground Lease.

ARTICLE 8
GROUND LEASE OR SALE OF PROPERTY

8.1 **Ground Lease or Sale of Property.** The County, in its sole and absolute discretion, will determine whether it wishes to sell any portion of the Alton Parcels or any other portion of the Property that the County owns other than the Alton Parcels. The process for selling any portion of the Property that the County owns will be conducted in accordance with

Applicable Law and not be subject to the Conveyance rights and obligations established by this Agreement.

8.2 **Ground Rent Appraisal**. In accordance with the process established by Article 9 hereof, the Ground Rent Appraisal(s) process shall be commenced for each applicable lot or parcel within the Master Ground Lease Parcel that is addressed in an Acquisition Notice within ten (10) business days of the occurrence of the: (i) commencement of construction of the off-site and on-site Phase 2 Improvements required for the use and occupancy of such lot or parcel; and (ii) the subsequent receipt by County of written notice and appropriate documentation from Developer demonstrating Developer's reasonable belief that Developer will have satisfied all the Ground Lease Preconditions (other than the establishment of the applicable Ground Rent) no later than eighty five (85) business days after the date of the written notice. The Ground Rent Appraisal(s) shall address the portion of the Master Ground Lease Parcel identified in the Acquisition Notice and determine (1) the current fee simple value of each applicable lot or parcel, (2) the current market rate of return utilized in the market area to establish ground rent for new ground leases; and (3) the resultant annual Ground Rent for each applicable lot or parcel. The appraisers shall assume that all Phase 2 Improvements have been installed and the completion of all other off-site improvements, including without limitation Marine Way, that will be reasonably likely to be available to the tenant at the time of occupancy of the improvements contemplated by the Ground Lease. The appraisers shall also reduce the fee simple value of each applicable lot or parcel by the dollar amount determined by multiplying the Net Acreage of that lot or parcel by the Developer Phase 2 Improvement Costs per Net Acre. The appraiser shall take into account all requirements for development imposed in the Entitlements or by Applicable Law.

8.3 **Takedown Thresholds**. Following completion of the Phase 2 Improvements for the portion of the Master Ground Lease Parcel identified in the applicable Acquisition Notice, Developer Party shall have the right to enter into a Ground Lease in accordance with the takedown plan specified in the Phase 2 Business Plan. To comply with its obligations under this Agreement, Developer Party must enter into the first Ground Lease within one (1) year after substantial completion of Marine Way (4 lanes) between Sand Canyon Road and Great Park Boulevard West ("**First Takedown Threshold**"), and the Net Acreage of that first Ground Lease must be a minimum of ten (10) acres of the Master Ground Lease Parcel. Developer Party must enter into additional Ground Leases for either (i) a Net Acreage of at least ten (10) acres per year, or (ii) no fewer than a Net Acreage of thirty (30) acres by the third (3rd) anniversary of the earlier of the effective date of the first Ground Lease or the date of the First Takedown Threshold. Once Marine Way has been substantially completed as a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point, as defined in this Section 8.3, ("**Second Takedown Threshold**"), Developer Party must enter into a Ground Lease for an additional minimum Net Acreage of (A) ten (10) acres per year, or (B) thirty (30) acres (for a cumulative total Net Acreage subject to Ground Leases of at least sixty (60) acres) within three (3) years of the Second Takedown Threshold. Thereafter, Developer Party must enter into additional Ground Leases for an additional minimum Net Acreage of (I) ten (10) acres per year, or (II) the remainder of the Leasable Master Ground Lease Area within six (6) years of the Second Takedown Threshold. The County shall have the right to terminate this DDA for cause if Developer Party defaults by not timely satisfying any of its obligations hereunder. For purposes of determining Developer's compliance with this Section, if the County designates a portion of the Master Ground Lease Parcel for sale, close of escrow on that portion of the Master

Ground Lease Parcel will be treated the same as a Ground Lease. For purpose of this Section, the term "Alternative Secondary Access Point" means either Barranca Parkway, Alton Parkway or, if County and Developer agree in writing, another road.

8.4 **Delivery of Acquisition Notice**. Developer shall deliver to County a written notice (the "**Acquisition Notice**") designating the parcel or parcels within the Master Ground Lease Parcel that Developer wishes to Ground Lease. If (i) the Acquisition Notice is consistent with the takedown plan identified in the Phase 2 Business Plan, (ii) the Developer has secured Final Approval of the Final Map, (iii) the Ground Rent has been established as provided for in Sections 9.1-9.3, or, to the extent applicable, updated as provided for in Section 9.4, (iv) the on-site and off-site Phase 2 Improvements are substantially complete for the portion of the Master Ground Lease Parcel at issue in the Acquisition Notice, (v) the proposed use and development the Developer identifies in the Acquisition Notice conforms to the Entitlements, (vi) no default by Developer exists with respect to the Master Ground Lease or this Agreement, and (vii) the Developer is in compliance with the above Takedown Thresholds (collectively, "**Ground Lease Preconditions**"), the delivery of an Acquisition Notice shall trigger the County's obligation to enter into the Ground Lease contemplated in the Acquisition Notice with the Developer within the later of sixty five (65) business days after (a) delivery of the applicable Acquisition Notice that complies with this Section or (b) the establishment of the Ground Rent pursuant to Article 9 hereof. Unless the Acquisition Notice satisfies the criteria established in the previous sentence, the delivery of the Acquisition Notice shall not be deemed effective and shall not create any County obligations.

8.5 **Third Party Ground Leases**. Developer acknowledges that the Acquisition Notice procedures described above, and any County obligations to enter into a Ground Lease based thereon, cannot and do not apply to any potential Ground Lease to an entity other than a Developer Party. Nothing in this Section 8.5 authorizes the County to enter into a Ground Lease with a party other than a Developer Party if such an action is otherwise prohibited under this Agreement.

8.6 **Execution of Ground Lease; Modification of Master Ground Lease**. After the delivery of an effective Acquisition Notice as specified above, the County and Developer shall enter into a ground lease for such parcel substantially in the form of the Ground Lease. Each Ground Lease shall lease a separate developable area of the Master Ground Lease Parcel. Such area may consist of one parcel which is intended for further subdivision, or may consist of multiple subdivided lots which will be developed as one coordinated development, but the minimum Net Acreage shall be ten (10) acres. As of the date that Ground Rent payments commence for a Ground Lease, or upon the close of escrow under a Purchase Agreement, the applicable lot or parcel shall be removed from the Master Ground Lease and the rent under the Master Ground Lease shall be proportionately reduced as set forth in the Master Ground Lease.

8.7 **Terms of Ground Lease**.

8.7.1 Lease Term. Each Ground Lease shall have a term of seventy-five (75) years.

8.7.2 Rental Rate for Ground Leased Parcels. The rental rate for each separate parcel which is subject to a Ground Lease shall be the Ground Rent. The Ground Rent paid by

Developer or a Developer Party shall be equal to the amount of Ground Rent established by the Ground Rent Appraisal, unless County in its sole and absolute discretion agrees to a lower amount.

8.7.3 Payment Schedule for Ground Rents. The Ground Lease term shall commence upon execution of the Ground Lease. The Ground Rent payments for Ground Leases shall be paid in equal monthly installments as follows: (i) for the first year of the term, an amount equal to ten percent (10%) of the Ground Rent; (ii) for the next year of the term, an amount equal to twenty-five percent (25%) of the Ground Rent; (iii) for the third year of the term, an amount equal to fifty percent (50%) of the Ground Rent, (iv) thereafter, one hundred percent (100%) of the Ground Rent. The Ground Rent shall be adjusted periodically as set forth in the Ground Lease.

8.8 **County Failure to Execute Ground Lease**. In the event that County fails to execute an individual Ground Lease that conforms to the terms of this Agreement, then Developer may elect to either (i) allow the parcel at issue to remain part of the Master Ground Lease and propose a new individual Ground Lease, or (ii) notify the County in writing again that it wants to execute that originally proposed Ground Lease, and if the County then fails to enter into that individual Ground Lease within sixty five (65) business days after the date of such second notice, Developer may terminate this DDA and the Master Ground Lease, in which event Developer shall be paid damages in accordance with Section 10.3 hereof.

ARTICLE 9
APPRAISAL PROCESS

9.1 **Appraisal by County and Developer**. Within the time frame required by this Agreement for the Parties to conduct an Appraisal, the County and Developer shall each engage an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel, located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease, with each Party paying the expense for its own appraiser. Each Party shall give the other notice of engagement of its appraiser within five (5) business days after such engagement. Upon receipt of its Appraisal, each Party shall, within five (5) business days, deliver a copy thereof to the other Party.

9.2 **Differences in the Appraisals**. If the Party's Appraisals of the resultant annual Ground Rent are within 10% (higher or lower) of each other, then the two Appraisals shall be averaged to set the applicable value. Under all other circumstances, Section 9.3 hereof shall apply.

9.3 **Third Appraisal to Determine Appraisal Values**.

9.3.1 If the two Appraisals are not within 10% (higher or lower) of each other, then the two appraisers shall choose a third appraiser within twenty (20) business days, and the two closest of the three appraisals will be averaged to determine the value at issue. The Parties shall each pay 50% of the costs and fees charged by the third appraiser. The third appraiser shall not be affiliated in any business relationship with either of the Parties.

9.3.2 All Appraisals of the resultant annual Ground Rent pursuant to this Article must be completed within eighty five (85) business days by an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel, located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

9.4 **Reappraisal**. Appraisals shall be valid for six (6) months from the date issued. After the expiration of such period, the appraiser(s) who issued the Appraisal(s) shall be engaged to update the no longer valid Appraisal(s) and shall be directed to do so within twenty five (25) business days from the date engaged. If a Party's original appraiser is not reasonably available to conduct the reappraisal, that Party shall select a new MAI (or a successor organization of appraisers) with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel, located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

ARTICLE 10
DEFAULT; REMEDIES FOR DEFAULT

The following describes the Parties exclusive remedies in the event of a default, breach or termination of this Agreement. In the event this Agreement is terminated, the Parties shall have no further rights or obligations hereunder except for those rights and obligations that are expressly identified in this Agreement as surviving such a termination. For purposes of this Article 10, the Parties agree that the term Property does not include any portion of the Property not owned in fee simple title by the County or the Alton Parcels.

10.1 **Termination Prior to the Final Approval of Phase 1**. Prior to the Final Approval of Phase 1, so long as Developer is not then in default of the DDA or unless the termination is for cause pursuant to Sections 3.2.1, 4.7 and Article 7, this Agreement shall not be terminated by County except in accordance with the express terms of this Agreement. Notwithstanding the foregoing, in the event that this Agreement has been terminated by County prior to the Final Approval of Phase 1 and prior to the Phase 1 Outside Date for a reason other than for cause as defined in this Agreement or a Developer default of this Agreement, and the Final Approval of Phase 1 is subsequently obtained within twelve (12) months after such termination, then the termination shall be deemed to have occurred after the Final Approval of Phase 1. In such an event the remedies set forth in Section 10.1.2, as applicable, shall apply except that the amount of the liquidated damage payment to the Developer shall be reduced by the amount of all additional, actual costs incurred by the County in securing that Final Approval of Phase 1 and any prior liquidated damage payments made by the County to Developer pursuant to this Agreement.

10.1.1 Termination After Phase 1 Outside Date. If Final Approval of Phase 1 does not occur by the Phase 1 Outside Date, the Board may terminate this Agreement and that termination shall be treated as for cause. Following that termination, the County shall thereafter pay the unpaid Consultant Fees and Third Party Costs incurred, and the portion of the Phase 1 Project Management Fee earned, prior to the date the County delivers the written termination as Developer's sole and exclusive remedy and neither Party shall have any further rights or obligations under this Agreement. If the sole reason that Final Approval of Phase 1 has not occurred is a pending third party court challenge to the otherwise approved Phase 1 Entitlements,

or a development moratorium or new permitting requirement imposed by the County that precludes Final Approval of the Entitlements, the Phase 1 Outside Date shall be extended for the lesser of an additional 365 days or the time it takes to successfully resolve the litigation or address the restrictions imposed by the development moratorium or new permitting requirement imposed by the County.

10.1.2 Termination Prior to the Phase 1 Outside Date. If prior to the Phase 1 Outside Date, the Board terminates this Agreement without cause as defined in this Agreement or contrary to the terms of this Agreement, the following remedies shall apply as sole and exclusive remedy for Developer:

10.1.2.1 If there has been no Conveyance as described in Section 10.1.2.2 or Section 10.1.2.3 below, then County shall pay the unpaid Consultant Fees and Third Party Costs incurred, and the portion of the Phase 1 Project Management Fee earned, prior to County giving the written notice of the County's intention to terminate the Agreement.

10.1.2.2 If the Board votes to pursue a Conveyance of the Property to a third party for a use other than governmental, and then actually sells, exchanges or otherwise conveys fee title in the Property or ground leases the Property to the third party for such a use, the County shall pay the unpaid Consultant Fees and Third Party Costs incurred, and the portion of the Phase 1 Project Management Fee earned, prior to the County giving the written notice of the County's intention to convey the Property as provided for in this Section 10.1.2.2. In addition, Developer shall be paid an amount equal to the lesser of (i) forty percent (40%) of the Consultant Fees and Third Party Costs incurred; or (ii) One Million Dollars ($1,000,000). County shall notify Developer of the intent to make such a Conveyance as described above at least ten (10) business days prior to the proposed close of escrow for such transaction and shall make the payments required by this Section 10.1.2.2 at close of escrow (or if Board approval is required for the payment, in no less than sixty five (65) business days after that approval). Notwithstanding anything to the contrary herein, if Developer financially participates in any way in the development or use of the Property for above purposes, including without limitation, as a contractor or developer, the Developer shall not be entitled to (or, if previously paid, shall refund) that additional payment specified above that would be (or was) based on the lesser of forty percent (40%) of Consultant Fees and Third Party Costs payment or One Million Dollars ($1,000,000).

10.1.2.3 If the Board votes to use the Property or pursue a Conveyance of the Property to a third party for a governmental use, and then actually sells, exchanges or otherwise conveys fee title or a ground lease in the Property to the third party or otherwise contracts for such a use, the County shall pay the unpaid Consultant Fees and Third Party Costs incurred, and the portion of the Phase 1 Project Management Fee earned, prior to the County giving the written notice of the County's intention as provided for in this Section 10.1.2.3. County shall notify Developer of the intent to make such a Conveyance as described above at least ten (10) days prior to the proposed close of escrow for such transaction and shall make the payments required by this Section 10.1.2.3 at close of escrow (or if Board approval is required for the payment, in no less than sixty five (65) business days after that approval).

10.2 **[Intentionally Omitted]**

10.3 **Termination After the Final Approval of Phase 1 and After Execution of the Master Ground Lease but Prior to Completion of the Phase 2 Improvements**. The Board may not terminate this Agreement for a period of three (3) years following County execution of the Master Ground Lease absent a Developer default under the DDA or Master Ground Lease. Thereafter, if the Board terminates the Agreement prior to completion of the Phase 2 Improvements, and Developer is not then in default of the DDA or the Master Ground Lease, the following are Developer's sole and exclusive remedies.

10.3.1 Termination After Phase 2 Outside Date. After the Phase 2 Outside Date, the Board may terminate this Agreement and that termination shall be treated as for cause. Following that termination, the County shall thereafter pay the unpaid Consultant Fees and Third Party Costs incurred, and the portion of the Phase 2 Project Management Fee earned, prior to the date the County delivers the written termination, as Developer's sole and exclusive remedy and neither Party shall have any further rights or obligations under this Agreement. If the sole reason that Final Approval of Phase 2 has not occurred is a pending third party court challenge to the otherwise approved Phase 2 Construction Documents or the Final Map, or a development moratorium or new permitting requirement imposed by the County that precludes completion of the Phase 2 Improvements, the Phase 2 Outside Date shall be extended for the lesser of an additional 365 days or the time it takes to successfully resolve the litigation or address the restrictions imposed by the development moratorium or new permitting requirement imposed by the County.

10.3.2 Termination Prior to the Phase 2 Outside Date. If the termination occurs prior to the Phase 2 Outside Date, the County shall pay as Developer's sole and exclusive remedy (i) the unpaid Third Party Costs, Phase 2 Project Management Fee, and Consultant Fees incurred prior to the termination; (ii) an amount equal to all the costs of the Phase 2 Improvements as identified by the Phase 2 Budget that Developer paid pursuant to Section 5.10 hereof on portions of the Master Ground Lease Parcel not ground leased or sold pursuant to Article 8 hereof; and (iii) a liquidated damages amount determined by multiplying Two Million Dollars ($2,000,000) by the fraction in which the numerator is equal to the Net Acreage of the Master Ground Lease Parcel as of the date the County terminates the Agreement and the denominator is equal to 100 acres. The County shall make the above liquidated damages payment within sixty five (65) business days of the date that the amount is determined.

10.4 **Default by Developer**.

10.4.1 Developer shall be deemed to be in default under this DDA in the event Developer:

10.4.1.1 Becomes insolvent or makes a general assignment for the benefit of creditors; or

10.4.1.2 Commits fraud or gross negligence or willfully disregards laws or ordinances;

10.4.1.3 Fails to comply with a provisions of the DDA, or the Master Ground Lease following its execution, and such failure is not cured within the time for cure set forth in the applicable agreement; or

10.4.1.4 The Master Ground Lease terminates prior to the entire Leasable Master Ground Lease Area having been conveyed by Ground Lease or Purchase Agreement, in accordance with the terms of the Master Ground Lease, for a reason other than a default by the County;

10.4.2 If Developer has not cured the noticed breach, the Board may terminate this DDA for cause and, if the breach occurred prior to Final Approval of the Entitlements, within twenty five (25) business days of the County notifying Developer of the termination, the Developer shall pay the County liquidated damages in the amount equal to the amount of the Phase 1 Project Management Fee paid by the County to Developer and ten percent (10%) of the Consultant Fees and Third Party Costs incurred..

10.4.3 In all other circumstances, if Developer has not cured the noticed breach, the Board may terminate this Agreement for cause and/or obtain any and all legal and equitable remedies against Developer.

10.5 **Notice and Cure**. Unless a different time period is specifically provided for in this Agreement, if a Party alleges that the other Party has breached its obligations under the DDA or is in default of the DDA or otherwise believes it is entitled to exercise a remedy under this DDA due to a default by the other Party, such alleging Party shall provide the other Party with a detailed, written statement describing the alleged breach and the actions reasonably necessary to cure such breach. The writing shall identify a period of time for cure of not less than twenty five (25) business days from the date that the writing is deemed received for non-monetary defaults and five (5) business days from the date that the writing is deemed received for monetary defaults, provided if a Party cannot reasonably cure a breach within the time set forth in the notice, then such Party shall not be in default if it commences to cure the default within such time limit and diligently effects such cure thereafter.

10.6 **Remedies are Exclusive**. UNLESS THIS DDA EXPRESSLY STATES THAT A SPECIFIC REMEDY IS NOT EXCLUSIVE, THE REMEDIES AND AMOUNTS OF DAMAGES SET FORTH IN SECTIONS 3.3, 3.4, 8.8, 10.1, 10.3, 10.4 AND 11.31 AND ARTICLE 7 SHALL SERVE AS LIQUIDATED DAMAGES AND THE NON DEFAULTING PARTY SHALL HAVE NO OTHER RIGHTS OR REMEDIES AGAINST THE DEFAULTING PARTY. EACH PARTY'S DAMAGES FOR EVENTS LEADING TO PAYMENT OF SUCH LIQUIDATED DAMAGES WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN FOR THE FOLLOWING REASONS: (1) THE DAMAGES TO WHICH SUCH PARTY WOULD BE ENTITLED IN A COURT OF LAW WILL BE BASED IN PART ON THE ACTUAL VALUE OF THE SERVICES PERFORMED OR THE ACTUAL VALUE OF THE PROPERTY AT A PARTICULAR MOMENT IN TIME; (2) PROOF OF THE AMOUNT OF SUCH DAMAGES WILL BE BASED ON OPINIONS OF VALUE OF THE PROPERTY AND/OR THE SERVICES RENDERED, WHICH CAN VARY IN SIGNIFICANT AMOUNTS; AND (3) IT IS IMPOSSIBLE TO PREDICT AS OF THE DATE ON WHICH THIS DDA IS MADE WHETHER THE VALUE OF THE PROPERTY OR SERVICES WILL INCREASE OR DECREASE AS OF THE DATE OF CONSUMMATION PURSUANT TO THIS DDA. THE PARTIES DESIRE TO LIMIT THE AMOUNT OF DAMAGES FOR WHICH COUNTY OR DEVELOPER MIGHT BE LIABLE SHOULD THE OTHER PARTY BREACH THIS DDA AND TO AVOID THE COSTS AND LENGTHY DELAYS WHICH WOULD RESULT IF ONE PARTY FILED A LAWSUIT TO COLLECT

ITS DAMAGES FOR A BREACH OF THIS DDA. THEREFORE, IF DEVELOPER OR COUNTY BECOMES ENTITLED TO PAYMENT OF LIQUIDATED DAMAGES AS SPECIFIED IN SECTIONS 3.3, 3.4, 8.8, 10.1, 10.3 AND 10.4 AND ARTICLE 7, SUCH SUMS SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CIVIL CODE, SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY IN SUCH EVENT SHALL BE LIMITED TO SUCH AMOUNT AND SUCH PARTY SHALL HAVE NO RIGHT TO RECOVER ANY ADDITIONAL DAMAGES OR TO PURSUE ACTION FOR SPECIFIC PERFORMANCE OF ANY PROVISIONS OF THIS DDA. IN CONSIDERATION OF THE PAYMENT OF LIQUIDATED DAMAGES, EACH PARTY WILL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY INCLUDING ANY RIGHTS DEVELOPER MAY HAVE PURSUANT TO SECTION 1680 OR SECTION 3389 OF THE CALIFORNIA CIVIL CODE RELATING TO COUNTY'S DEFAULT RESULTING IN ESCROW NOT CLOSING AS PROVIDED UNDER THIS DDA. BY INITIALING THIS PROVISION IN THE SPACES BELOW, DEVELOPER AND COUNTY EACH SPECIFICALLY AFFIRM THEIR RESPECTIVE AGREEMENTS CONTAINED IN THIS DDA AND AGREE THAT SUCH SUM IS A REASONABLE SUM CONSIDERING THE CIRCUMSTANCES AS THEY EXIST ON THE DATE OF THIS DDA.

_____ _____

COUNTY'S INITIALS DEVELOPER'S INITIALS

10.7 **Waiver of Lis Pendens Rights**. Developer agrees that no lis pendens shall be filed with respect to the DDA or any dispute or act arising from it. Developer hereby waives any right which Developer may otherwise have to record any notice of pending action (lis pendens) affecting the Property, including without limitation pursuant to California Civil Code section 3389.

10.8 **Termination – Orderly**. After receipt of a default notice from County and Developer's failure to cure in accordance with Section 10.5 hereof, the County may deliver to developer a notice of termination of the provisions of this DDA. After receipt of such termination notice, Developer shall submit to the County a termination claim, if applicable, which shall include any amounts due pursuant to the terms of this Agreement. Such claim shall be submitted promptly, but in no event later than forty five (45) business days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Developer. Upon termination, or other expiration of this DDA, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the DDA. In addition, each Party will assist the other Party in orderly termination of this DDA and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party. The right of either Party to terminate this DDA hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 **Acceptance**. Unless otherwise agreed to in writing by County or as otherwise set forth in this DDA: (1) acceptance of services performed, as set forth herein, shall not be deemed

complete unless in writing and until services have actually been received to the satisfaction of County, and (2) payment shall be made as set forth in this DDA.

11.2 **Entire Agreement**. This DDA, when fully executed by the Parties, and all its exhibits and attachments comprise the entire agreement between the Developer and the County with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this DDA, oral or written, are hereby superseded, except to the extent that they have been incorporated into this DDA. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this DDA shall be considered valid or binding on the County unless specifically agreed to in writing.

11.3 **Amendments; Term**. No alteration or variation of the terms of this DDA shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing and approved by the Board. Unless otherwise terminated pursuant to the terms of this Agreement, this Agreement shall terminate following completion of the Phase 2 Improvements.

11.4 **Assignment or Sub-Contracting**. The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, prior to Final Approval of Phase 1, neither the performance of this DDA nor any portion thereof may be assigned or subcontracted by Developer without the express written consent of County, which consent may be withheld or granted in the County's sole and absolute discretion, and which may be provided pursuant to approval of the Business Plan or as otherwise provided herein by the Project Lead. Developer is hereby granted permission to enter into subcontracts in the form of Consultant Agreements with the Consultants identified in **Exhibit C**, to perform the tasks described therein. Following Final Approval of Phase 1, subcontracting by Developer shall be subject to the terms of this Agreement and the Project Lead's reasonable approval based on factors such as the proposed subcontractor's financial capability and relevant experience. Following Final Approval of Phase 1, subject to the Project Lead's reasonable approval based on factors such as the proposed transferee's financial capability and relevant experience being equal to or better than Developer's, Developer shall be permitted to assign its rights and obligations under this Agreement to a Developer Party that is also the lessee under the Master Ground Lease subject to the County receiving a monetary payment from Developer equal to fifty percent (50%) of the net consideration to be received by Developer as a result of the approved assignment.

Any attempt by Developer to assign or subcontract the performance or any portion thereof of this DDA without the express written consent of County shall be invalid and shall constitute a breach of this DDA. Developer may assign to a Subsidiary (as defined in Section 11.8 below) all of Developer's right, title, and interest in and obligations under this DDA subject to delivery to the County of a copy of an assignment and assumption agreement and all supporting documentation whereby Subsidiary agrees to assume all of the duties and obligations of Developer hereunder, upon express written consent of the County to be provided as set forth in the first paragraph of this Section. Any such Subsidiary shall have the same capabilities and financial capacity as Developer. However, no assignment, even with County approval, shall

relieve Developer of its obligations hereunder. Both Developer and Subsidiary will be fully responsible for complying with all provisions of the DDA and will both be directly liable for all obligations under the DDA.

In the event the Developer is authorized to subcontract, this DDA shall prevail over and control any subcontracts including Consultant Agreements. Further, any and all subcontracts, including Consultant Agreements, entered into by the Developer shall reference and incorporate this DDA (including, but not limited to, the County's right to audit subcontractor's books and records), state that the County is a third party beneficiary of such subcontract, and require the subcontractors to comply with all applicable terms and provisions of this DDA including, without limitation, Sections 2.1 (compliance with Applicable Laws), 2.2, 2.7, 2.9, 2.10(d), 2.14, 2.15, 2.16, 3.4, 3.5, 3.6, 4.6, 9.6, 12.10, 12.11, 12.18, 12.20, and 12.21. In the manner in which the County expects to receive services, the County shall look to Developer for performance and shall have no obligation to deal directly with any subcontractor. All matters shall be funneled through the Developer, and all work must meet the approval of and be coordinated by the County as contemplated by this DDA. The County shall have final decision-making authority over all works performed under subcontracts by any and all subcontractors. County shall have the absolute right to participate in all aspects of the matters addressed in this DDA, including those performed by subcontractors.

11.5 **Attorney's Fees**. In any action or proceeding to enforce or interpret any provision of this DDA, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

11.6 **Authorization Warranty**. The Developer represents and warrants that the person executing this DDA on behalf of and for the Developer is an authorized agent who has actual authority to bind the Developer to each and every term, condition and obligation of this DDA and that all requirements of the Developer, if any, have been fulfilled to provide such actual authority.

11.7 **Calendar Days**. Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

11.8 **Change of Ownership**. The Developer agrees that if there is a change or transfer in direct ownership of Developer's business prior to completion of this DDA, the new owners shall be required under terms of sale or other transfer to assume Developer's duties and obligations contained in this DDA and complete them to the satisfaction of County. For the purposes of this DDA, the transfer, assignment or hypothecation, whether in one transaction or a series of transactions, of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) shall be deemed a transfer and a change of ownership under this Section and an assignment under Section 11.4, above, and will require the prior written consent of the County which consent may be withheld or granted in County's sole and absolute discretion. Notwithstanding the foregoing, with prior County written consent pursuant to Section 11.4, Developer may assign its interest in this DDA to any Subsidiary. At a minimum the Developer must be the managing member that controls (as defined in Section 1.27 hereof) the entity and directly owns fifty percent (50%) or more of the equity interest therein (a "**Subsidiary**") and Developer must demonstrate to the reasonable satisfaction of the Project Lead that the Subsidiary has sufficient net worth and relevant experience to ensure performance of

Developer's obligations under this Agreement. Further, Developer shall deliver to the County a copy of an assignment and assumption agreement by and between Developer and Subsidiary whereby Subsidiary agrees to assume all of the duties and obligations of Developer hereunder, for consideration by County when exercising its right to consent. The Entitlement Team shall not be disturbed by any assignment or change of ownership.

11.9 **Changes/Extra Work/Amendments**. Developer shall promptly notify County of any proposed changes in scope, schedule, budget, Business Plan or other material issues affecting the subject matter of this DDA that it believes are necessary or prudent. However, no changes to the scope, schedule, budget, Business Plan or other material items shall be made without the Project Lead's written consent, which may in some instances require Board approval. No material alteration or variation of the terms of this DDA shall be valid unless in writing and signed by the Parties and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties. In the event that there are new or unforeseen requirements, the County, with the Developer's concurrence, through the Project Lead has the discretion to request official changes to the scope, schedule, budget and Business Plan at any time without changing the intent of this DDA.

If Project Lead-initiated changes affect the Developer's ability to deliver services, or the Phase Schedule, the Developer shall give the County written notice no later than five (5) business days from the date the change was proposed and the Developer was notified of the change. Such changes shall be agreed to in writing and may be incorporated into a DDA amendment, if necessary, before becoming effective. Any amendment to this DDA will be subject to approval by the Board. Nothing herein shall prohibit the Developer from proceeding with the work set forth in the Business Plan, as may be modified from time to time by the Project Lead, without changing the intent of this DDA.

11.10 **Confidentiality**. The Developer agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this DDA. All such records and information shall be considered confidential and kept confidential by Developer and Developer's staff, agents and employees in the same manner Developer treats its proprietary information which it considers to be confidential. Information obtained by the Developer in the performance of this DDA shall be treated as proprietary and confidential and shall not be used by the Developer for any purpose other than the performance of this DDA. The requirements of this Section shall also be specifically imposed upon and apply to any subcontractors and subcontracts concerning the Project. However, no information shall be considered confidential if it is otherwise generally available to the public and/or otherwise public pursuant to applicable law.

11.11 **Conflict of Interest**. Board policy prohibits County employees from engaging in activities involving a conflict of interest. The Developer shall not during the term of this DDA employ any County employee for any purpose in relation to Developer's performance hereunder.

The Developer shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the County. This obligation shall apply to Developer, Developer's employees, agents, relatives, subcontractors, and third parties associated with accomplishing work and services hereunder.

The Developer's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations, which could be deemed to appear to influence individuals to act contrary to the best interest of the County. Developer shall also comply with any other conflict of interest laws, rule and regulations that may apply to their work on the Project, including those of the City. It is the responsibility of the Developer to be aware of and to comply with any such laws, rules or regulations. The requirements of this Section shall also be specifically imposed upon and apply to any subcontractors and subcontracts concerning the Project.

11.12 **Consent to Breach Not Waiver**. No term or provision of this DDA shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to waiver of, or excuse for any other different or subsequent breach.

11.13 **Orange County Child Support Enforcement**. Failure of the Developer to timely submit the data and/or certifications required may result in the DDA being awarded to another contractor. In the event a DDA has been issued, failure of the Developer to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the DDA. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the DDA. (See **Exhibit H** for further details).

11.14 **Force Majeure**. Neither Party shall be in default of this DDA during any delay beyond the time period for the performance of this DDA caused by a Force Majeure event; provided the Party claiming a delay gives written notice of the start of the delay to the other Party within ten (10) business days of the start of the delay and that Party avails itself of any available remedies. Force Majeure events do not extend the Phase 1 Outside Date.

11.15 **EDD Independent Contractor Reporting Requirements**. Effective January 1, 2001, the County is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays $600 or more or with whom the County enters into a DDA for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

11.16 **Governing Law and Venue**. This DDA 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 DDA, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

11.17 **Headings Not Controlling**. Headings used in the DDA are for reference purposes only and shall not be considered in construing this DDA.

11.18 **Indemnification and Insurance**. The obligations set forth below shall survive the termination of this Agreement.

11.18.1 Indemnification Provisions. The Developer shall indemnify, defend with counsel chosen by the Developer but subject to the County's reasonable written approval, and hold the County, its elected and appointed officials, officers, employees, agents and those special boards and agencies which the Board acts as the governing board ("**County Indemnitees**") harmless from any claims, demands, costs (including, without limitation, attorneys' fees), expenses, penalties or liability of any kind or nature (collectively, "**Claim(s)**"), including but not limited to personal injury or property damage, arising out of, pertaining to or relating to the services, products or other performance provided by Developer in performing its obligations pursuant to this DDA. If judgment is entered against Developer and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Developer and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Developer shall include specific provisions in any subcontracts requiring any Consultant or Contractor to indemnify the County consistent with this Section for any work done on the Project.

11.18.2 Insurance Requirements. Prior to the provision of services under this DDA, the Developer agrees to purchase all required insurance at Developer'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 DDA have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this DDA. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Consultants and general contractors/subcontractors (hereinafter referred to as "Developer Parties"), performing work on behalf of Developer pursuant to this DDA shall obtain insurance subject to the same terms and conditions exclusive of insurance limits as set forth herein for Developer. Subcontractor insurance limits will be established by mutual agreement between County and Developer.

Developer shall ensure that all Developer Parties performing work on behalf of Developer pursuant to this Agreement shall be covered under Developer's insurance or maintain insurance subject to the terms and conditions as set forth herein. Developer shall not allow any Developer Parties to commence work until the insurance requirements have been satisfied. It is the obligation of the Developer to provide notice of the insurance requirements to all Developer Parties and to obtain evidence of insurance prior to allowing any Developer Parties to commence work. Evidence of insurance must be maintained by Developer through the entirety of this Agreement for inspection by County at any reasonable time.

Developer will require Builders Risk insurance during any construction. The Builders Risk policy shall be written on a Special Causes of Loss Form with the exclusion of earthquake and flood. The limit of insurance shall be 100% of the completed project value with no coinsurance and replacement cost valuation.

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, Developer shall indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured

retention (SIR) in an amount in excess of $25,000 ($5,000 for automobile liability) carried by Developer or a Developer Party, shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Developer shall be responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of Developer Parties work hereunder, such Developer Party shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Developer and additional insureds.

If the Developer fails to maintain insurance required by this Agreement, the County may terminate this Agreement after providing Developer a thirty (30) day period in which to cure.

11.18.3 Qualified Insurer. The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**.

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

Insurance Requirements for Developer

Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence $2,000,000 aggregate

Insurance Requirements for Architects, Engineers and other Licensed Professionals

Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence

Professional Liability Insurance	$1,000,000 per claims made or per occurrence $2,000,000 aggregate

Insurance Requirements for Geotechnical contractors or other contractors in which soils may be disturbed

Contractor's Pollution Legal Liability	$1,000,000 per claims made or per occurrence $2,000,000 aggregate

If the Developer's insurance carrier is not an admitted carrier in the State of California and does not have an A.M. Best rating of A-/VII, 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. Developer is responsible to enforce this requirement with the Developer Parties.

11.18.4 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 equivalent liability coverage. The Business Auto Liability coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage.

11.18.5 Required Endorsements. The Commercial General Liability shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or an equivalent form naming the County, the members of the Board, its elected and appointed officials, officers, employees and agents as Additional Insureds.

2. A primary non-contributing endorsement evidencing that the Developer's insurance is primary and any insurance maintained by the 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 and members of the Board, its elected and appointed officials, officers, employees and agents.

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

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

11.18.6 Other Terms. Developer shall notify County in writing prior to any lapse of insurance coverage and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of this Agreement, upon which the County may suspend or terminate this Agreement.

If the Professional Liability policy is a "claims made" policy, Developer and/or the Developer Party shall agree to maintain professional liability coverage for three years following completion of the applicable contract.

The Developer is granted the option of procuring insurance under a single policy or by a combination of underlying policies with the balance provided by an excess or Umbrella policy with Follow Form coverage to the total per occurrence and aggregate limits required under this Agreement.

County will have the right, but not the obligation of prohibiting the Developer from entering the Property until such evidence of insurance has been submitted to the County.

Failure of County to demand delivery of or identify deficiency with such evidence of insurance shall not be construed as a waiver of Developer's obligations under this section.

By requiring insurance, the County does not represent that coverage and limits will necessarily be adequate to protect the Developer. Insurance procured by the Developer will not reduce or limit the Developer's contractual obligation to indemnify and defend the County as required by this Agreement or otherwise.

Developer shall not be relieved of its responsibility for any and all loss, damage or liability stemming from any risk or exposure that is not insured, or not covered within any deductibles or self-insured retentions, or not covered as a result of policy exclusions or limitations.

Insurance certificates should be forwarded to the Project Lead.

County expressly retains the right to request a change in insurance requirements. If so requested, Developer and County will strive to mutually agree to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by the County Risk Manager as appropriate to adequately protect County.

Following mutual agreement, Developer will then deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of procuring such revised insurance.

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

11.19 **Independent Contractor**. The Developer shall be considered an Independent Contractor, and neither Developer, its employees, nor anyone working under Developer shall be considered an agent or an employee of County. Neither Developer, its employees, nor anyone working under Developer, shall qualify for workers' compensation or other fringe benefits of any kind through County.

11.20 **Interpretation**. This DDA has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this DDA. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this DDA by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this DDA against the Party that has drafted it is not applicable and is waived.

The provisions of this DDA shall be interpreted in a reasonable manner to affect the purpose of the Parties and this DDA.

11.21 **Notices**. Any and all notices, requests, demands or other communications contemplated, called for, permitted or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the term of the work and services. Any written communication shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than three (3) business days after being mailed (the date of mailing shall count as the first day), whichever occurs first, by United States certified or registered mail, return receipt requested, postage prepaid, or the next business day after deposit, for which a receipt is given, with a reputable overnight business delivery service. All communication shall be addressed to the appropriate Party at the following address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid;

For Developer:	Name:	Lowe Enterprises Real Estate Group
	Address:	5555 Overland Avenue Suite 2311 San Diego, CA 92123
	Attn:	Michael W. McNerney
	Telephone:	(858) 565-7288
	Fax:	(858) 565-7290
	E-mail:	mmcnerney@loweenterprises.com
	Copy to:	Lowe Enterprises Real Estate Group 11777 San Vicente Boulevard, Suite 900 Los Angeles, CA 90049
	Attn:	Corporate Counsel and Richard G. Newman, Jr.
	Phone:	(310) 820-6661
	Fax:	(310) 820-8131
	Email:	jdemarco@loweenterprises.com

	and a Copy to:	Manatt, Phelps & Phillips, LLP 11355 W. Olympic Boulevard Los Angeles, CA 90064
	Attn:	Timi Anyon Hallem
	Phone:	(310) 312-4217
	Fax:	(310) 914-5844
	Email:	thallem@manatt.com
For County:	Name:	County of Orange County Executive Office 445 Civic Center Drive West Santa Ana, CA 92701-4084
	Attn:	James Campbell, Project Lead
	Phone:	(714) 667-9673
	Fax:	(714) 834-5355
	Email:	james.campbell@ocpw.ocgov.com
	Copy to:	County of Orange County Executive Office 333 West Santa Ana Boulevard, 3rd Floor Santa Ana, CA 92701-4084
	Attn:	Scott Mayer, Chief Real Estate Officer
	Phone:	(714) 834-2345
	Fax:	(714) 834-5355
	Email:	scott.mayer@ocgov.com
	and a copy to:	Orange County Counsel Office of the County Counsel 333 West Santa Ana Blvd., 4th Floor Santa Ana, CA 92702
	Attn:	Thomas (Mat) Miller
	Phone:	(714) 834-6019
	Fax:	(714) 834-2359
	Email:	thomas.miller@coco.ocgov.com

11.22 **Ownership of Documents**. The County has permanent ownership of all directly connected and derivative materials produced under this DDA by the Developer or any subcontractor (Developer shall ensure that any subcontracts contain this provision or reference to the obligations this Section). All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Developer other than on the Project without the express written consent of the County. The requirements of this Section shall also be specifically imposed upon and apply to any Consultants, subcontractors and subcontracts concerning the Project.

11.23 **Patent/Copyright Materials/Proprietary Infringement**. Unless otherwise expressly provided in this DDA, Developer shall be solely responsible for clearing the right to

use any patented or copyrighted materials in the performance of this DDA. Developer warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Developer agrees that, in accordance with the more specific requirement contained in Section 11.18 above, it shall indemnify, defend with counsel approved in writing, and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses. The Developer's obligations under this Section 11.23 shall survive termination of this Agreement.

11.24 **Precedence**. The DDA documents consist of this DDA and its Exhibits. In the event of a conflict between the DDA documents, the order of precedence shall be the provisions of the main body of this DDA (*i.e.*, those provisions set forth in the Recitals and Sections of this DDA), and then the Exhibits.

11.25 **Severability**. If any term, covenant, condition or provision of this DDA 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.

11.26 **Title to Data**. All materials, documents, data or information obtained from the County data files or any County medium furnished to the Developer in the performance of this DDA will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Developer after completion or termination of this DDA. All materials, documents, data or information, including copies, must be returned to the County at the end of this DDA.

11.27 **Use of Property**. The County shall have free use and control over the portion of the Property it owns or controls and all revenue generated by and from the same. Such use or revenue generating activities may include, without limitation, research and training activities and conveyances not otherwise violative of the express terms of this DDA. Subject thereto, with notice to Project Lead, Developer and the other members of the Entitlement Team shall have free access over the portion of the Property the County owns or controls during the term of this DDA for all purposes reasonably related to the obtaining of the Entitlements and the other matters addressed in this DDA.

11.28 **Validity**. The invalidity in whole or in part of any provision of this DDA shall not void or affect the validity of any other provision of the DDA.

11.29 **Waiver of Jury Trial**. to the extent permitted by applicable law, each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, to the extent permitted by applicable law, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this DDA and/or any other claim of injury or damage.

11.30 **Cross Defaults Under the Master Ground Lease**. A default (after notice and failure to cure in accordance with the terms of the Master Ground Lease) by Developer under the Master Ground Lease shall also constitute a default under this Agreement. Termination of this Agreement by either Party gives the County the right, in its sole and absolute discretion, to terminate the Master Ground Lease.

11.31 **Termination**. County has the right to terminate this DDA without penalty, immediately following the notice and cure opportunity, if any, specified in this Agreement if no cure is effected, and when termination is for cause as defined in this Agreement. Cause shall be defined as any knowing breach of this DDA, including without limitation, any misrepresentation or fraud on the part of the Developer and the other for cause circumstances expressly described in this Agreement. Exercise by County of its right to terminate the DDA for cause shall relieve County of all future obligations and shall not be deemed a breach under this Agreement. Except when this Agreement expressly provides for a payment to Developer in the event of a for cause termination, a termination of this Agreement for cause shall extinguish any rights of Developer under this Agreement including, without limitation, the right to receive payments or remedies that might otherwise be owed under this Agreement.

11.32 **Termination – Convenience of the County**. Except as expressly provided fo***r*** in this Agreement, County shall not terminate this Agreement without cause prior to Final Approval of Phase 1. Following Final Approval of Phase 1, the Board may terminate performance of work under this DDA for its convenience in whole, or, from time to time, in part if the Board determines that a termination is in the County's interest. The Project Lead shall terminate the DDA by delivering to the Developer a written notice of termination specifying the extent of the termination and the effective date thereof.

After receipt of a notice of termination and, except as directed by the Project Lead, the Developer shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Developer shall:

1. Stop work as specified in the notice of termination;

2. Place no further subcontractors or orders for materials, services, or facilities, except as necessary to complete the continued portion of the DDA;

3. Terminate all orders and subcontractors to the extent they relate to the work terminated;

4. Settle all outstanding liabilities arising from the termination of any subcontractors, the approval or ratification of which will be final for purposes of this clause;

5. As directed by the Project Lead transfer title and deliver to the County electronic and hard copies of (a) work in process, completed work, supplies, and other material produced or acquired for the Project, and (b) completed or partially completed plans, drawings, information, and other property that, if the DDA had been completed, would be required to be furnished to the County;

6. Complete performance of the work not terminated; and

7. Take any action that may be necessary or as the Project Lead may direct for the protection and preservation of the Property related to this DDA that is in the possession of the Developer and in which the County has or may acquire an interest and to mitigate any potential damages or requests for DDA adjustment or termination settlement to the maximum practical extent.

Unless expressly provided for in this Agreement, Developer shall not be entitled to anticipatory or unearned profits, consequential damages or any other damages of any sort as a result of a termination in whole or in part under this provision. Developer shall insert in all Consultant or subcontractor agreements that the Consultants or subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a notice of termination, and shall require Consultant or subcontractors to insert the same condition in any lower tier subcontracts. Notwithstanding anything to the contrary herein, to the extent applicable, Developer shall be entitled to the applicable remedies expressly provided for in Section 10 of this Agreement, or any notices provided for in Section 10.5 above.

11.33 **Employee Eligibility Verification**. The Developer warrants that it complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this DDA meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Developer shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. The Developer shall retain all such documentation for all covered employees for the period prescribed by the law. The Developer shall indemnify, defend with counsel reasonably approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Developer or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work for Developer under this DDA. The Developer's obligations under this Section 11.33 shall survive termination of this Agreement.

11.34 **Environmental Conditions**. The Parties acknowledge that the Property is part of the former Marine Corps Air Station ("**MCAS**") El Toro and that environmental conditions exist, including but not limited to the release of hazardous substances and petroleum compounds to soil and groundwater. MCAS El Toro is listed on the U.S. Environmental Protection Agency National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") and the Department of the Navy has taken, and is currently undertaking, corrective action pursuant to CERCLA, the Resource Conservation and Recovery Act, and associated state laws and regulations. Information regarding the environmental conditions has been provided by the County to Developer and additional investigation and assessment concerning the environmental condition is necessary and will be obtained by the Parties throughout the term of this Agreement. Developer acknowledges and accepts the disclosures, restrictions and obligations established by and identified in that certain Quitclaim Deed between the City and County dated August 29, 2011 and recorded in the Official Records of Orange County as document number 2013000367242 on June 18, 2013. The Developer acknowledges that subsequent quitclaim deeds and related documents that will impose obligations and encumber the Property will be recorded in connection with the conveyance of the

remainder of the Property to the County. To the extent possible, costs associated with investigating, assessing and addressing the environmental conditions shall be addressed in the Phase 1 Budget and the Phase 2 Budget as well as the cost overrun/savings provisions of this Agreement. With twenty (20) business days prior written notice to the other Party of its reasoning, so that the Parties may have an opportunity to meet and confer prior to a termination, either Party may terminate this Agreement for cause in the event that the environmental condition of the Property as described in this Section 11.34: (1) precludes development of an economically significant portion of the Property for anything other than a passive use such that development of the remainder of the Property is no longer economically viable, (2) causes unexpected material delays in the development of the Property which threaten the economic viability of the development of the Property; or (3) precludes the procurement of a Pollution Legal Liability insurance policy that (i) specifies the County and Developer as "named insureds," (ii) has a minimum 10-year term, (iii) has a project specific coverage limit of $20 million; (iv) provides coverage for on-site clean-up of pre-existing unknown and new conditions; (v) covers third party claims for on-site and off-site bodily injury and property damage resulting from new and pre-existing conditions and known pollutants; (v) includes third party coverage for non-owned locations; (vii) provides contingent transportation coverage; (viii) provides primary coverage; and (ix) can be amended to cover commercial and/or residential occupancy. Any and all other provisions and matters relative to the scope and substance of the Pollution Legal Liability insurance policy shall be determined by the County in its sole and absolute discretion. Any additional insured provisions as may assist in the marketing of the Property may be included in the Pollution Legal Liability insurance policy provided those provisions can be secured at no out-of-pocket cost to the County, other than customary office supplies. Unexpected delays associated with the investigation or remediation of environmental conditions on the Property may also serve as a basis for the Parties adjusting the Phase Schedules, including but not limited to any inability to access or investigate any portions of the Property as a result of limitations imposed by the environmental conditions or the United States Department of Defense ("**DOD**"). The County acknowledges and agrees to fully cooperate with Developer, at no out-of-pocket cost to the County other than customary office supplies, in pursing indemnification from the DOD for any suit, claim, demand, action, liability, judgment, cost or fee resulting from, or in any manner predicated upon, the release or threatened release of any hazardous substances, pollutant or contaminant, or petroleum or petroleum derivative as a result of DOD activities or inactivity.

11.35 **County Employees**. Developer agrees that it will neither negotiate, offer, nor give employment to any full-time, regular employee of County in professional classifications of the same skills required for the performance of this Agreement who is involved in this Project in a participatory status during the life of this Agreement regardless of the assignments said employee may be given or the days or hours employee may work with Developer.

[**Signature Block Is On The Following Page**]

IN WITNESS WHEREOF, the Parties hereto have executed this DDA on the dates shown opposite their respective signature below.

Date: _____

LOWE ENTERPRISES REAL ESTATE GROUP
a California corporation

By _____

Its _____

By _____

Its _____

(Pursuant to California Corporations Code Section 313, the signatures of two corporate officials are required to bind the corporation, one from each of the following two groups: (a) the chairman of the board, president, or any vice-president; (b) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described in Section 313. For County/County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.)

Date: _____

COUNTY OF ORANGE

By _____
Chair, Board of Supervisors
Orange County, California

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Resolution 79-1535

ATTEST:

_____
Susan Novak,
Clerk of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM:

COUNTY COUNSEL

By _____
Thomas Miller, Senior Deputy

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Exhibit A
Legal Description of Property

THAT CERTAIN PORTION OF LAND IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOT 285 AND LOT 286 OF BLOCK 140, AND LOT 284 OF BLOCK 155 OF IRVINE'S SUBDIVISION, RECORDED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WITHIN PARCEL '3A-2' OF "QUITCLAIM DEED AND ENVIRONMENTAL RESTRICTION" RECORDED JULY 12, 2005 AS INSTRUMENT NO. 2005000536292 OF OFFICIAL RECORDS OF SAID COUNTY AND AS SHOWN ON RECORD OF SURVEY 2007-1206, FILED IN BOOK 225, PAGES 29 THROUGH 42, INCLUSIVE OF RECORDS OF SURVEYS IN THE OFFICE OF SAID COUNTY RECORDER, SAID RECORD OF SURVEY BEING THE BASIS OF BEARINGS FOR THIS DESCRIPTION, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF THE A.T. & S.F. RAILROAD, (100' WIDE AS SHOWN ON SAID RECORD OF SURVEY), WITH THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "N40°39'34"E 5230.30'" ALONG THE NORTHWESTERLY LINE OF SAID LOT 286, SAID POINT OF COMMENCEMENT BEING THE MOST WESTERLY CORNER OF SAID PARCEL '3A-2', ALL AS SHOWN ON SAID RECORD OF SURVEY;

THENCE ALONG SAID NORTHWESTERLY LINE OF LOT 286, NORTH 40°39'34" EAST, 788.35 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 'G-3' OF THE "GREAT PARK DEVELOPMENT AGREEMENT" RECORDED JULY 12, 2005, AS INSTRUMENT NO. 2005000538136 OF OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 'G-3', SOUTH 49°47'34" EAST, 40.50 FEET TO THE **TRUE POINT OF BEGINNING;**

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE THE FOLLOWING 17 COURSES:

1. THENCE SOUTH 49°47'34" EAST, 177.72 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1448.00 FEET;

2. THENCE SOUTHEASTERLY 458.92 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°09'32";

3. THENCE SOUTH 67°57'06" EAST, 265.53 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1352.00 FEET;

4. THENCE SOUTHEASTERLY 419.03 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°45'29";

Exhibit A
Legal Description of Property

5. THENCE SOUTH 50°11'37" EAST, 533.21 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1352.00 FEET;

6. THENCE SOUTHEASTERLY 419.03 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°45'29";

7. THENCE SOUTH 32°26'08" EAST, 268.86, FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1448.00 FEET;

8. THENCE SOUTHEASTERLY 360.17 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°15'05" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 92.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 43°18'47" EAST;

9. THENCE SOUTHERLY 69.59 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 43°20'30" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 108.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 86°39'17" WEST;

10. THENCE SOUTHERLY 173.57 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92°04'57" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 92.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 05°25'40" WEST;

11. THENCE SOUTHEASTERLY 73.18 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°34'23";

12. THENCE SOUTH 49°51'17" EAST, 1660.14 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1352.00 FEET;

13. THENCE SOUTHEASTERLY 411.04 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°25'09";

14. THENCE SOUTH 32°26'08" EAST 229.96 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1448.00 FEET;

15. THENCE SOUTHEASTERLY 448.79 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°45'29";

Exhibit A
Legal Description of Property

16. THENCE SOUTH 50°11'37" EAST 362.63 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1448.00 FEET;

17. THENCE EASTERLY 830.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°52'15" TO THE SOUTHEASTERLY CORNER OF SAID PARCEL 'G-3', A RADIAL LINE TO SAID CORNER BEARS SOUTH 6°56'08" WEST;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 40°39'34" WEST, 908.14 FEET ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 'G-3' TO SAID NORTHEASTERLY RIGHT OF WAY LINE OF THE A.T. & S.F. RAILROAD;

THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE NORTH 49°20'21" WEST, 979.30 FEET TO THE SOUTHEASTERLY LINE OF THAT CERTAIN PARCEL 'HOME 1 (TRANSFER, BLDG. 319)' PER DOCUMENT RECORDED JULY 12, 2005, AS INSTRUMENT NO. 2005000536293, OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG SAID SOUTHEASTERLY LINE, NORTH 40°31'30" EAST, 55.94 FEET TO THE INTERSECTION OF SAID SOUTHEASTERLY LINE WITH THE NORTHWESTERLY PRODUCTION OF THE SOUTHWESTERLY LINE OF THAT PARCEL 'HOME 5 (TRANSFER, BLDG 360)' PER SAID INSTRUMENT NO. 2005000536293;

THENCE ALONG SAID NORTHWESTERLY PRODUCTION AND SOUTHWESTERLY LINE, SOUTH 49°14'50" EAST, 753.60 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 'HOME 5';

THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 'HOME 5' AND THE NORTHEASTERLY PRODUCTION THEREOF, NORTH 40°26'50" EAST, 363.13 FEET TO THE INTERSECTION OF LAST SAID LINE WITH THE SOUTHEASTERLY PRODUCTION OF THE NORTHEASTERLY LINE OF SAID PARCEL 'HOME 1' ;

THENCE ALONG LAST SAID SOUTHEASTERLY PRODUCTION AND ALONG LAST SAID NORTHEASTERLY LINE, NORTH 49°20'00" WEST, 1483.10' FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL 'HOME 1';

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL 'HOME-1', SOUTH 40°31'30" WEST, 418.01 FEET TO SAID NORTHEASTERLY RIGHT OF WAY LINE OF THE A.T. & S.F. RAILROAD;

THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE NORTH 49°20'21" WEST, 2669.08 FEET;

THENCE NORTH 40°36'59"EAST, 92.01 FEET;

Exhibit A
Legal Description of Property

THENCE NORTH 26°59'05"WEST, 849.25 FEET TO A LINE PARALLEL WITH AND DISTANT 415.01 FEET NORTHEASTERLY, (AS MEASURED AT RIGHT ANGLES), FROM SAID NORTHEASTERLY RIGHT OF WAY LINE;

THENCE ALONG SAID PARALLEL LINE, NORTH 49°20'21" WEST, 1841.00 FEET TO A LINE PARALLEL WITH AND DISTANT 40.50 FEET SOUTHEASTERLY, (AS MEASURED AT RIGHT ANGLES), FROM SAID NORTHWESTERLY LINE OF LOT 286;

THENCE, ALONG LAST SAID PARALLEL LINE, NORTH 40°39'34" EAST, 373.66 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 100.00 ACRES, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT F-1, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS, RIGHTS OF WAY AND EASEMENTS, IF ANY.

PREPARED BY ME OR UNDER MY SUPERVISION
ON JULY 14, 2010.

ANTHONY C. CUOMO
PLS 6042
LICENSE EXPIRATION DATE 06/30/11

Exhibit A
Legal Description of Property

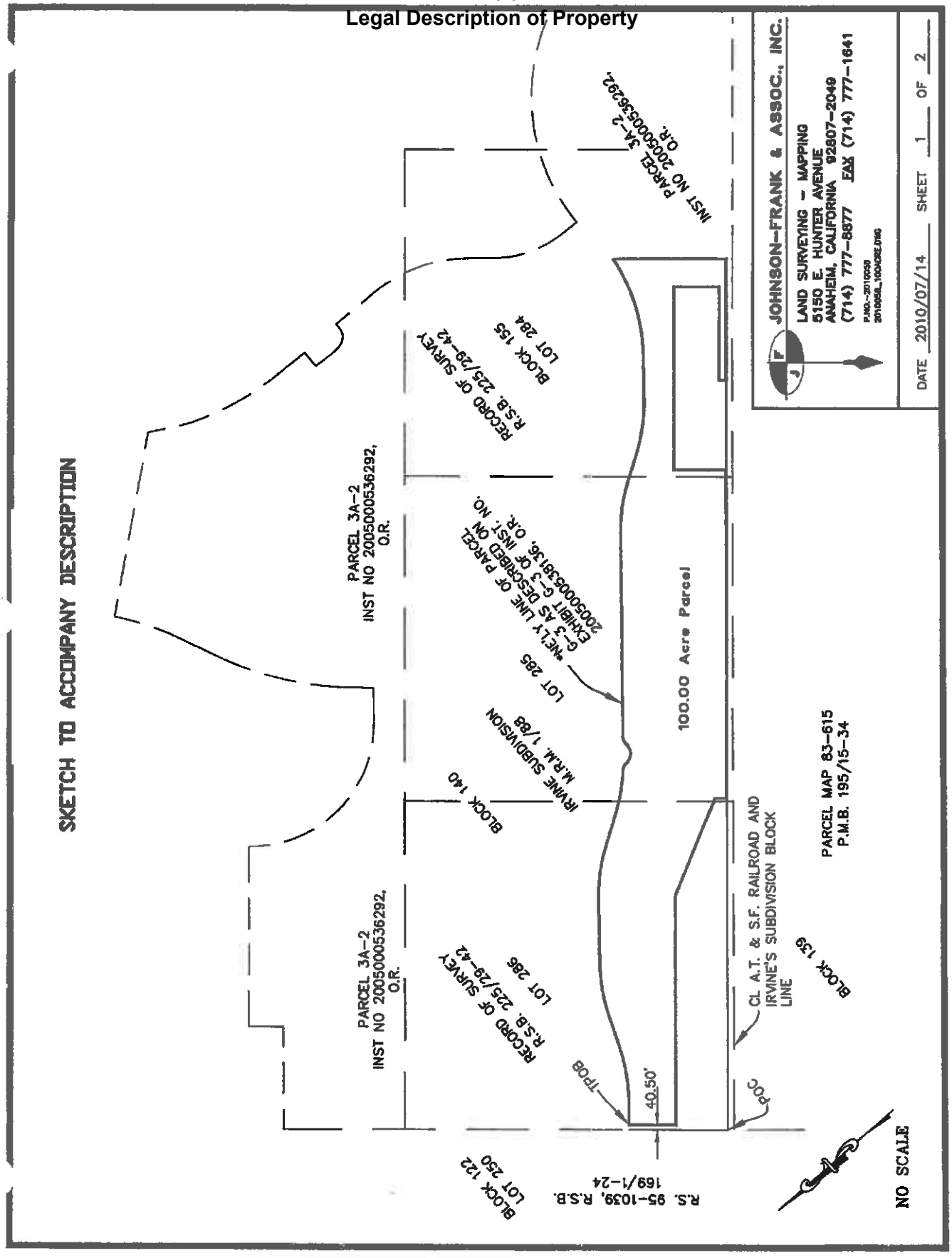
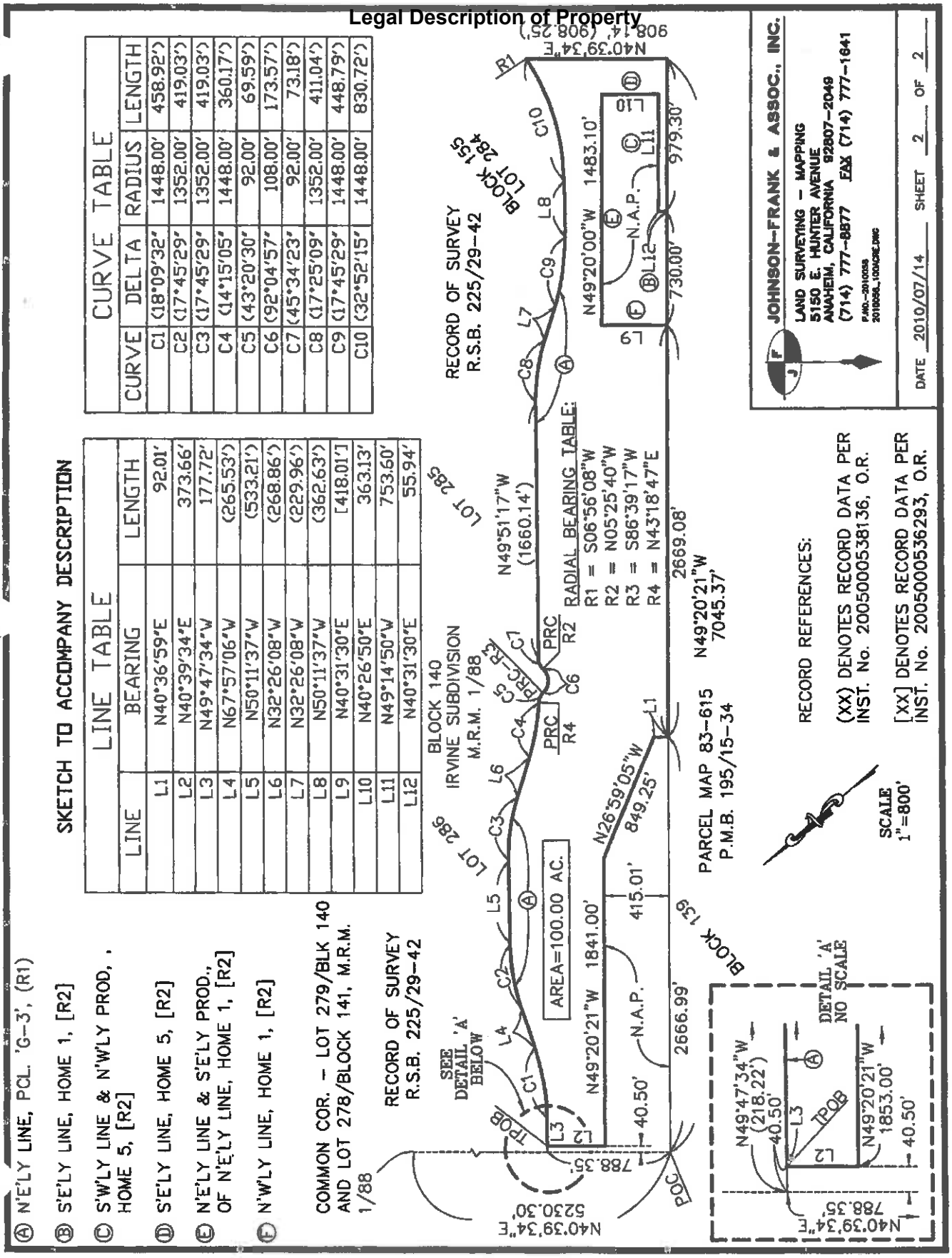


Exhibit A
Legal Description of Property



LINE TABLE

LINE	BEARING	LENGTH
L1	N40°36'59"E	92.01'
L2	N40°39'34"E	373.66'
L3	N49°47'34"W	177.72'
L4	N67°57'06"W	(265.53')
L5	N50°11'37"W	(533.21')
L6	N32°26'08"W	(268.86')
L7	N32°26'08"W	(229.96')
L8	N50°11'37"W	(362.63')
L9	N40°31'30"E	[418.01']
L10	N40°26'50"E	363.13'
L11	N49°14'50"W	753.60'
L12	N40°31'30"E	55.94'

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	(18°09'32")	1448.00'	458.92')
C2	(17°45'29")	1352.00'	419.03')
C3	(17°45'29")	1352.00'	419.03')
C4	(14°15'05")	1448.00'	360.17')
C5	(43°20'30")	92.00'	69.59')
C6	(92°04'57")	108.00'	173.57')
C7	(45°34'23")	92.00'	73.18')
C8	(17°25'09")	1352.00'	411.04')
C9	(17°45'29")	1448.00'	448.79')
C10	(32°52'15")	1448.00'	830.72')

Exhibit A
Legal Description of Property

LEGAL DESCRIPTION

Parcel G-4A

That portion of Parcel 2, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005, as Instrument No. 2005000536290 of Official Records, also being portions of Lot 274, Block 154, Lots 299, 300, and 302, Block 174 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southerly corner of Parcel 2 as described in the Grant Deed to the United States of America recorded December 5, 1986 as Instrument No. 86-597360 of said Official Records; thence along the westerly line of said Parcel 2, North 2°41'23" East 332.04 feet to the southwesterly line of said Lot 299 also being the southwesterly line of Parcel 3 described in the Grant Deed to the United States of America recorded July 29, 1976 in Book 11831, Page 1053 of said Official Records; thence along said southwesterly line; South 49°15'49" East 8.89 feet to the easterly line of Irvine Boulevard described as Parcel 192.02 in the Grant of Easement to the County of Orange recorded November 15, 1988 as Instrument No. 88-587111 of said Official Records; thence leaving said southwesterly lines along said easterly line and the easterly line of Parcel 199.21 of said Grant of Easement the following courses: North 2°41'23" East 444.89 feet to a tangent curve concave westerly having a radius of 2070.00 feet, northerly 117.76 feet along said curve through a central angle of 3°15'34", non-tangent from said curve on a radial line from the center of said curve, North 89°25'49" East 15.00 feet to a curve concave southwesterly being concentric to the last mentioned curve, having a radius of 2085.00 feet, a radial line to the beginning of said curve bears North 89°25'49" East, northwesterly 1774.14 feet along said curve through a central angle of 48°45'12" and tangent from said curve, North 49°19'23" West 71.37 feet to the southwesterly prolongation of that certain course in the Department of the Interior survey line shown on said Record of Survey No. 2007-1206 as " N40°22'37"E 1009.86' "; thence along said southwesterly prolongation, North 40°22'37" East 136.28 feet to the southwesterly terminus of said course; thence along said Department of the

Exhibit A
Legal Description of Property

Interior survey line the following courses: South 49°37'08" East 2277.13 feet, South 43°05'45" East 709.83 feet and North 74°19'01" East 103.60 feet to the southwesterly line of Parcel 5 as described in the Decree on Declaration of Taking recorded August 2, 1953 in Book 2567, Page 100 of said Official Records; thence along said southwesterly line, South 49°15'58" East 77.98 feet to the southerly line of said Parcel 3 described in said Grant Deed to the United States of America recorded July 29, 1976 in Book 11831, Page 1053 of said Official Records; thence along said southerly line South 70°30'46" West 1520.77 feet to the southwesterly line of said Parcel 3 also being said southwesterly line of Lot 299; thence along said southwesterly lines, North 49°15'49" West 282.44 feet to the easterly corner of said Parcel 2 described in said Grant Deed to the United States of America recorded December 5, 1986, said corner being on a non-tangent curve concave westerly having a radius of 1255.00 feet, a radial line to said curve bears South 75°24'14" East; thence southerly along the easterly line of said Parcel 2 a distance of 278.46 feet through a central angle of 12°42'46" to the **Point of Beginning.**

Excepting therefrom that portion lying within Parcel II-F as described in said Quitclaim Deed.

Also excepting therefrom any portion of said land lying within a 7.00 foot wide strip of land, the westerly line of said strip described as follows:

Beginning at the southerly corner of said Parcel 2 described in said Grant Deed to the United States of America recorded December 5, 1986; thence along the westerly line of said Parcel 2, North 2°41'23" East 332.04 feet to the southwesterly line of said of said Parcel 3 and said Lot 299.

The easterly line of said strip shall be prolonged or shortened northerly to terminate in said southwesterly line of Lot 299 and southerly to terminate in the easterly line of said Parcel 2 as described in said Grant Deed to the United States of America recorded December 5, 1986.

Contains an area of 20.153 acres, more or less.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Rory S. Williams

Rory S. Williams, L.S. No. 6654
License Expires: December 31, 2009
Date: 6/17/08

June 2, 2008
WO No. 1855-80X
Page 2 of 2
H&A Legal No. 7173
By: R. Wheeler
Checked By: J. Suess

Exhibit A
Legal Description of Property

LEGAL DESCRIPTION

Parcel G-4B

That portion of Parcel 2, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005, as Instrument No. 2005000536290 of Official Records, also being portions of Lot 300, Block 174 and Lot 313, Block 175 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all as shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southerly corner of Parcel 5 as described in the Decree on Declaration of Taking recorded August 2, 1953 in Book 2567, Page 100 of said Official Records; thence along the southwesterly line of said Parcel 5, North 49°15'58" West 1876.03 feet to an angle point in the Department of the Interior survey line as shown on said Record of Survey; thence along said survey line the following courses: South 84°39'33" East 132.95 feet, South 23°59'33" East 37.00 feet, North 65°30'27" East 184.71 feet, North 21°00'38" West 83.12 feet, North 69°01'28" East 155.00 feet, South 20°59'01" East 64.95 feet, North 67°20'25" East 612.09 feet, North 88°47'12" East 78.92 feet, North 64°39'40" East 290.62 feet, North 44°39'40" East 34.25 feet, North 75°54'40" East 257.59 feet, North 55°14'49" East 103.32 feet, North 79°45'32" East 265.63 feet, North 78°20'32" East 165.87 feet, North 82°24'51" East 320.35 feet and North 76°05'38" East 476.69 feet to the southeasterly line of said Lot 313, also being the northwesterly line of the Rancho Canada de Los Alisos; thence along said southeasterly line, the southeasterly line of said Lot 300 and said Rancho line, South 35°55'21" West 2559.18 feet to the **Point of Beginning.**

Excepting therefrom that portion lying within Parcel II-V as described in said Quitclaim Deed.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Rory S. Williams, L.S. No. 6654
License Expires: December 31, 2009
Date: 8/06/08

Revised: August 06, 2008
May 21, 2008
WO No. 1855-80X
Page 1 of 2
H&A Legal No. 7172
By: R. Wheeler
Checked By: J. Suess

Exhibit A
Legal Description of Property

LEGAL DESCRIPTION

Parcel II-F-A

That portion of Parcel II-F, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005 as Instrument No. 2005000536290 of Official Records, also being portions of Lot 274 Block 154 and Lot 299 Block 174 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southwesterly terminus of that certain course in the Department of the Interior survey line shown on said Record of Survey No. 2007-1206 as having a bearing and distance of " N40°22'37"E 1009.86' " (Course 1), also being an angle point in the general easterly line of said Parcel II-F; thence along said survey line and the easterly line of said Parcel II-F the following courses: South 49°37'08" East 2277.13 feet, South 43°05'45" East 709.83 feet, North 74°19'01" East 103.60 feet and South 49°15'58" East 77.98 feet; leaving said survey line and continuing along the southerly and the southwesterly lines of said Parcel II-F the following courses: South 70°30'46" West 549.50 feet and North 47°34'01" West 1755.02 feet to a point on the easterly line of Irvine Boulevard described as Parcel 199.21 in the Grant of Easement to the County of Orange recorded November 15, 1988 as Instrument No. 88-587111 of said Official Records, said point being on a non-tangent curve concave southwesterly having a radius of 2085.00 feet, a radial line to said point bears North 69°55'00" East; thence along said easterly line, northwesterly 1064.04 feet along said curve through a central angle of 29°14'23"; thence tangent from said curve, North 49°19'23" West 71.37 feet to the southwesterly prolongation of Course 1 described above; thence along said southwesterly prolongation, North 40°22'37" East 136.28 feet to the **Point of Beginning**.

Contains an area of 23.942 acres, more or less.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Joseph J. Suess

Joseph J. Suess, L.S. 6409
License Expires: December 31, 2008
Date: 7-7-2008

July 7, 2008
WO No. 1855-80X
Page 1 of 1
H&A Legal No. 7195
By: R. Wheeler
Checked By: J. Suess

Exhibit A
Legal Description of Property

PSOMAS

LEGAL DESCRIPTION

PARCEL II-V

In the City of Irvine, County of Orange, State of California, being portions of Lot 300 of Block 174 and Lot 313 of Block 175 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Beginning at the intersection of the "Department of Interior Survey Line" as shown on sheet 13 on said Record of Survey with the southeasterly line of said Block 175; thence South 35°55'17" West 1775.84 feet along said southwesterly line; thence leaving said southwesterly line North 77°03'31" West 1372.06 feet; thence North 69°59'03" West 113.12 feet; thence North 60°13'02" West 187.23 feet to the beginning of a non-tangent curve concave westerly having a radius of 280.00 feet; a radial bearing to said beginning bears South 53°33'35" East; thence southwesterly along said curve 65.49 feet through a central angle of 13°24'01"; to a point on the southwesterly line of Lot 300; thence North 49°16'11" West 304.19 feet along said southwesterly line to the westerly terminus of that certain course in said "Department of Interior Survey Line" having a bearing and distance of "North 84°39'33" West 132.97 feet" as shown on sheet 13 of said Record of Survey; thence along said "Department of Interior Survey Line" the following 16 courses:

1) South 84°39'33" East 132.97 feet;
2) South 23°59'33" East 37.00 feet;
3) North 65°30'27" East 184.71 feet;
4) North 21°00'30" West 83.12 feet;
5) North 68°59'30" East 155.00 feet;
6) South 21°00'30" East 65.00 feet;
7) North 67°20'15" East 612.07 feet;

Exhibit A
Legal Description of Property

PSOMAS

8) North 88°45'15" East 78.87 feet;
9) North 64°40'15" East 290.62 feet;
10) North 44°40'15" East 34.25 feet;
11) North 75°55'15" East 257.59 feet;
12) North 55°15'15" East 103.32 feet;
13) North 79°45'15" East 265.63 feet;
14) North 78°20'15" East 165.87 feet;
15) North 82°25'15" East 320.43 feet;
16) North 76°05'15" East 476.64 feet to the point of beginning.

Containing 43.004 acres (1,873,279.13 sq. ft.), more or less.

Subject to covenants, conditions and restrictions, rights-of-way and easements of record, if any.

As shown on exhibit attached hereto and made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyor's Act.

Peter J. Fitzpatrick 2/5/05

Peter J. Fitzpatrick, P.L.S. 6777 — Date

Expires 9/30/06

REVIEWED BY CADASTRAL — RWS

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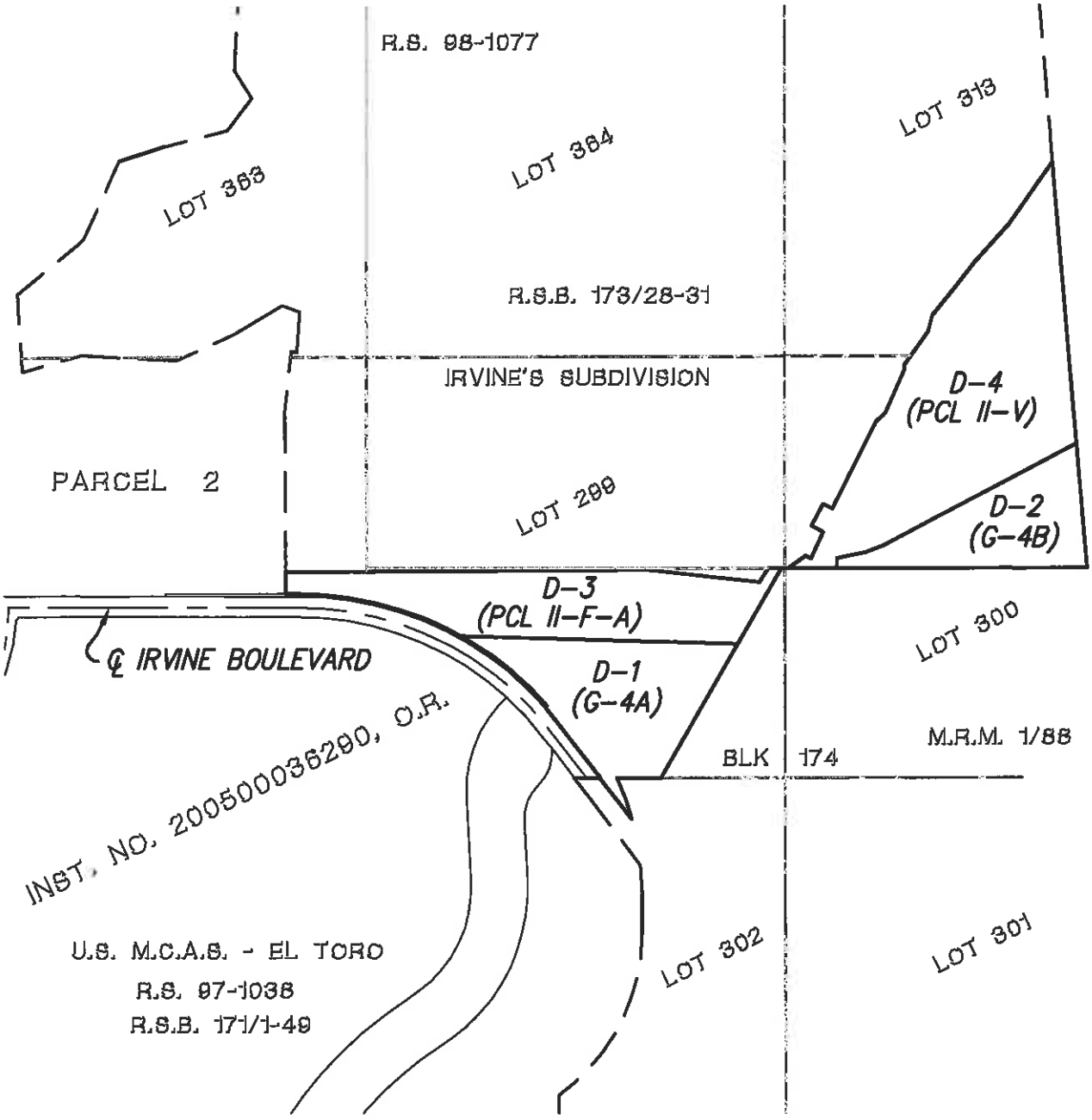
Last printed 2/3/2005 8:08 PM

Exhibit A
Legal Description of Property



FUSCOE ENGINEERING
16795 Von Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

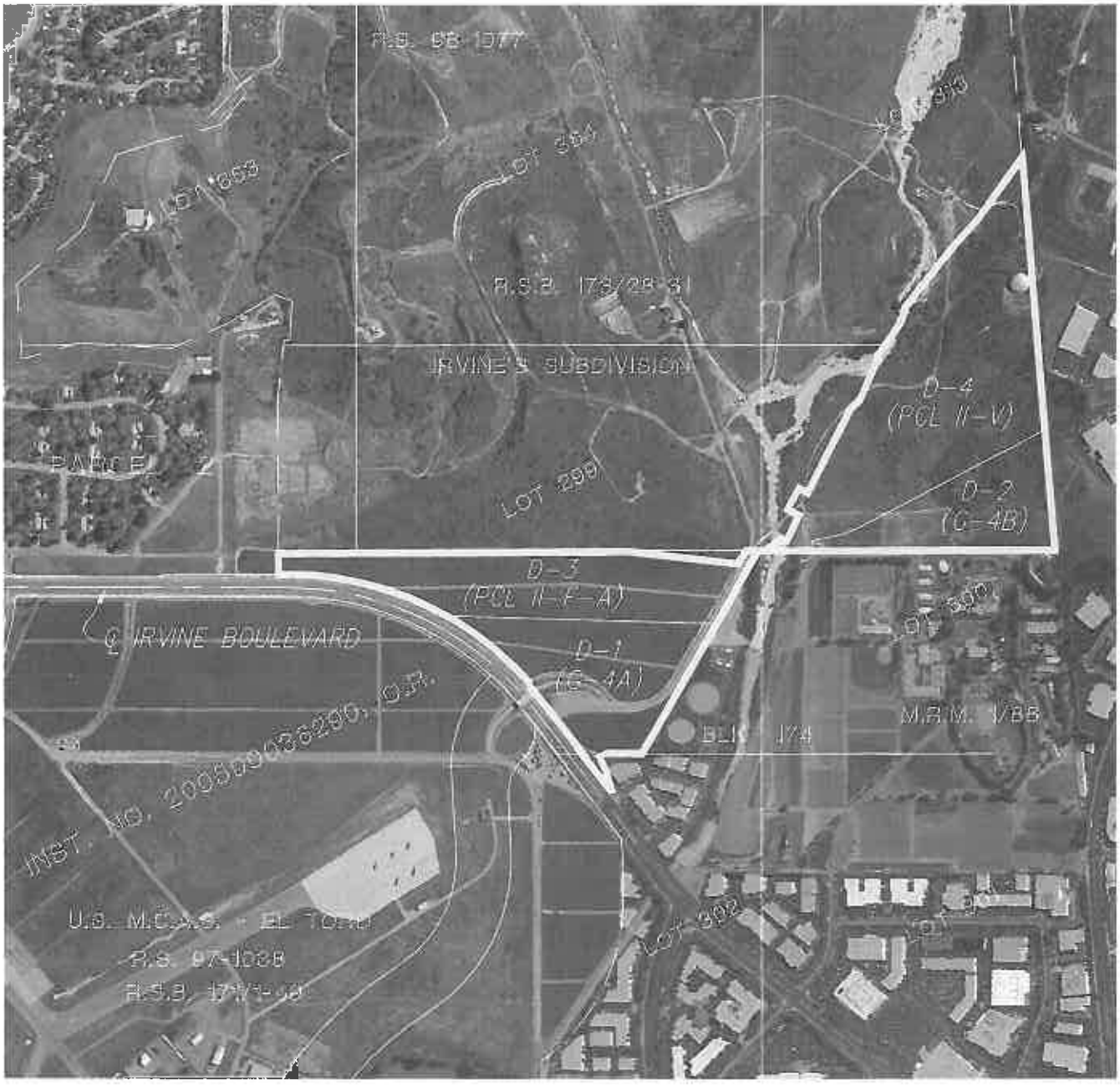
AGRICULTURAL/HABITAT MITIGATION AND ALTON PARKWAY EXTENSION
CITY OF IRVINE, ORANGE COUNTY, CALIFORNIA

DATE: 11/03/08
SCALE: 1"=1000'
JN: 855.0201
DRAWN: RJL
CHECKED: JO

1 OF 1

M:\MAPPING\855\02\LEGALS\85502 EXH D.DWG (12-01-08)

Exhibit A
Legal Description of Property



FUSCOE ENGINEERING
16795 Von Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

AGRICULTURAL/HABITAT MITIGATION AND ALTON PARKWAY EXTENSION
CITY OF IRVINE, ORANGE COUNTY, CALIFORNIA

DATE: 11/03/08
SCALE: 1"=1000'
JN: 855.0201
DRAWN: RJL
CHECKED: JO

1 OF 1

M:\MAPPING\855\02\LEGALS\85502 EXH E.DWG (12-01-08)

EXHIBIT A-1

CONCEPTUAL DEPICTION OF LEASABLE MASTER GROUND LEASE AREA

Exhibit A-1
Conceptual Depiction of Leasable Master Ground Lease Area

Exhibit A

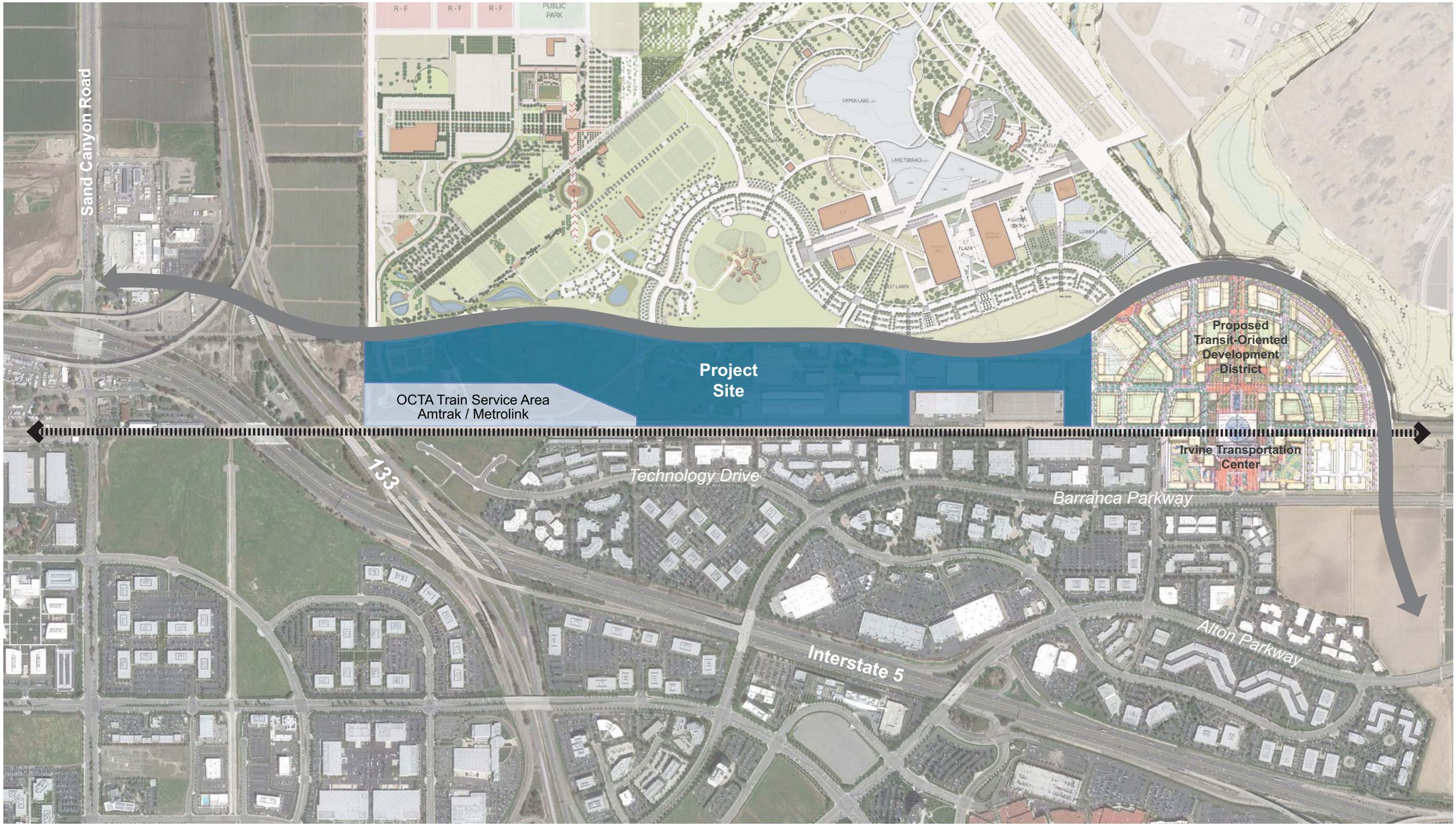


EXHIBIT B

LEGAL DESCRIPTION OF ALTON PARCELS

Exhibit B
Legal Description for Alton Parcels

LEGAL DESCRIPTION

Parcel G-4A

That portion of Parcel 2, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005, as Instrument No. 2005000536290 of Official Records, also being portions of Lot 274, Block 154, Lots 299, 300, and 302, Block 174 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southerly corner of Parcel 2 as described in the Grant Deed to the United States of America recorded December 5, 1986 as Instrument No. 86-597360 of said Official Records; thence along the westerly line of said Parcel 2, North 2°41'23" East 332.04 feet to the southwesterly line of said Lot 299 also being the southwesterly line of Parcel 3 described in the Grant Deed to the United States of America recorded July 29, 1976 in Book 11831, Page 1053 of said Official Records; thence along said southwesterly line; South 49°15'49" East 8.89 feet to the easterly line of Irvine Boulevard described as Parcel 192.02 in the Grant of Easement to the County of Orange recorded November 15, 1988 as Instrument No. 88-587111 of said Official Records; thence leaving said southwesterly lines along said easterly line and the easterly line of Parcel 199.21 of said Grant of Easement the following courses: North 2°41'23" East 444.89 feet to a tangent curve concave westerly having a radius of 2070.00 feet, northerly 117.76 feet along said curve through a central angle of 3°15'34", non-tangent from said curve on a radial line from the center of said curve, North 89°25'49" East 15.00 feet to a curve concave southwesterly being concentric to the last mentioned curve, having a radius of 2085.00 feet, a radial line to the beginning of said curve bears North 89°25'49" East, northwesterly 1774.14 feet along said curve through a central angle of 48°45'12" and tangent from said curve, North 49°19'23" West 71.37 feet to the southwesterly prolongation of that certain course in the Department of the Interior survey line shown on said Record of Survey No. 2007-1206 as " N40°22'37"E 1009.86' "; thence along said southwesterly prolongation, North 40°22'37" East 136.28 feet to the southwesterly terminus of said course; thence along said Department of the

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By: R. Wheeler
Checked By: J. Suess

Exhibit B
Legal Description for Alton Parcels

Interior survey line the following courses: South 49°37'08" East 2277.13 feet, South 43°05'45" East 709.83 feet and North 74°19'01" East 103.60 feet to the southwesterly line of Parcel 5 as described in the Decree on Declaration of Taking recorded August 2, 1953 in Book 2567, Page 100 of said Official Records; thence along said southwesterly line, South 49°15'58" East 77.98 feet to the southerly line of said Parcel 3 described in said Grant Deed to the United States of America recorded July 29, 1976 in Book 11831, Page 1053 of said Official Records; thence along said southerly line South 70°30'46" West 1520.77 feet to the southwesterly line of said Parcel 3 also being said southwesterly line of Lot 299; thence along said southwesterly lines, North 49°15'49" West 282.44 feet to the easterly corner of said Parcel 2 described in said Grant Deed to the United States of America recorded December 5, 1986, said corner being on a non-tangent curve concave westerly having a radius of 1255.00 feet, a radial line to said curve bears South 75°24'14" East; thence southerly along the easterly line of said Parcel 2 a distance of 278.46 feet through a central angle of 12°42'46" to the **Point of Beginning.**

Excepting therefrom that portion lying within Parcel II-F as described in said Quitclaim Deed.

Also excepting therefrom any portion of said land lying within a 7.00 foot wide strip of land, the westerly line of said strip described as follows:

Beginning at the southerly corner of said Parcel 2 described in said Grant Deed to the United States of America recorded December 5, 1986; thence along the westerly line of said Parcel 2, North 2°41'23" East 332.04 feet to the southwesterly line of said of said Parcel 3 and said Lot 299.

The easterly line of said strip shall be prolonged or shortened northerly to terminate in said southwesterly line of Lot 299 and southerly to terminate in the easterly line of said Parcel 2 as described in said Grant Deed to the United States of America recorded December 5, 1986.

Contains an area of 20.153 acres, more or less.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Rory S. Williams

Rory S. Williams, L.S. No. 6654
License Expires: December 31, 2009
Date: 6/17/08

June 2, 2008
WO No. 1855-80X
Page 2 of 2
H&A Legal No. 7173
By: R. Wheeler
Checked By: J. Suess

Exhibit B
Legal Description for Alton Parcels

LEGAL DESCRIPTION

Parcel G-4B

That portion of Parcel 2, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005, as Instrument No. 2005000536290 of Official Records, also being portions of Lot 300, Block 174 and Lot 313, Block 175 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all as shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southerly corner of Parcel 5 as described in the Decree on Declaration of Taking recorded August 2, 1953 in Book 2567, Page 100 of said Official Records; thence along the southwesterly line of said Parcel 5, North 49°15'58" West 1876.03 feet to an angle point in the Department of the Interior survey line as shown on said Record of Survey; thence along said survey line the following courses: South 84°39'33" East 132.95 feet, South 23°59'33" East 37.00 feet, North 65°30'27" East 184.71 feet, North 21°00'38" West 83.12 feet, North 69°01'28" East 155.00 feet, South 20°59'01" East 64.95 feet, North 67°20'25" East 612.09 feet, North 88°47'12" East 78.92 feet, North 64°39'40" East 290.62 feet, North 44°39'40" East 34.25 feet, North 75°54'40" East 257.59 feet, North 55°14'49" East 103.32 feet, North 79°45'32" East 265.63 feet, North 78°20'32" East 165.87 feet, North 82°24'51" East 320.35 feet and North 76°05'38" East 476.69 feet to the southeasterly line of said Lot 313, also being the northwesterly line of the Rancho Canada de Los Alisos; thence along said southeasterly line, the southeasterly line of said Lot 300 and said Rancho line, South 35°55'21" West 2559.18 feet to the **Point of Beginning.**

Excepting therefrom that portion lying within Parcel II-V as described in said Quitclaim Deed.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Rory S. Williams, L.S. No. 6654
License Expires: December 31, 2009
Date: 8/06/08

LICENSED LAND SURVEYOR
RORY S. WILLIAMS
No. 6654
Exp. 12/31/09
STATE OF CALIFORNIA

Revised: August 06, 2008
May 21, 2008
WO No. 1855-80X
Page 1 of 2
H&A Legal No. 7172
By: R. Wheeler
Checked By: J. Suess

Exhibit B
Legal Description for Alton Parcels

LEGAL DESCRIPTION

Parcel II-F-A

That portion of Parcel II-F, in the City of Irvine, County of Orange, State of California, as described in the Quitclaim Deed recorded July 12, 2005 as Instrument No. 2005000536290 of Official Records, also being portions of Lot 274 Block 154 and Lot 299 Block 174 of Irvine's Subdivision as shown on a map recorded in Book 1, Page 88 of Miscellaneous Record Maps, both in the office of the County Recorder of said county, all shown on Record of Survey No. 2007-1206 filed in Book 225, Pages 29 through 42, inclusive, of Record of Surveys in the office of said County Recorder, described as follows:

Beginning at the southwesterly terminus of that certain course in the Department of the Interior survey line shown on said Record of Survey No. 2007-1206 as having a bearing and distance of " N40°22'37"E 1009.86' " (Course 1), also being an angle point in the general easterly line of said Parcel II-F; thence along said survey line and the easterly line of said Parcel II-F the following courses: South 49°37'08" East 2277.13 feet, South 43°05'45" East 709.83 feet, North 74°19'01" East 103.60 feet and South 49°15'58" East 77.98 feet; leaving said survey line and continuing along the southerly and the southwesterly lines of said Parcel II-F the following courses: South 70°30'46" West 549.50 feet and North 47°34'01" West 1755.02 feet to a point on the easterly line of Irvine Boulevard described as Parcel 199.21 in the Grant of Easement to the County of Orange recorded November 15, 1988 as Instrument No. 88-587111 of said Official Records, said point being on a non-tangent curve concave southwesterly having a radius of 2085.00 feet, a radial line to said point bears North 69°55'00" East; thence along said easterly line, northwesterly 1064.04 feet along said curve through a central angle of 29°14'23"; thence tangent from said curve, North 49°19'23" West 71.37 feet to the southwesterly prolongation of Course 1 described above; thence along said southwesterly prolongation, North 40°22'37" East 136.28 feet to the **Point of Beginning**.

Contains an area of 23.942 acres, more or less.

As shown on Exhibit "D" attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, rights-of-way and easements, if any, of record.

Prepared by me or under my direction.

Joseph J. Suess

Joseph J. Suess, L.S. 6409
License Expires: December 31, 2008
Date: 7-7-2008

LICENSED LAND SURVEYOR
Joseph J. Suess
Exp. 12/31/08
No. 6409
STATE OF CALIFORNIA

July 7, 2008
WO No. 1855-80X
Page 1 of 1
H&A Legal No. 7195
By: R. Wheeler
Checked By: J. Suess

Exhibit B
Legal Description for Alton Parcels

PSOMAS

LEGAL DESCRIPTION

PARCEL II-V

In the City of Irvine, County of Orange, State of California, being portions of Lot 300 of Block 174 and Lot 313 of Block 175 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Beginning at the intersection of the "Department of Interior Survey Line" as shown on sheet 13 on said Record of Survey with the southeasterly line of said Block 175; thence South 35°55'17" West 1775.84 feet along said southwesterly line; thence leaving said southwesterly line North 77°03'31" West 1372.06 feet; thence North 69°59'03" West 113.12 feet; thence North 60°13'02" West 187.23 feet to the beginning of a non-tangent curve concave westerly having a radius of 280.00 feet; a radial bearing to said beginning bears South 53°33'35" East; thence southwesterly along said curve 65.49 feet through a central angle of 13°24'01"; to a point on the southwesterly line of Lot 300; thence North 49°16'11" West 304.19 feet along said southwesterly line to the westerly terminus of that certain course in said "Department of Interior Survey Line" having a bearing and distance of "North 84°39'33" West 132.97 feet" as shown on sheet 13 of said Record of Survey; thence along said "Department of Interior Survey Line" the following 16 courses:

1) South 84°39'33" East 132.97 feet;
2) South 23°59'33" East 37.00 feet;
3) North 65°30'27" East 184.71 feet;
4) North 21°00'30" West 83.12 feet;
5) North 68°59'30" East 155.00 feet;
6) South 21°00'30" East 65.00 feet;
7) North 67°20'15" East 612.07 feet;

Exhibit B
Legal Description for Alton Parcels

PSOMAS

8) North 88°45'15" East 78.87 feet;
9) North 64°40'15" East 290.62 feet;
10) North 44°40'15" East 34.25 feet;
11) North 75°55'15" East 257.59 feet;
12) North 55°15'15" East 103.32 feet;
13) North 79°45'15" East 265.63 feet;
14) North 78°20'15" East 165.87 feet;
15) North 82°25'15" East 320.43 feet;
16) North 76°05'15" East 476.64 feet to the point of beginning.

Containing 43.004 acres (1,873,279.13 sq. ft.), more or less.

Subject to covenants, conditions and restrictions, rights-of-way and easements of record, if any.

As shown on exhibit attached hereto and made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyor's Act.

Peter J. Fitzpatrick 2/5/05

Peter J. Fitzpatrick, P.L.S. 6777 — Date

Expires 9/30/06

REVIEWED BY CADASTRAL — RWS

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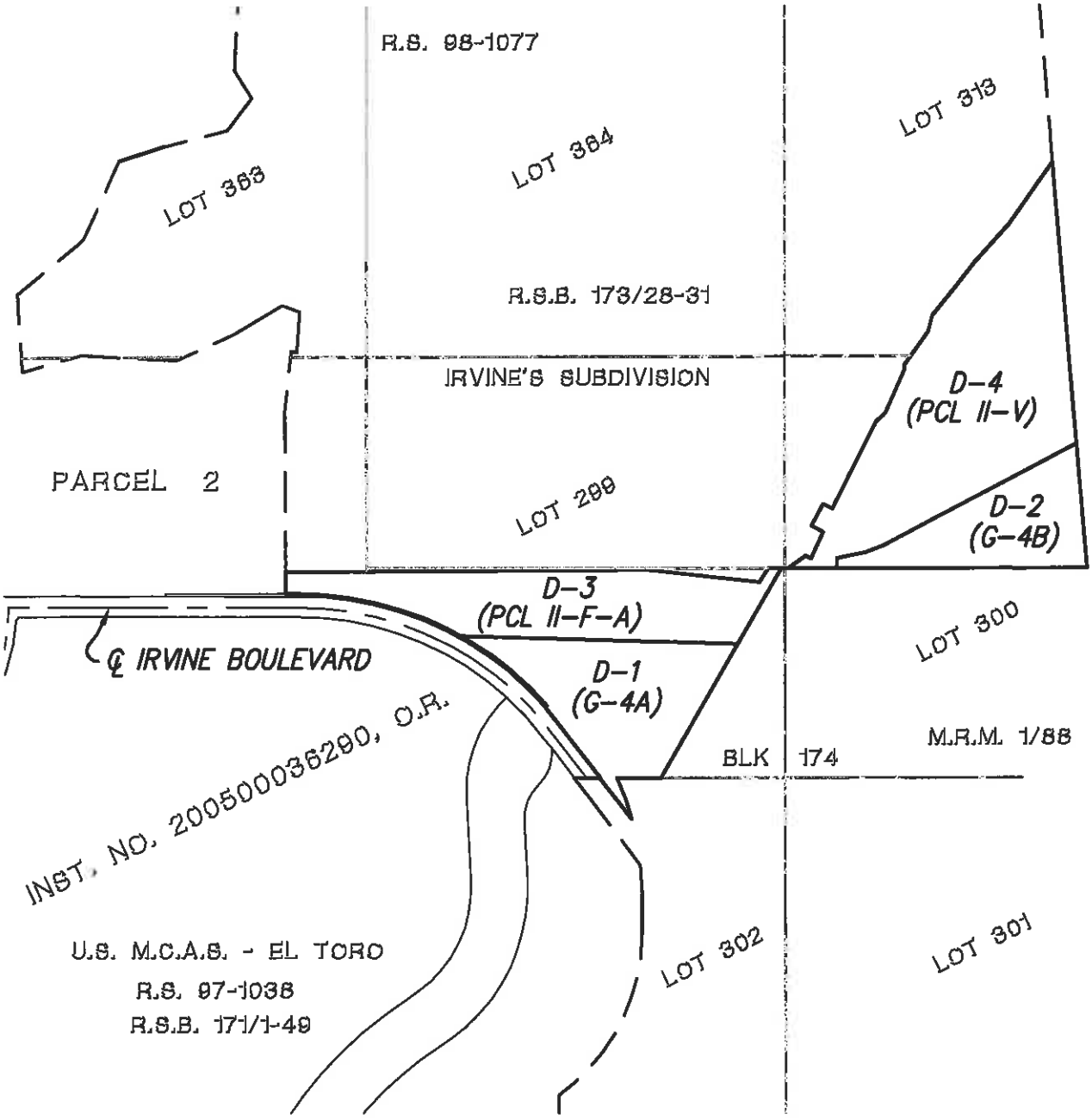
Exhibit B
Legal Description for Alton Parcels



FUSCOE ENGINEERING
16795 Von Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

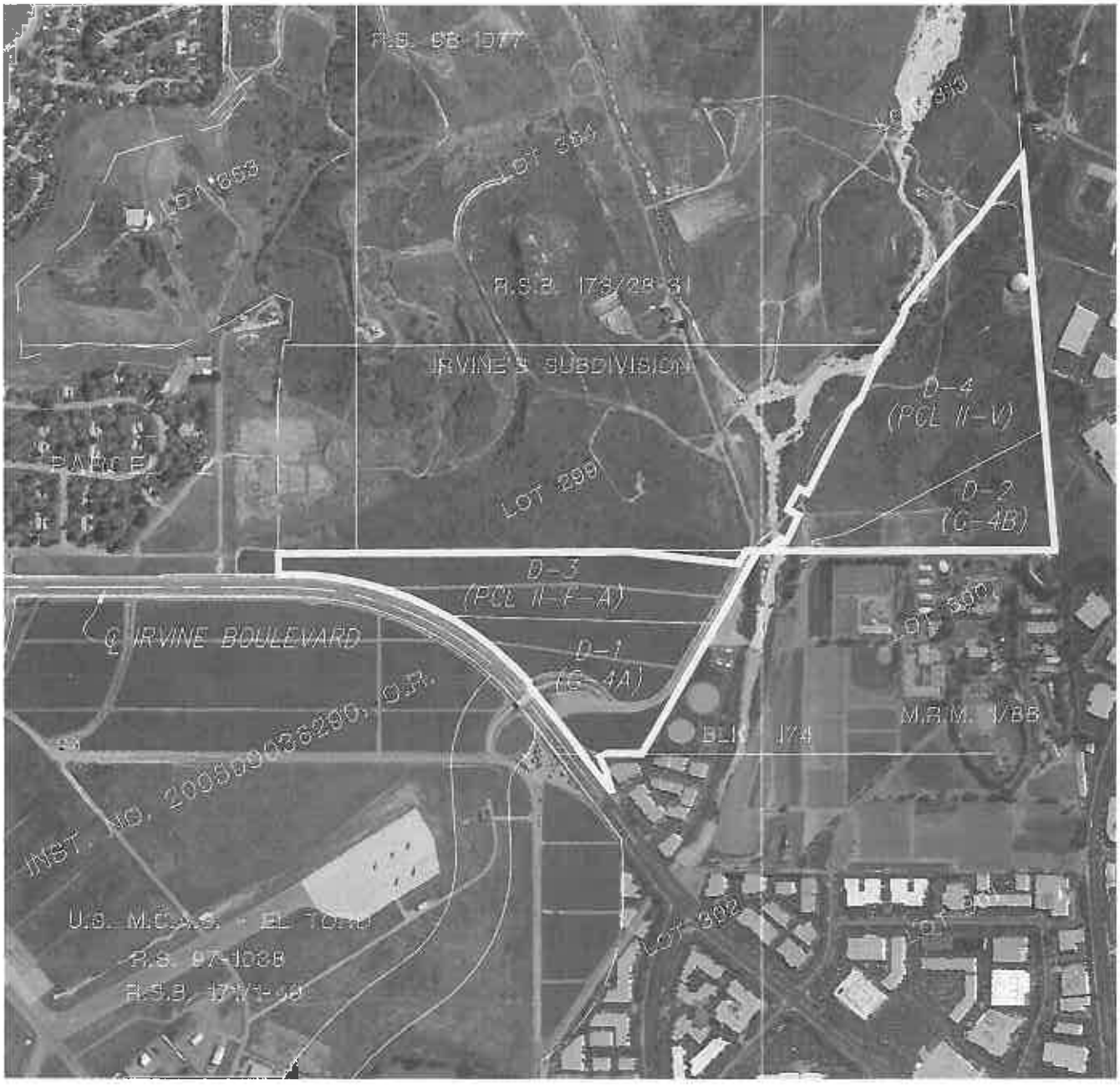
AGRICULTURAL/HABITAT MITIGATION AND ALTON PARKWAY EXTENSION
CITY OF IRVINE, ORANGE COUNTY, CALIFORNIA

DATE: 11/03/08
SCALE: 1"=1000'
JN: 855.0201
DRAWN: RJL
CHECKED: JO

1 OF 1

M:\MAPPING\855\02\LEGALS\85502 EXH D.DWG (12-01-08)

Exhibit B
Legal Description for Alton Parcels



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AGRICULTURAL/HABITAT MITIGATION AND ALTON PARKWAY EXTENSION
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CHECKED: JO

1 OF 1

M:\MAPPING\855\02\LEGALS\85502 EXH E.DWG (12-01-08)

EXHIBIT C

ENTITLEMENTS TEAM CONSULTING COMPANIES

EXHIBIT C

ENTITLEMENT TEAM CONSULTING COMPANIES

INITIAL LIST OF CONSULTANTS TO BE SUPPLEMENTED WITH EACH BUSINESS PLAN UPDATE

Discipline	Consulting Companies
Appraisal (County to select)	TBD
As-builting of Existing Conditions	TBD
Branding/Logo/Collateral	TBD
City Consultant	Terry Hartman
Civil Engineering	Tait & Associates
Community Outreach	TBD
Dry Utilities	Morrow Management
EIR Preparation	Bon Terra Consulting
Environmental (EPA Base Closure)	TBD
Environmental Due Diligence	Geosyntec
Erosion Control/SWPPP	TBD
OCFA Consultant	TBD
Geotechnical	TBD
Government Relations/Public Affairs	TBD
Land Planning	KTGY
Landscape Architect	TBD
Land Use Advisory Services	TBD
Market Analysis	TBD

Offsite Engineering Studies	TBD
Public Financing Consultant	TBD
Utility Studies	TBD
Sustainability Consultant	TBD
Traffic (EIR)	Fehr & Peers
Traffic (On site circulation planning)	Fehr & Peers
Transportation Planning/Finance	TBD

EXHIBIT D

GROUND LEASE FORM

Exhibit D
GROUND LEASE

THIS GROUND LEASE ("**Lease**") is made and effective as of the ___ day of _____ ("**Effective Date**"), by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called "**County**") and _____, a _____ (hereinafter called "**Tenant**") (each a "**Party**" and collectively, the "**Parties**").

Recitals

A. County is the fee owner of the Premises (as hereinafter defined);

B. Tenant and County desire that Tenant shall ground lease the Premises from County on the terms set forth herein; and

C. County and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

NOW, THEREFORE, in consideration of the above recitals which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, County and Tenant mutually agree to the following:

ARTICLE I
DEFINITIONS

1.1 **Definitions**: The following defined terms used in this Lease shall have the meanings set forth below. Other terms are defined in other provisions of this Lease, and shall have the definitions given to such terms in such other provisions.

1.1.1. "**Additional Rent**" shall have the meaning set forth in Section 3.12.

1.1.2. "**Adjustment Date**" shall have the meaning set forth in Section 3.4.2.

1.1.3. "**Affiliate**" means, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

1.1.4. "**Aggregate Transfer**" shall refer to the total percentage of the shares of stock, partnership interests, membership interests, or any other equity interests (which other equity interests constitute "Beneficial Residual Interests" in Tenant) transferred or assigned in one transaction or a series of related transactions (other than an Excluded Transfer) occurring since the latest of (a) the Effective Date, (b) the execution by Tenant of this Lease, or (c) the most recent Tenant Ownership Change; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of "Aggregate Transfer."

1.1.5. "**Appraised Value**" means the agreed upon value of the Premises determined by an Appraisal or Appraisals in accordance with Article III, hereof.

1.1.6. "**Basic Rent**" means the annual rent payable commencing on the Stabilization Date.

Exhibit D

1.1.7. "**Beneficial Residual Interest**" shall refer to the ultimate direct or indirect ownership interests in Tenant, regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies, or trusts. With respect to an Aggregate Transfer, in lieu of deducting the Improvement Costs (or Successor's Improvement Costs, as the case may be) in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or that was transferred in the past but constitutes a portion of an Aggregate Transfer shall be deducted; provided, however, that the amount so deducted shall in no event be less than the pro-rata share of the Improvement Costs (or Successor's Improvement Costs, as the case may be) as of the respective date of the transfer of each interest in the aggregation pool. Furthermore, in the event that any such Tenant Ownership Change produces a Net Proceeds Share, the then-existing Improvement Costs (or Successor's Improvement Costs, as the case may be) shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Tenant on a transfer of a comparable interest in this Lease.

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

1.1.9. "**Certificate of Occupancy**" means a temporary or final certificate of occupancy (or other equivalent entitlement, however designated) which entitles Tenant to commence normal operation and occupancy of the Improvements.

1.1.10. "**City**" means the City of Irvine, State of California.

1.1.11. "**Claims**" means liens, claims, demands, suits, judgments, liabilities, damages, fines, losses, penalties, costs and expenses (including without limitation reasonable attorneys fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.12. "**Commencement Date**" means the same as the Effective Date.

1.1.13. "**Completion Deadline**" means the date which is forty-two (42) months following the Commencement Date.

1.1.14. "**Construction Rent Period**" means the twelve month period commencing on the last day of the Design Period.

1.1.15. "**Construction Period Rent**" shall mean an amount equal to twenty-five percent (25%) of the Basic Rent per year, payable in twelve (12) equal monthly installments.

1.1.16. "**County**" means the County of Orange, a political subdivision of the State of California. Any reference to the County herein, unless expressly stated to the contrary, shall refer to the County solely in its capacity as owner of the Premises and not the County in its capacity as a land use or other governmental approval authority.

1.1.17. "**County Counsel**" means the County Counsel, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as may be designated by the Board of Supervisors.

Exhibit D

1.1.18. "**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 as may be designated by the Board of Supervisors.

1.1.19. "**County's Fee Interest**" means all of County's interest in this Lease and County's reversionary interest in the Premises and Improvements.

1.1.20. "**County Parties**" means the County and County's Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.21. "**CPI Index**" means the CPI Index for All Urban Consumers, All Items (1982-84=100) for Los Angeles-Anaheim-Riverside, as published by the United States Department of Labor, Bureau of Labor Statistics. If the base year is changed, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If, for any reason, there is a major change in the method of calculation or formulation of the CPI Index, or the CPI Index is no longer published, then County and Tenant shall mutually select such other commodity index that produces substantially the same result as would be obtained if the CPI Index had not been discontinued or revised. If the parties are unable to agree upon a successor index, each party shall propose to the other a successor index, and one of the two suggested indexes shall be chosen by arbitration in accordance with Article 20 below.

1.1.22. "**DDA**" means that certain Disposition and Development Agreement for the Master Planning, Entitlement and Development of a portion of the former El Toro Marine Corps Air Station in the City of Irvine, California between the County of Orange and Lowe Enterprises Real Estate Group, dated _____, 2014.

1.1.23. "**Design Period"** shall mean the period commencing on the Effective Date and ending on the earlier of the first anniversary of the Effective Date or commencement of construction**.**

1.1.24. "**Design Period Rent**" shall mean an amount equal to ten percent (10%) of the Basic Rent per year, payable in twelve (12) equal monthly installments.

1.1.25. "**Effective Date**" is defined in the introductory paragraph to this Lease.

1.1.26. "**Event of Default**" is defined in Section 11.1 below.

1.1.27. "**Excluded Financing**" shall mean:

(a) Leasehold Mortgage secured in accordance with the terms hereof and solely for the purpose of financing the construction of the Improvements, and nothing more;

(b) A County approved Financing Event that solely pays off only the Leasehold Mortgage used to finance the construction of the Improvements, and nothing more;

(c) Any Financing Event that occurs in connection with a simultaneous Tenant Ownership Change; or

(d) With respect to a Financing Event secured by Ownership Interests, any Financing Event, the foreclosure of the security interests of which would not result in an Aggregate Transfer.

1.1.28. "**Excluded Transfer**" shall mean any of the following:

(a) A transfer by any direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date or the date on which a Tenant Ownership Change occurred as to the interest transferred, to any other direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the partner or member of Tenant who is an individual or for the benefit of the immediate family of any direct or indirect partner or member of Tenant who is an individual;

(b) A transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(c) A transfer of ownership interests in Tenant or in constituent entities of Tenant (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, grandchildren or great-grandchildren, parents and siblings); (ii) to a trust for the benefit of a member of the transferor or immediate family of the transferor; (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection is the result of gift, devise, intestate succession, or operation of law; or (iv) in connection with a pledge by any partners or members of a constituent entity of Tenant to an affiliate of such partner or member;

(d) A transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, when such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

(e) A mere change in the form, method, or status of ownership (including, without limitation, the creation of single-purpose entities) as long as the ultimate beneficial ownership remains the same as of the Effective Date, or is otherwise excluded in accordance with subsections (i) – (iv) above; or

(f) Any assignment of the Lease by Tenant to an Affiliate of Tenant in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

1.1.29. "**Financing Event**" shall mean any financing or refinancing consummated by Tenant or by the holders of Ownership Interests that is not an "Excluded Financing," whether with private or institutional investors or lenders, when such financing or refinancing results in any grant, pledge, assignment, transfer, mortgage, hypothecation, grant of security interest, or other encumbrance, of or in all or any portion of (A) the leasehold interest of Tenant's or (B) Ownership Interests.

1.1.30. "**Force Majeure Event**" is defined in Article XIV below.

Exhibit D

1.1.31. "**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Tenant Ownership Change that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred; if Tenant and County are unable to agree upon such fair value, then the matter shall be determined pursuant to Sections 3.4.3(d) and (e)).

1.1.32. "**Ground Lease Appraisal**" means the valuation for purposes of establishing the Appraised Value and Ground Lease Rate in accordance with the DDA.

1.1.33. "**Ground Lease Rate**" means the rate set by the Ground Lease Appraisal which when multiplying by the Appraised Value will determine the Rent, as set forth in Section 3.4, below.

1.1.34. "**Hazardous Material(s)**" shall have the meaning set forth in Section 4.5.

1.1.35. "**Improvements**" means and includes all buildings (including above-ground and below ground portions thereof, and all foundations and supports), building systems and equipment (such as HVAC, electrical and plumbing equipment), physical structures, fixtures, hardscape, paving, curbs, gutters, sidewalks, fences, landscaping and all other improvements of any type or nature whatsoever now or hereafter made or constructed on the Premises. The term Improvements means the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease.

1.1.36. "**includes**" means "includes but is not limited to" and "**including**" means "including but is not limited to."

1.1.37. "**Initial Improvements**" means the improvements first constructed by Tenant on the Premises at its sole cost and expense in accordance with the DDA and Article V hereof as more particularly described in **Exhibit C** attached hereto and incorporated herein.

1.1.38. "**Institutional Lender**" shall mean: (a) a bank, savings bank, investment bank, savings and loan association, mortgage company, insurance company, trust company, commercial credit corporation, real estate investment trust, pension trust or real estate mortgage investment conduit; or (b) some other type of lender engaged in the business of making commercial loans, provided that such other type of lender has total assets of at least $2,000,000,000 and capital/statutory surplus or shareholder's equity of at least $500,000,000 (or a substantially similar financial capacity if the foregoing tests are not applicable to such type of lender).

1.1.39. "**Interest Rate**" means the highest rate of interest permissible under the Laws not to exceed the rate of ten percent (10%) per annum.

1.1.40. "**Laws**" means all laws, codes, ordinances, statutes, orders and regulations now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity that are binding on and applicable to the Premises and Improvements.

1.1.41. "**Lease**" means this Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

Exhibit D

1.1.42. "**Leasehold Estate**" is defined in Section 17.1.1.

1.1.43. "**Leasehold Foreclosure Transferee**" is defined in Section 17.1.2.

1.1.44. "**Leasehold Mortgage**" is defined in Section 17.1.3.

1.1.45. "**Leasehold Mortgagee**" is defined in Section 17.1.4.

1.1.46. "**Lease-Up Period**" means the twelve (12) month period commencing on the day after the last day of the Construction Rent Period.

1.1.47. "**Lease-Up Period Rent**" means an amount equal to fifty percent (50%) of the Basic Rent per year payable in twelve (12) equal monthly installments.

1.1.48. "**Memorandum**" is defined in Section 19.23.

1.1.49. "**Monthly Rent**" means the monthly payment of Design Period Rent, Construction Period Rent, Lease Up Period Rent, or Basic Rent due hereunder.

1.1.50. "**Net Transfer Proceeds—Original Tenant**" shall mean, in the case of a transfer of the leasehold by the original Tenant (but not a transfer of the leasehold by a successor or assignee of Tenant) constituting a Tenant Ownership Change for which Value Appreciation Rent is payable, the Gross Transfer Proceeds from the transfer, less the Improvement Costs, Documented Transaction Costs and Subsequent Refinancing Proceeds, with respect to Tenant (but not its successors or assignees), each as defined below:

(a) "**Improvement Costs"** shall mean the final actual predevelopment, development and construction costs incurred by Tenant in connection with the construction of the Initial Improvements (but not any Phase 2 Improvements, as defined in the DDA) including lease commissions, tenant improvement allowances and costs spent by Tenant to initially lease up the Improvements, construction period interest on Tenant's construction loan, capitalized ground lease payments, and an allowance for Tenant overhead, management and profit equal to 10% of direct construction costs, which costs have been submitted to County within one hundred eighty (180) days after completion of the Initial Improvements together with written certification from Tenant to the effect that such costs are accurate ("**Tenant Improvement Cost Certification**"). If by the date that is ninety (90) days after the completion of the Initial Improvement, the final amount of the Improvement Costs is not established because of a dispute or disputes between the Tenant and its contractor(s), then Tenant shall note such dispute(s) in its Tenant Improvement Cost Certification (including a description of the costs and the amounts under dispute). Tenant shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute(s). In addition, Improvement Costs shall be increased by the actual costs incurred by Tenant for any alterations or additions to the Improvements approved by County under Section 6.3 of this Lease. For any Improvements completed pursuant to Section 6.3, Tenant shall submit a Tenant Improvement Cost Certification for such Improvements within one hundred eighty (180) days of completion of the Improvements subject to the dispute procedure set forth in this Section 1.1.50(a), above.

(b) "**Documented Transaction Costs**" shall mean commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, prepayment fees, penalties, or other similar charges

(such as yield maintenance premiums or defeasance costs), legal fees and costs, consultant fees and costs, costs of survey and reports required for the Tenant Ownership Change or Financing Event, title and escrow costs and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County the Value Appreciation Rent.

(c) "**Subsequent Refinancing Proceeds**" shall mean that portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Tenant paid County the Value Appreciation Rent.

1.1.51. "**Net Transfer Proceeds—Tenant's Successor**" shall mean, in the case of a transfer of the leasehold by a Tenant other than the original Tenant, the Gross Transfer Proceeds received by that successor, minus the Successor's Basis, Successor's Improvement Costs, and Successor's Documented Transaction Costs, each as defined below:

(a) "**Successor's Basis**" shall mean the greatest of (a) the purchase price such successor Tenant paid to Tenant or such successor Tenant's seller for the interest acquired, or (b) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Tenant's acquisition of the leasehold, and with respect to which County was paid Value Appreciation Rent, plus the original principal amount of any other financing existing as of the date on which such successor's seller acquired the leasehold or any other financing subsequently obtained by Tenant, if such financing has not been refinanced, but without duplication;

(b) "**Successor's Improvement Costs**" shall mean Improvement Costs actually paid by such successor Tenant after such successor Tenant's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in Section 1.1.29 above, the proceeds of which were used to fund such Improvement Costs) made in accordance with the terms of this Lease; and

(c) "**Successor's Documented Transaction Costs**" shall mean Documented Transaction Costs with respect to the transfer of the interest by the successor Tenant.

1.1.52. "**Net Refinancing Proceeds**" shall mean the gross principal amount of any Financing Event after the Effective Date (plus, in the case of secondary financing, the original principal amount of any existing financing that is not repaid as a part of such secondary financing), minus (i) the greatest of (A) the Improvement Costs, (B) the original principal amount of any subsequent refinancing by Tenant in connection with which County was paid Value Appreciation Rent plus, if the financing described in this clause (B) was secondary financing, the original principal amount of any then-existing financing that was not repaid as a part of such secondary financing, or (C) in the case of a successor Tenant, the purchase price such successor paid to Tenant or such successor Tenant's seller for the interest acquired; (ii) any portion of the proceeds of the Financing Event that shall be used for Improvement Costs; (iii) other Improvement Costs incurred by Tenant and not paid for or repaid with the proceeds of any Financing Event; and (iv) Documented Transaction Costs with respect to such Financing Event. Notwithstanding the foregoing, there shall be no double counting of Improvement Costs in clauses (i), (ii), and (iii) above.

1.1.53. "**New Lease**" is defined in Section 17.10.1.

Exhibit D

1.1.54. "**Operating Costs**" shall have the meaning set forth in Section 3.12.5.

1.1.55. "**Ownership Interests**" shall mean the stock, partnership interests, membership interests, or other direct or indirect ownership interests in Tenant, including Beneficial Residual Interests.

1.1.56. "**Permitted Use**" means any lawful purpose permitted in accordance with the Laws.

1.1.57. "**person**" include firms, associations, partnerships, joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

1.1.58. "**Premises**" means that certain real property containing approximately _____ square feet [acres] with an address of _____ in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as **Exhibit A**. A rendering showing the approximate boundaries of the Premises is attached hereto as **Exhibit A-1**.

1.1.59. "**Rent**" means and includes the Monthly Rent and Additional Rent payable by Tenant under this Lease.

1.1.60. "**Risk Manager**" means the Manager of County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the County Executive Officer.

1.1.61. "**Security Deposit**" means a security deposit in the amount of [$_____].

1.1.62. "**Stabilization Date**" means the first day of the Stabilization Period.

1.1.63. "**Stabilized Period**" has the meaning set forth in Section 3.4.

1.1.64. "**Taxes**" has the meaning set forth in Section 3.12.2.

1.1.65. "**Tenant Group**" means Tenant and Tenant's Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.66. "**Tenant Ownership Change**" shall mean (a) any transfer by Tenant of the leasehold interest in this Lease or (b) any transaction or series of related transactions that constitute an "Aggregate Transfer" of twenty five percent (25%) of the "Beneficial Residual Interests" in Tenant, in each case that is not an "Excluded Transfer." Any transfer of an Ownership Interest owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies, or trusts shall be treated as a transfer of the Beneficial Residual Interests, the owners of which directly or indirectly own such Ownership Interest.

1.1.67. "**Term**" means the term of this Lease, which shall commence on the Effective Date and shall expire at 12:00 midnight Eastern Time on the seventy-fifth (75^{th}) annual anniversary of the Effective Date, unless earlier terminated in accordance with the provisions of this Lease.

Exhibit D

1.1.68. "**Title Exceptions**" means all matters shown on the attached **Exhibit B**.

1.1.69. "**Transfer**" has the meaning set forth in Section 10.1.1.

1.1.70. "**Transfer Notice**" has the meaning set forth in Section 10.4.

1.1.71. "**Treasurer-Tax Collector**" means the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as may be designated by the Board of Supervisors.

1.1.72. "**Utility Costs**" shall have the meaning set forth in Section 3.12.6.

1.1.73. "**Value-Based Adjustment Date**" means the twenty-fifth (25^{th}) and fiftieth (50^{th}) anniversaries of the Stabilization Date.

1.1.74. "**Value-Based Rent**" shall mean the Rent commencing on a Value-Based Adjustment Date.

1.1.75. "**Work**" means both Tenant's construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including, without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

ARTICLE II
LEASE OF PROPERTY

2.1 **Lease of Premises**. County hereby leases the Premises to Tenant for the Term, and Tenant hereby leases the Premises from County for the Term, subject to the terms and conditions of this Lease.

2.2 **Access and Common Areas**. The Tenant's use of the Premises hereunder also may include the non-exclusive, in common, use of County's driveways for vehicle ingress and egress, pedestrian walkways, and common areas appurtenant to Tenant's Premises created by this Lease, but only as such areas may be identified from time-to-time in writing by the County Executive Officer.

2.3 **Termination at End of Term**. This Lease shall terminate without need of further actions of any Party at 12:00 midnight Pacific Time on the last day of the Term (as extended pursuant hereto).

2.4 **Condition of Title**. Tenant accepts the Premises subject to the Title Exceptions.

2.5 **Condition of the Premises**. Tenant hereby accepts the Premises "AS IS", and acknowledges that the Premises is in satisfactory condition. County makes no warranty as to the suitability of the Premises for Tenant's proposed uses. County makes no covenants or warranties respecting the condition of the soil, subsoil, or any other conditions of the Premises or the presence of Hazardous Materials, nor does County covenant or warrant as to the suitability of the Premises for the proposed development, construction or use by Tenant. County shall not be responsible for any land subsidence, slippage, soil instability or damage resulting therefrom. County shall not be required or obligated to make any changes, alterations, additions, improvements or repairs to the Premises.

Exhibit D

2.6 **Limitations of the Leasehold**. 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.

2.7 **Tenant's Investigation**. Tenant acknowledges that it is solely responsible for investigating the Premises to determine the suitability thereof for the uses contemplated by Tenant. Tenant further acknowledges by executing this Lease, that it has completed its investigation and has made such determinations as Tenant believes may be required under the circumstances.

ARTICLE III
RENT

3.1 **Design Period Rent**. Commencing on the Effective Date and continuing during the Design Period, Tenant shall pay to County the Design Period Rent.

3.2 **Construction Period Rent**. Commencing on the expiration of the Design Period (but in no event after the first anniversary of the Effective Date), and continuing through the Construction Rent Period, Tenant shall pay to County the Construction Period Rent.

3.3 **Lease-Up Period Rent**. Commencing on the expiration of the Construction Rent Period, and continuing through the Lease-Up Period, Tenant shall pay to the County the Lease-Up Period Rent.

3.4 **Stabilized Period.** Commencing on the expiration of the Lease-Up Period and expiring upon the last day of the Term (the "**Stabilized Period**"), Tenant shall pay annual Basic Rent calculated pursuant to this Section 3.4.

3.4.1. Commencing on the Stabilization Date, and continuing until the first Adjustment Date, the annual Basic Rent shall be equal to $ _____ per year [which amount was calculated by multiplying the Appraised Value of the Premises by the Ground Lease Rate, both of which were established in the Ground Lease Appraisal]. Such Basic Rent shall be payable in twelve (12) equal monthly installments.

3.4.2. Basic Rent shall increase in the manner provided below at the expiration of the five (5) year period immediately following the Stabilization Date, and at the expiration of each successive five (5) year period thereafter during the Term other than on the Value-Based Adjustment Dates (each such date on which such an adjustment takes effect under this Section 3.4.2 is referred to as an "**Adjustment Date**"). On each Adjustment Date, the Monthly Rent in effect during the five (5) year period immediately prior to such Adjustment Date shall be increased by an amount proportionate to the percentage increase, if any, in the CPI Index (as defined below) during the period from the third (3^{rd}) month prior to the commencement of each five (5) year period through the third (3^{rd}) month prior to the expiration of such prior five (5) year period; provided, however, that no such increase shall (i) exceed twenty percent (20%) nor (ii) be less than ten percent (10%). County shall notify Tenant in writing of the increased Monthly Rent thirty (30) days prior to

the applicable Adjustment Date (or following such later date on which the necessary CPI Index figures have been published), and shall set forth in such notice the basis for the amount of the increased Monthly Rent. Absent error identified in writing within ten (10) days after the County provides notice of the increase, the increased amount shall thereafter be binding on both County and Tenant. Tenant shall commence paying the increased Monthly Rent upon commencement of the new five (5) year period, and in the event that such notice is delivered after commencement of such five (5) year period, shall pay County a lump sum payment equal to any unpaid amount of increased Monthly Rent that has accrued from the Adjustment Date to the date of such payment. The failure of County to deliver timely notice of any adjustment to Minimum Rent under this Section shall not constitute a waiver by County of its rights under this Section nor limit the effectiveness of any notice given.

3.4.3. On each Value-Based Adjustment Date, the Basic Rent shall be determined as follows:

(a) At least twenty-four (24) months prior to each Value-Based Adjustment Date, as applicable, County and Tenant shall endeavor in good faith to negotiate the Value-Based Rent for the ensuing period.

(b) Each Party shall propose a Rent based on such Party's estimation of the then fair market value of the Premises multiplied by _____ [**insert the Ground Lease Rate established in the Ground Lease Appraisal performed pursuant to the DDA**] ("**Ground Lease Rate**"). If agreed upon by the Parties, such Rent shall continue until the next Adjustment Date.

(c) If, however, by the date which is eighteen (18) months prior to the applicable Value-Based Adjustment Date, County and Tenant have not so agreed upon the Value-Based Rent to commence on such date, then the Value-Based Rent shall be determined by multiplying the Premise's then Appraised Value, determined in accordance with this Section 3.4.3, by the Ground Lease Rate.

(d) **Setting of Appraised Value**. If County and Tenant have not theretofore agreed on the Value-Based Rent, the County and Tenant shall each engage an MAI appraiser (with experience as required by Section 3.4.3(f), below) selected by the respective Party, with each Party paying the expense for its own appraiser. Each Party shall give the other notice of engagement of its appraiser within five (5) business days after such engagement. Upon receipt of its Appraisal, each Party shall, within five (5) business days, deliver a copy thereof to the other Party. If the appraisals are within 10% (higher or lower) of each other, then the two appraisals shall be averaged to set the value at issue and the Appraised Value determined by the averaged appraisals shall be final and shall be utilized for the determination of Monthly Rent as of the Value-Based Adjustment Date.,

(e) **Third Appraisal to Determine Appraised Values (If Necessary)**. If the two appraisals are not within 10% (higher or lower) of each other, then the two appraisers shall choose a third MAI appraiser within twenty (20) business days of exchange of the appraisals by the Parties, and the third MAI appraiser shall complete his or hers own valuation of the Appraised Value. Thereafter the two closest of the three appraisals will be averaged to determine the appraised value at issue. The Parties shall each pay 50% of the costs and fees charged by the third MAI appraiser.

(f) All appraisals pursuant to this Article must be completed within one hundred twenty (120) days by an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years

of experience appraising (i) undeveloped, but entitled, land similar to the Premises, located in Orange, Los Angeles or San Diego counties; and (ii) land that is subject to a ground lease, with each Party paying the expense for its own appraiser. The appraiser also shall not be affiliated in any business relationship with the party soliciting the appraiser.

(g) Notwithstanding the foregoing clauses pertaining to adjustments based on changes in the Value of the Premises, the rent which is calculated based on such changes in the Premises Value (if any) shall be not less than the most immediately prior Monthly Rent, as increased by the CPI adjustment as of the current Value-Based Adjustment Date.

(h) For purposes of determining the fair market value of the Premises, the Parties and any appraiser shall reduce the otherwise determined fee simple value of the Premises by the product of _____ dollars ($_____) **[insert the amount determined by multiplying the Developer Phase 2 Improvement Costs per Net Acre as calculated in accordance with Section 8.3 of the DDA by the acreage of the Premises as defined in Section 1.1.60]** as adjusted to reflect the net change in the CPI since the Effective Date. **[Delete this subsection from the lease if the County's Maximum Phase 2 Cost is greater than the Cost of the Phase 2 Improvements as identified in the Phase 2 Budget, all as defined by the DDA]**

(i) **Reappraisal**. Appraisals shall be valid for six (6) months from the date issued. After the expiration of such period, the appraiser(s) who issued the appraisal(s) shall be engaged to update the no longer valid appraisal(s) and shall be directed to do so within twenty five (25) business days from the date engaged. If a Party's original appraiser is not reasonably available to conduct the reappraisal, that Party shall select a new MAI (or a successor organization of appraisers) appraiser consistent with Section 3.4.3(f), above.

3.5 **Value Appreciation Rent**. In the event of a Tenant Ownership Change or a Financing Event, Tenant shall pay to County Value Appreciation Rent as described herein. For a Tenant Ownership Change, the Value Appreciation Rent shall be the greater of (a) the lesser of (i) the Net Transfer Proceeds, or (ii) 3% of the Gross Transfer Proceeds, or (b) ten percent (10%) of Net Transfer Proceeds. For a Financing Event, Tenant shall pay County twenty percent (20%) of the Net Refinancing Proceeds. Before any Tenant Ownership Change or Financing Event for which Value Appreciation Rent may be due, Tenant shall provide County with its detailed calculation of the Value Appreciation Rent. No Tenant Ownership Change or Financing Event shall occur until agreement is reached on the calculation of Value Appreciation Rent; provided, however, that such Tenant Ownership Change or Financing Event shall be permitted to occur without such agreement as long as County and Tenant make mutually acceptable arrangements for the payment of the Value Appreciation Rent amount not in dispute by a date prior to the Tenant Ownership Change or Financing Event and preservation of any additional Value Appreciation Rent that is in dispute plus interest at the Interest Rate that might be due to County over and above that reflected in the Tenant's calculation should any such dispute be resolved in favor of County. Value Appreciation Rent shall be due and payable concurrently with the Tenant Ownership Change or Financing Event giving rise to the obligation to pay Value Appreciation Rent (or, with respect to any disputed amount, on resolution of the dispute) and, in the situation of a Tenant Ownership Change, shall be the joint and several obligation of the transferee and transferor.

Exhibit D

3.6 **Payment of Rent**. Monthly Rent shall be payable in advance and without any deduction, offset, prior demand or notice, commencing upon the Commencement Date and thereafter on the first day of each month during the Term. Monthly Rent due under this Lease for any partial month shall be calculated by dividing the number of days for which Monthly Rent is actually owing by the actual number of days in the month, and multiplying the resulting percentage by the Monthly Rent amount then in effect. All Monthly Rent or other amounts owing to County under this Lease shall be paid, in lawful currency of the United States of America, by check delivered to County or by electronic payment as County shall direct. All monetary payments owing by Tenant to County under this Lease other than Monthly Rent shall be deemed additional rent owing under this Lease. Rent payments shall be delivered to, and statements required by this Lease shall be filed with the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 11 Civic Center Plaza, Room G58, Santa Ana 92702). The designated place of payment and filing may be changed at any time by the County Executive Officer upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss if payments are made by mail. The County offers electronic payment for any payments hereunder, thus the Tenant shall utilize such County electronic payment system for any payments under this Lease, unless otherwise directed in writing by the Director. For electronic payments, the Tenant shall submit their payment using the following information:

Bank Name: Wells Fargo Bank
Account Name: Revenue Recovery
Routing / ABA: _____
Account #: _____
Lease Name: _____

3.7 **Triple Net Rent**. It is the intent of the parties that all Rent shall be absolutely net to County and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, utilities, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term or any extension thereof as a result of Tenant's use and occupancy of the Premises. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall County be obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

3.8 **Insufficient Funds**. If any payment of Rent or other fees made by check is returned due to insufficient funds, or otherwise, more than once during the Term, County shall have the right to require Tenant to make all subsequent Rent payments by cashier's check, certified check or ACH automatic debit system. All Rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Tenant or receipt by County of a lesser amount than the Rent due shall be deemed to be other than on account of the Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of said Rent or pursue any other remedy in this Lease.

Exhibit D

3.9 **Processing Fee**. Within thirty (30) days of the Execution Date of this Lease, Tenant shall pay to County a processing fee of five thousand dollars ($5,000) for issuance of this Lease. Said processing fee is deemed earned by County and is not refundable. County shall provide Tenant with an invoice for the processing fee and Tenant shall promptly pay the total processing fee amount within thirty (30) days after receipt of invoice and delivered to County at the address provided in Section 19.19, below.

3.10 **Charge for Late Payment**.

3.10.1. Tenant hereby acknowledges that the late payment of Rent or any other sums due hereunder will cause County to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

3.10.2. Accordingly, if any payment of Rent or of any other sum due County is not received by County within three (3) business days of Tenant's receipt of notice from County that such payment is due, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus $100 shall be added to the payment, and the total sum shall become immediately due and payable to County. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid. Any payments of any kind by Tenant that are returned for insufficient funds will be subject to an additional handling charge of Two Hundred Fifty and 00/100 Dollars ($250.00).

3.10.3. Tenant and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Tenant's default with respect to such overdue payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

3.11 **Security Deposit**

3.11.1. Upon the execution of this Lease, Tenant shall provide to County the Security Deposit which shall be held by County as security for the full and faithful performance of each of the terms hereof by Tenant, subject to use and application as set forth below. The Security Deposit may be applied by County towards (i) the payment of any Rent or any other sum in default under this Lease, (ii) the cost of performing any Tenant obligation which Tenant has failed to perform and which County has a right to cure under this Lease, or (iii) any other amounts or damages to which County is entitled under this Lease. If County applies the Security Deposit as described in the immediately preceding sentence, County shall immediately notify Tenant in writing of the amount so applied, and Tenant shall, within ten (10) days after receipt of such written notice (provided that County's application of such amount is not in violation of this Lease or applicable Laws), deposit with County an amount sufficient to restore the Security Deposit to its full amount. The Security Deposit may be commingled by County with County's other funds, and no interest shall be paid thereon.

The security deposit shall take one of the forms set out below and shall guarantee Tenant's full and faithful performance of all the terms, covenants, and conditions of this Lease:

(a) Cash

(b) The assignment to County of Orange, of a savings deposit held in a financial institution in Orange County acceptable to County Executive Officer. At the minimum, such assignment shall be evidenced by the delivery to County Executive Officer of the original passbook (if a passbook exists) reflecting said savings deposit and a written assignment of said deposit to County of Orange, in a form approved by County Executive Officer.

(c) A Time Certificate of Deposit from a financial institution in Orange County wherein the principal sum is made payable to County of Orange, or order. Both the financial institution and the form of the certificate must be approved by County Executive Officer.

(d) An instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing Tenant's performance and that all or any part shall be paid to County of Orange, or order upon demand by County of Orange. Both the financial institution(s) and the form of the instrument(s) must be approved by County Executive Officer.

Regardless of the form in which Tenant elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to County Executive Officer for correcting any default or breach of this Lease by Tenant, Tenant's successors or assigns, or for payment of expenses incurred by County as a result of an Event of Default hereunder by Tenant, Tenant's successors or assigns.

Should Tenant elect to assign a savings deposit, provide a Time Certificate of Deposit, or provide an instrument of credit to fulfill the security deposit requirements of this Lease, said assignment, certificate, or instrument shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to County of Orange, or order upon demand by County Executive Officer. The agreement entered into by Tenant with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above may allow the payment to Tenant or order of interest accruing on account of said deposit.

In the event County Executive Officer withdraws any or all of the security deposit as provided herein, Tenant shall, within ten (10) days of any withdrawal by County Executive Officer, replenish the security deposit to maintain it at amounts herein required. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

The security deposit shall be rebated, reassigned, released, or endorsed by County Executive Officer to Tenant or order, as applicable, at the end of the Lease term, provided there is no Event of Default by Tenant as of such date.

3.12 **Additional Rent**.

3.12.1. **Additional Rent**. During the Term, the annual basic rental shall be absolutely net to County so that this Lease shall yield to County the rental amounts specified above in each year of the Term,

and that all costs (including but not limited to Operating Costs and Utility Costs, as defined below), fees, taxes (including but not limited to Real Estate Taxes and Equipment Taxes, as defined below), charges, expenses, impositions, reimbursements, and obligations of every kind relating to the Premises shall be paid or discharged by Tenant as additional rent ("**Additional Rent**"). Tenant may pay, under protest, any impositions, and/or contest and defend against same. Any imposition rebates shall belong to Tenant.

3.12.2. **Taxes**. During the Term, Tenant shall pay directly to the taxing authorities all Taxes (as herein defined) at least ten (10) days prior to delinquency thereof. For purposes hereof, "**Taxes**" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, penalty, sewer use fee, real property tax, charge, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County in the Premises or any payments in lieu of taxes required to be made by County, including, but not limited to, the following:

(a) Any assessment, tax, fee, levy, improvement district tax, charge or similar imposition in substitution, partially or totally, of any assessment, tax, fee, levy, charge or similar imposition previously included within the definition of Taxes. It is the intention of Tenant and County that all such new and increased assessments, taxes, fees, levies, charges and similar impositions be included within the definition of "**Taxes**" for the purpose of this Lease.

(b) Any assessment, tax, fee, levy, charge or similar imposition allocable to or measured by the area of the Premises or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the city, county, state or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof;

(c) Any assessment, tax, fee, levy, charge or similar imposition upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises, including any possessory interest tax levied on the Tenant's interest under this Lease;

(d) Any assessment, tax, fee, levy, charge or similar imposition by any governmental agency related to any transportation plan, fund or system instituted within the geographic area of which the Premises are a part.

The definition of "**Taxes**," including any additional tax the nature of which was previously included within the definition of "**Taxes**," shall include any increases in such taxes, levies, charges or assessments occasioned by increases in tax rates or increases in assessed valuations, whether occurring as a result of a sale or otherwise.

3.12.3. **Contest of Taxes**. Tenant shall have the right to contest, oppose or object to the amount or validity of any Taxes or other charge levied on or assessed against the Premises and/or Improvements or any part thereof; provided, however, that the contest, opposition or objection must be filed before the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at

which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to County a good and sufficient undertaking in an amount specified by County and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant's contest, opposition or objection to such tax, assessment or other charge.

3.12.4. **Payment by County**. Should Tenant fail to pay any Taxes required by this Article III to be paid by Tenant within the time specified herein, and if such amount is not paid by Tenant within ten (10) days after receipt of County's written notice advising Tenant of such nonpayment, County may, without further notice to or demand on Tenant, pay, discharge or adjust such tax, assessment or other charge for the benefit of Tenant. In such event Tenant shall promptly on written demand of County reimburse County for the full amount paid by County in paying, discharging or adjusting such tax, assessment or other charge, together with interest at the Interest Rate from the date advanced until the date repaid.

3.12.5. **Operating Costs**. Tenant shall pay all Operating Costs during the Term. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement or repair of the Improvements and/or the Premises.

3.12.6. **Utility Costs**. Tenant shall pay all Utility Costs during the Term. As used in this Lease, the term "**Utility Costs**" shall include all charges, surcharges and other costs of installing and using all utilities required for or utilized in connection with the Premises and/or the Premises or the Improvements, including without limitation, costs of heating, ventilation and air conditioning for the Premises, costs of furnishing gas, electricity and other fuels or power sources to the Premises, and the costs of furnishing water and sewer services to the Premises.

ARTICLE IV
USE OF PREMISES

4.1 **Permitted Use of Premises**. Tenant may use the Premises for the construction, development, entitlement, operation, maintenance, replacement and repair of the Improvements permitted hereunder. Tenant agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises, except as set forth herein with the prior written approval of the County Executive Officer.

4.2 **Required and Optional Facilities and Services.**

4.2.1. Required Services and Uses. County's primary purpose for entering into this Lease is to promote the development of the Improvements consistent with applicable Laws. In furtherance of that purpose, Tenant shall construct and during the entire Term operate and maintain the Improvements in a manner consistent with the Laws and for one or more of the following uses: **[to be inserted]**

(a) _____

(b) _____

4.2.2. Ancillary Services and Uses. Consistent with the Entitlements and Laws, Tenant may provide those additional services and uses which are ancillary to and compatible with the required services and uses herein without any further consent or approvals from the County.

4.2.3. Additional Concessions or Services. Tenant may establish, maintain, and operate such other additional facilities, concessions, and services as Tenant and County Executive Officer may jointly from time to time determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by the Entitlements and consistent with the Laws. Such other facilities, concessions, and services may be approved in writing by the County Executive Officer, which approval shall not be unreasonably withheld, conditioned or delayed.

4.2.4. Restricted Use. The services and uses listed in this Article IV, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises except as approved in writing by the County Executive Officer.

4.2.5. Change in Use. Upon written request by Tenant to the County Executive Officer, the approved uses herein may be modified or amended to any other use permitted by the Entitlements and otherwise consistent with the Laws (or as such Entitlements or Laws may be amended, whether by the County, Tenant or otherwise). The County Executive Officer's approval of such modified or amended uses may not be unreasonably withheld conditioned or delayed.

4.3 **Nuisance; Waste**. Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises and Improvements or any part thereof. Tenant shall not commit or allow to be committed any waste in or upon the Premises or Improvements and shall keep the Premises and the Improvements thereon in good condition, repair and appearance.

4.4 **Compliance with Laws**. Tenant shall not use or permit the Premises or the Improvements or any portion thereof to be used in any manner or for any purpose that violates any applicable Laws in any material respect. Tenant shall have the right to contest, in good faith, any such Laws, and to delay compliance with such Laws during the pendency of such contest (so long as there is no material threat to life, health or safety that is not mitigated by Tenant to the satisfaction of the applicable authorities). County shall cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if County's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to County, and Tenant shall indemnify, defend and protect the Premises and County from Tenant's failure to observe or comply with the contested Law during the pendency of the contest.

4.5 **Hazardous Materials**.

4.5.1. Definition of Hazardous Materials. For purposes of this Lease, the term "Hazardous Material" or "Hazardous Materials" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, , including, without limitation, petroleum (including crude oil or any fraction or additive thereof), asbestos or asbestos containing materials, radon, radiation and radioactive materials, lead-based

paints, and polychlorinated biphenyls, which is or shall become regulated by any governmental entity, including, without limitation, the County acting in its governmental capacity, the State of California or the United States government.

4.5.2. Prior Use. The Parties acknowledge that the Property is part of the former Marine Corps Air Station ("**MCAS**") El Toro and that environmental conditions exist, including but not limited to the release of hazardous substances and petroleum compounds to soil and groundwater. MCAS El Toro is listed on the U.S. Environmental Protection Agency National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") and the Department of the Navy has taken, and is currently undertaking, corrective action pursuant to CERCLA, the Resource Conservation and Recovery Act, and associated state laws and regulations. Information regarding the environmental conditions has been provided by the County to Tenant. Tenant further acknowledges and accepts the disclosures, restrictions and obligations established by and identified in that certain Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 (For Parcels: _____) Recorded on _____, in Official Records, Orange County, as Instrument Number _____, and attached hereto as **Exhibit D** ("**Navy Quitclaim**").

4.5.3. Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease (which Hazardous Materials shall be used in compliance with all applicable Laws), Tenant or Tenant's employees, agents, independent contractors or invitees (collectively "**Tenant Parties**") shall not cause or permit 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 Section shall include the subsurface soil and ground water).

4.5.4. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or otherwise located on the Premises for any reason (unless deposited there by the County) results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any 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 located on 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, 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 County. 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 County. If there are Hazardous Materials on the Premises caused by the United States Department of the Navy, then Tenant may assert and pursue any and all claims available against the United States Navy and use commercially reasonable efforts to cause the United States Department of the Navy to remediate or otherwise address such Hazardous Materials, with regard to which the County shall reasonably cooperate and assist at no out-of-pocket expense to the County, other than customary office supplies. This section and the

obligations herein are intended to address the respective rights and obligations of the Tenant and County and not intended to relieve or affect any legal obligations of the Navy under the Navy Quitclaim or the Laws.

4.5.5. Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, Tenant shall indemnify, hold harmless, protect and defend (with attorneys acceptable to County) County, its elected officials, officers, employees, agents, independent contractors, and the Premises from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises but not damages arising from any adverse impact on marketing or diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable ("**Claims**"), arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises, and Claims relating to Hazardous Materials arising out of the actions or use of the Premises by Tenant or Tenant Parties, unless the Hazardous Materials are brought onto the Premises by the County.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

4.6 **Access by County**. County reserves the right for County and County's authorized representatives (upon at least 24 hours prior telephonic notice to Tenant, except in the case of an emergency in which event no prior notice shall be required, and subject to all rights of tenants and occupants and all security rules and procedures imposed by Tenant) to enter the Premises (but excluding any residential areas or units which are occupied by third parties in the Improvements pursuant to Resident Agreements, leases or otherwise) at any reasonable time during business hours, in order to (i) determine whether Tenant is complying with Tenant's obligations hereunder, or (ii) enforce any rights given to County under this Lease. County shall take all necessary measures not to unreasonably interfere with Tenant's or any subtenant's business at the Premises in exercising its rights under this Section.

ARTICLE V
CONSTRUCTION OF IMPROVEMENTS

5.1 **Construction Of Improvements**.

5.1.1. **Initial Improvements**. Upon payment for and issuance of all permits required under the Laws, Tenant shall construct the Initial Improvements.

5.1.2. **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:

(a) after written notice has been given by Tenant to County of the proposed commencement of construction of the Premises 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; and

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(b) Tenant shall have provided to County evidence that (i) Tenant has entered into a Construction Contract with a Contractor in accordance with Section 5.2 below, (ii) Tenant has secured the construction funding required under Section 5.1.4 below, and (iii) Tenant has obtained the bonds required by Section 5.3 below.

5.1.3. **Utilities**. To the extent not already constructed, Tenant, at no cost to County, shall construct, or cause to be constructed, all utility facilities necessary for the development and operation of the Premises.

5.1.4. **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 Tenant's estimated total cost of constructing the Initial Improvements, which evidence may consist of (i) a written commitment to Tenant from an Institutional Lender selected by Tenant to provide a construction loan to Tenant for the purpose of constructing the Initial Improvements (which may be secured by a Leasehold Mortgage encumbering Tenant's leasehold interest under this Lease), (ii) actual equity funds then held by Tenant and set-aside for the purpose of constructing the Initial Improvements, or (iii) any combination of the foregoing. 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.

5.1.5. **Compliance With Laws and Permits**. Tenant shall cause all Improvements made by Tenant to be constructed in substantial 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.

5.1.6. **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.

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

5.1.8. **Insurance**. Tenant (or the Contractor, as applicable) shall deliver to County (i) certificates of insurance evidencing coverage for "builder's risk" as specified in Section 8.1, and (ii) evidence of worker's compensation insurance covering all persons employed in connection with the construction of any Improvements upon the Premises and with respect to whom death or bodily injury claims could be asserted against County, the Premises or the Improvements. Tenant shall (or shall cause Contractor to) maintain, keep in force and pay all premiums required to maintain and keep in force all insurance above at all times during which construction Work is in progress.

5.1.9. **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 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 any 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 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 any 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.

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5.1.10. **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.

5.2 **Construction Contracts**.

5.2.1. **GMax Contracts**. Tenant shall enter into written "Guaranteed Maximum Price" contract with a general contractor for construction of the Initial Improvements. All construction of the Initial Improvements shall be performed by contractors and subcontractors duly licensed as such under the laws of the State of California. Tenant shall give County a true copy of the contract or contracts with the general contractor.

5.2.2. **Assignment to County**. Subject to the rights of any Leasehold Mortgagee, Tenant shall obtain the written agreement of the general contractor that, at County's election and in the event that Tenant fails to perform its contract with the general contractor, such general contractor will recognize County as the assignee of the contract with the general contractor, and that County may, upon such election, assume such contract with credit for payments made prior thereto.

5.3 **Payment and Performance Bonds**. Tenant shall provide or cause its general contractor (or major subcontractors) to provide payment and/or performance bonds for major subcontracts 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.

5.4 **Ownership of Improvements**.

5.4.1. **During Term**. Title to all 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. The parties agree for themselves and all persons claiming under them that the Improvements are real property.

5.4.2. **Upon Expiration of Term**. All Improvements on the Premises at the expiration or earlier termination of the Term of this Lease shall, without compensation to Tenant, then become County's property free and clear of all claims to or against them by Tenant and free and clear of all Leasehold Mortgages and 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, in the seventieth (70^{th}) year of the Term, may request and Tenant must deliver an estimate showing estimated costs for the removal, demolition and clearing. In addition at that time, County may request and Tenant shall establish a separate account, in a bank or other financial establishment approved by County Executive Officer, containing sufficient funds to cover the anticipated expense of the demolition and clearing. Upon approval of County Executive Officer Tenant may provide assurance of removal in one of the forms set forth in Section 3.11. Such funds shall be maintained for the duration of the Lease Term and expended solely for the demolition and clearing under this Section. The funds shall also be explicitly available to the County for such removal in the event that Tenant does not comply with the terms of this Section upon the time periods set forth herein. To the extent that Tenant does not comply with the terms of this Section upon the time periods set forth herein and the County must utilize such funds for removal and such funds exceed the actual cost of such removal, the excess funds shall be delivered to Tenant within sixty (60) days after completion of such removal.

5.5 **"AS-BUILT" Plans**. Within sixty (60) days following completion of any substantial improvement within the Premises, Tenant shall furnish the County Executive Officer a complete set of reproducibles 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 County Executive Officer copy of the final construction costs for the construction of such improvements.

5.6 **Capital Improvement Fund**

5.6.1. Commencing with the month during which the fifth (5th) anniversary of the Stabilization Date occurs, and continuing until five (5) years prior to the expiration of the Term of the Lease, Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.6 designated to pay for Permitted Capital Expenditures (as defined below) for the Improvements. Tenant and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements ("**Permitted Capital Expenditure(s)**"). The Capital Improvement Fund shall not be used to fund any portion of the cost of the Initial Improvements. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary maintenance expenditures or maintenance, repairs or replacements that keep the Improvements in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied or constitute qualifying aesthetic improvements. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Tenant. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant's reasonable discretion and subject to County Executive Officer's approval as provided for in Section 5.6.4, below. Tenant shall furnish to the County

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Executive Officer applicable invoices, evidence of payment and other back-up materials concerning the use of amounts from the Capital Improvement Fund.

5.6.2. The Capital Improvement Fund shall be held in an account established with an Institutional Lender acceptable to the County, into which deposits shall be made by Tenant pursuant to this Section 5.6. Tenant shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.6 with capital improvement reserves required by Tenant's Leasehold Mortgagee, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.6.

5.6.3. Commencing on the fifteenth (15^{th}) day of the month during which the fifth (5^{th}) anniversary of the Stabilization Date occurs, and continuing on or before the fifteenth (15^{th}) day of each month thereafter until five (5) years prior to the expiration of the Term, Tenant shall make a monthly deposit to the Capital Improvement Fund in an amount equal to one percent (1%) of total Monthly Rent for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Tenant pursuant to this Section 5.6.

5.6.4. Disbursements shall be made from the Capital Improvement Fund only for costs which satisfy the requirements of this Section 5.6. For the purpose of obtaining the County Executive Officer's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the County Executive Officer on an annual calendar year basis a capital expenditure plan for the upcoming three (3) year period which details the amount and purpose of anticipated Capital Improvement Fund expenditures ("**Capital Improvement Plan**"). County Executive Officer shall approve or disapprove such Capital Improvement Plan within thirty (30) days of receipt, which approval shall not be unreasonably withheld, conditioned or delayed. Any expenditure set forth in the approved Capital Improvement Plan shall be considered pre-approved by County (but only up to the amount of such expenditure set forth in the Capital Improvement Plan) for the duration of the upcoming year. Tenant shall have the right during the course of each year to submit to the County Executive Officer for the County Executive Officer's approval revisions to the then current Capital Improvement Plan, or individual expenditures not noted on the previously submitted Capital Improvement Plan. In the event of an unexpected emergency that necessitates a Permitted Capital Expenditure not contemplated by the Capital Improvement Plan, the Tenant may complete such work using the funds from the Capital Improvement Fund with contemporaneous or prior (if possible) written notice to the County and provide applicable documentation to the County thereafter for County approval. If the County disapproves the emergency expenditure, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the County of its decision.

5.6.5. All amounts then-existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than five (5) years prior to the expiration of the Term of the Lease.

5.6.6. Notwithstanding anything above to the contrary, if Tenant incurs expenditures that constitute Permitted Capital Expenditures but which are not funded out of the Capital Improvement Fund because sufficient funds are not then available in such fund, then Tenant may credit the Permitted Capital Expenditures so funded by Tenant out of its own funds against future Capital Improvement Fund contribution obligations of Tenant; provided, that such credit must be applied, if at all, within four (4) years after such Permitted Capital Expenditure is incurred by the Tenant.

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ARTICLE VI
REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

6.1 **Maintenance by Tenant**. Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and any and all Improvements now or hereafter constructed and installed on the Premises in good order, condition and repair (*i.e.*, so that the Premises does not deteriorate more quickly than its age and reasonable wear and tear would otherwise dictate) and in a safe and sanitary condition and in compliance with all applicable Laws in all material respects. Tenant's performance of this ordinary and routine alteration, maintenance and repair to the Improvements and Premises may occur without County consent.

6.2 **Interior Improvements, Additions and Reconstruction of Improvements**. Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time, without County's prior written consent, but with prior written notice to the County: (i) to make any interior improvements to the Improvements that are consistent with the County approved use of the Premises as reflected in this Lease; (ii) to restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or (iii) to make changes, revisions or improvements to the Improvements for uses consistent with the County approved use of the Premises as reflected in this Lease, to the extent that such changes, revisions or improvements do not increase or reduce the square footage of the buildings and structures (except for minor variations in the square footage). Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.

6.3 **All Other Construction, Demolition, Alterations, Improvements and Reconstruction**. Following the completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, repairs, maintenance, 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. Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.

6.4 **Requirements of Governmental Agencies**. At all times during the Term of this Lease, Tenant, at Tenant's sole cost and expense, shall: (i) make all alterations, improvements, demolitions, additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements (subject to Tenant's right to contest such Laws in accordance with Section 4.4); (iv) indemnify, defend and hold County, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims and actions resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

6.5 **County Obligations**. Tenant specifically acknowledges and agrees that County shall not have any obligations with respect to the maintenance, alteration, improvement, demolition, addition or repair of any Improvements, except only as specifically provided in this Lease to the contrary.

Exhibit D

ARTICLE VII
DAMAGE AND RESTORATION

7.1 **Damage and Restoration**. In the event the whole or any part of the 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 Section 7.2) with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the 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 Premises to accommodate such changed use after approval of such change of use by the County pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations.

7.2 **Damage During Last 10 Years**. If the 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 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 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 Improvements if, and promptly after, ceasing to do business on the Premises; (iii) Tenant causes to be discharged all Leasehold Mortgages and 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; and (iv) Tenant razes and removes the damaged Improvements and any other Improvements designated by the County for removal and delivers the Land to County in a safe condition (in which case any available property insurance proceeds attributable to such damage or destruction shall first be paid to any Leasehold Mortgagee until paid in full, and any remaining proceeds shall then be paid to and retained by Tenant), provided that County may elect by written notice to Tenant to instead have Tenant deliver the Improvements to County in their then existing damaged condition (in which case any available property insurance proceeds attributable to such damage or destruction shall first be paid to any Leasehold Mortgagee until paid in full, and any remaining proceeds shall then be paid to and retained by County).

7.3 **Restoration**. In the event of any restoration or reconstruction pursuant to this Section, 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 Initial Improvements.

7.4 **No Rental Abatement**. Tenant shall not be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements become untenantable as a result of the partial or total destruction of the Improvements, and Tenant's obligation to pay Monthly Rent and other charges under this Lease, and Tenant's obligation to keep and perform all other covenants and agreements on its part to be kept and performed hereunder, shall not be decreased or affected in any way by any destruction of or damage to the Improvements.

7.5 **Application of Insurance Proceeds**. If following the occurrence of damage or destruction to the Premises or Improvements, Tenant is obligated to or otherwise elects to restore the Premises and Improvements pursuant to this Article VII, then all proceeds from the insurance required to be maintained by Tenant on the Premises and the 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 Improvements, Tenant shall pay the deficiency and shall nevertheless proceed to complete the restoration of the 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 (subject to the rights of any Leasehold Mortgagee). If Tenant elects to terminate this Lease pursuant to a right to do so under Section 7.2, then all property insurance proceeds attributable to such damage or destruction giving rise to such right of termination shall be applied as set forth in Section 7.2.

7.6 **Exclusive Remedies**. Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article VII. County and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article VII.

ARTICLE VIII
INSURANCE AND INDEMNITY

8.1 **Tenant's Required Insurance**.

8.1.1. Prior to the provision of services under this Lease, the Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Lease**.** The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all general contractors/subcontractors/engineers/consultants (hereinafter referred to as "**Insured Parties**"), performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions exclusive of insurance limits as set forth herein for Tenant. Subcontractor insurance limits will be established by mutual agreement between County and Tenant.

8.1.2. Tenant shall ensure that all Insured Parties performing work on behalf of Tenant pursuant to this Lease shall be covered under Tenant's insurance or maintain insurance subject to the terms and conditions as set forth herein. Tenant shall not allow any Insured Parties to commence work until the insurance requirements have been satisfied. It is the obligation of the Tenant to provide notice of the insurance requirements to all Insured Parties and to obtain evidence of insurance prior to allowing any Insured Parties to commence work. Evidence of insurance must be maintained by Tenant through the entirety of this Lease for inspection by County at any reasonable time.

8.1.3. Tenant will require Builders Risk insurance during Phase III for new construction. The Builders Risk policy shall be written on a Special Causes of Loss Form with the exclusion of earthquake

and flood. The limit of insurance shall be 100% of the completed project value with no coinsurance and replacement cost valuation.

8.1.4. All self-insured retentions ("**SIR(s)**") or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of $25,000 ($5,000 for automobile liability) carried by Tenant, shall specifically be approved by the County Executive Office ("**CEO**")/Office of Risk Management. Tenant shall be responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of Insured Parties work hereunder, such Insured Party shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Tenant and additional insureds.

8.1.5. If the Tenant fails to maintain insurance required by this Lease the County may terminate this Lease after providing Tenant a thirty (30) day period in which to cure.

8.1.6. **Terms & Conditions Applicable to Tenant and All Insured Parties**

(a) **Qualified Insurer**.

(1) The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VII (Financial Size Category) as determined by the most current edition of the **Best's key Rating Guide/Property-Casualty/United States or ambest.com**.

(2) If the Tenant's insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VII, 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. Tenant is responsible to enforce this requirement with the Insured Parties.

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

Coverages	Minimum Limits
Commercial General Liability	$25,000,000 per occurrence $5,000,000 aggregate
Professional Liability	$1,000,000 per claim made or per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 limit per occurrence

Exhibit D

Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	$1,000,000 per occurrence

(4) The policy or policies of insurance maintained by the contractors shall provide the minimum limits and coverage as set forth below (Subcontractor insurance limits will be established by mutual agreement between County and Developer):

Coverages	Minimum Limits
Commercial General Liability	$10,000,000 per occurrence $10,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$10,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	$1,000,000 per occurrence
Builders Risk for New Construction	Completed Project value
Special Causes of Loss Form with no Coinsurance and RC valuation	

(5) The policy or policies of insurance maintained by architects, engineers and other licensed professionals:

Coverages	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Professional Liability For Structural Engineers and Architects	$5,000,000 per claim or occurrence $2,000,000 aggregate
Professional Liability for Others	$1,000,000 per claim or occurrence

Exhibit D

	$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$10,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	$1,000,000 per occurrence

(6) Post vertical construction insurance requirements for lessees/sublessees shall be determined by the County once occupancy is established.

(b) **Required Coverage Forms**.

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

(2) The Business Auto Liability coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage.

(c) **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 2010 or CG 2033 or an equivalent form naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.

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

(3) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, employees and agents.

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

Exhibit D

(5) The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

8.1.7. **Terms & Conditions Specific to Tenant**

(a) Tenant shall notify County in writing prior to any lapse of insurance coverage and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Lease, upon which the County may suspend or terminate this Lease.

(b) If Tenant's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for three years following completion of contract.

(c) The Tenant is granted the option of procuring insurance under a single policy or by a combination of underlying policies with the balance provided by an Excess or Umbrella policy with Follow Form coverage to the total per occurrence and aggregate limits required under this Lease.

(d) County will have the right, but not the obligation of prohibiting the Tenant from entering the project site until such Evidence of Insurance has been submitted to the County.

(e) Failure of County to demand delivery of or identify deficiency with such Evidence of Insurance shall not be construed as a waiver of Tenant’s obligations under this section.

(f) By requiring insurance, the County does not represent that coverage and limits will necessarily be adequate to protect the Tenant. Insurance procured by the Tenant will not reduce or limit the Tenant’s contractual obligation to indemnify and defend the County for claims or suits that result from or are connected with the performance of this Lease.

(g) Tenant shall not be relieved of its responsibility for any and all loss, damage or liability stemming from any risk or exposure that is not insured, or not covered within any deductibles or self-insured retentions, or not covered as a result of policy exclusions or limitations.

(h) Insurance certificates should be forwarded to:

County of Orange
CEO/Risk Management
600 West Santa Ana Boulevard, Suite 104
Santa Ana, CA 92701
Attn: Manager

(i) County expressly retains the right to request a change in insurance requirements. If so requested, Tenant and County will strive to mutually agree to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

Exhibit D

(j) Following mutual agreement, Tenant will then deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of procuring such revised insurance.

(k) 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 Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

8.2 **Indemnification**. Tenant hereby releases and waives all claims and recourse against County, including the right of contribution for injury to or death of any person or loss of or damage to property, arising from, growing out of or in any way connected with or related to this Lease, except claims arising from the concurrent active or sole negligence of County, its officers, agents, employees and contractors. Tenant shall indemnify, defend (with counsel approved in writing by County), protect and hold County and the County Parties harmless from all Claims arising from or related to (i) Tenant's lease, use or occupancy of the Premises and the Improvements, (ii) Claims made by any tenant, resident, employee, agent, contractor or invitee to the Premises, (iii) the conduct of Tenant's business, or (iv) any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or the Improvements. Tenant shall further indemnify, defend and hold County and the County Parties harmless from all Claims arising from any breach or default in the performance of any obligation to be performed by Tenant under the terms of this Lease, or arising from any act, neglect, fault or omission of Tenant or of its agents or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such Claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against County or a member of the County Parties by reason of any such Claim, Tenant, upon notice from County, shall defend the same at Tenant's expense, by counsel designated by Tenant and approved in writing by County, which approval shall not be unreasonably withheld. Tenant, as a material part of the consideration to County, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises from any cause whatsoever except that which is caused by County's negligence or willful misconduct. Neither County nor the County Parties shall be liable to Tenant or any Tenant Party for any loss, injury or damage to Tenant or to the Tenant Group or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, unless and to the extent caused by or resulting from the negligence or willful misconduct of County or the County Parties. The provisions of this Section shall survive the expiration or earlier termination of this Lease as to all matters arising prior to such expiration or termination or prior to Tenant's vacation of the Premises. If judgment is entered against County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and Tenant, County and Tenant agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

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

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor."

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

Exhibit D

8.3 **Damage to Tenant's Premises**. County shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Improvements caused by or resulting from any peril which may affect the Premises or Improvements, including fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises or the Improvements, whether such damage or injury results from conditions arising upon the Premises or from other sources.

ARTICLE IX
CONDEMNATION

9.1 **Definitions**.

9.1.1. "**Condemnation**" means (i) the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute, whether by legal proceedings or otherwise, by a Condemnor (hereinafter defined), and (ii) a voluntary sale or transfer to a Condemnor, either under threat of condemnation or while condemnation legal proceedings are pending.

9.1.2. "**Date of Taking**" means the later of (i) the date actual physical possession is taken by the Condemnor; or (ii) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

9.1.3. "**Award**" means all compensation, sums or anything of value awarded, paid or received for a Total Taking, a Substantial Taking or a Partial Taking (hereinafter defined), whether pursuant to judgment or by agreement or otherwise.

9.1.4. "**Condemnor**" means any public or quasi-public authority or private corporation or individual having the power of condemnation.

9.1.5. "**Total Taking**" means the taking by Condemnation of all of the Premises and all of the Improvements.

9.1.6. "**Substantial Taking**" means the taking by Condemnation of so much of the Premises or Improvements or both that one or more of the following conditions results: (i) The remainder of the Premises would not be economically and feasibly usable by Tenant; and/or (ii) A reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) The conduct of Tenant's business on the Premises would be materially and substantially prevented or impaired.

9.1.7. "**Partial Taking**" means any taking of the Premises or Improvements that is neither a Total Taking nor a Substantial Taking.

9.1.8. "**Notice of Intended Condemnation**" means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a party hereto. The notice is considered to have been

received when a party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

9.2 **Notice and Representation**.

9.2.1. **Notification**. The party receiving a notice of one or more of the kinds specified below shall promptly notify the other party of the receipt, contents and dates of such notice: (i) a Notice of Intended Condemnation; (ii) service of any legal process relating to the Condemnation of the Premises or Improvements; (iii) any notice in connection with any proceedings or negotiations with respect to such a Condemnation; (iv) any notice of an intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of Condemnation.

9.2.2. **Separate Representation**. County and Tenant each have the right to represent its respective interest in each Condemnation proceeding or negotiation and to make full proof of his claims. No agreement, settlement, sale or transfer to or with the Condemnor shall be made without the consent of County and Tenant. County and Tenant shall each execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to Condemnation.

9.3 **Total or Substantial Taking**.

9.3.1. **Total Taking**. On a Total Taking, this Lease shall terminate on the Date of Taking.

9.3.2. **Substantial Taking**. If a taking is a Substantial Taking, Tenant may, by notice to County given within ninety (90) days after Tenant receives a Notice of Intended Condemnation, elect to treat the taking as a Total Taking. If Tenant does not so notify County, the taking shall be deemed a Partial Taking.

9.3.3. **Early Delivery of Possession**. Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion elect to relinquish possession of the Premises to County before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

9.3.4. **Apportionment of Award**. On a Total Taking all sums, including damages and interest, awarded for the fee or leasehold or both shall be distributed and disbursed as finally determined by the court with jurisdiction over the Condemnation proceedings in accordance with applicable law. Notwithstanding anything herein to the contrary, Tenant shall be entitled to receive compensation for the value of its leasehold estate under this Lease including its interest in all Improvements, personal property and trade fixtures located on the Premises, its relocation and removal expenses, its loss of business goodwill and any other items to which Tenant may be entitled under applicable law.

9.4 **Partial Taking**.

9.4.1. **Effect on Rent**. On a Partial Taking this Lease shall remain in full force and effect covering the remainder of the Premises and Improvements, except that the Monthly Rent (including any adjustments thereto) shall be equitably reduced based on the impact (if any) of such Partial Taking on the operating income and revenue derived from Tenant's operations and the decrease (if any) in the market value of the leasehold interest. Such adjustment shall be determined by arbitration in accordance with Article 20 below if the parties are unable to mutually agree on the amount of such decrease.

9.4.2. **Restoration of Improvements**. Promptly after a Partial Taking, Tenant shall repair, alter, modify or reconstruct the Improvements ("**Restoring**") so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased.

9.4.3. **Apportionment of Award**. On a Partial Taking, County shall be entitled to receive the entire award for such Partial Taking, except that (i) the proceeds of such Partial Taking shall first be applied towards the cost of Restoring the Premises pursuant to Section 9.4.2 and (ii) Tenant shall be entitled to receive any portion of such award allocated to Tenant's interest in any of Tenant's Improvements, personal property and trade fixtures taken.

9.5 **Waiver of Termination Rights**. Both parties waive their rights under Section 1265.130 of the California Code of Civil Procedure (and any successor provision) and agree that the right to terminate this Lease in the event of Condemnation shall be governed by the provisions of this Article XIX.

ARTICLE X
ASSIGNMENT AND ENCUMBERING

10.1 **General**. Prior to the Stabilization Date, and except as otherwise provided herein (and except that Tenant may acquire a Leasehold Mortgage as set forth in Article XVII), Tenant shall not assign (including an assignment by operation of law), transfer or encumber this Lease, or any interest therein, nor sublet the Premises or Improvements. After the Stabilization Date, Tenant may assign or sublet this Lease without County's consent to a Permitted Transferee (as defined below). All other assignments and transfers shall require the consent of County, which may not be unreasonably withheld, conditioned or delayed.

10.1.1. Except for the Leasehold Mortgage allowed by Article XVII and transfers to a Permitted Transferee, any mortgage, pledge, hypothecation, encumbrance, transfer, sublease of Tenant's entire Lease interest or assignment (hereinafter in this section referred to collectively as "**Transfer**") of Tenant's interest in the Premises, or assignment of any part or portion thereof, shall first be approved in writing by County Executive Officer, unless otherwise provided herein. Failure to obtain County Executive Officer's required written approval of a Transfer will render such Transfer void. Occupancy of the Premises by a prospective transferee, sublessee, or assignee before approval of the Transfer by County shall constitute an Event of Default.

10.1.2. Except for a Permitted Transfer (as defined in Section 10.3, below), if Tenant hereunder is a corporation, limited liability company, an unincorporated association or partnership, the Transfer of any stock or interest in said corporation, company, association, partnership in the aggregate exceeding twenty-five percent (25%) shall be deemed a Transfer within the meaning of this Lease that requires County written consent.

10.1.3. Should County consent to any Transfer, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease nor be construed as County's consent to any further Transfer. Such terms, covenant or conditions shall apply to each and every Transfer 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.

10.1.4. This section shall not be interpreted to disallow or require County approval for space leases (subleases of less than Tenant's entire Lease interest) or concession agreements within the Premises or the Improvements between the Tenant and a sub-tenant, which are consistent with the approved uses under this Lease.

10.2 **Leasehold Mortgage**. Tenant shall have the right to hypothecate its leasehold interest in this Lease (including its interest in the Improvements) without County's consent to the extent provided in Article XVII of this Lease, which shall govern in the event of any inconsistency with this Article X. However, under no circumstances may Tenant mortgage, encumber or hypothecate County's Fee Interest.

10.3 **Permitted Transfers**. Following the Stabilization Date, County's consent shall not be required to any of the following Transfers (each party to whom a Permitted Transfer may be made is a "**Permitted Transferee**"): (i) an Excluded Transfer, (ii) any Transfer to any successor corporation or other entity resulting from a merger or consolidation of Tenant or a conversion of Tenant into a limited liability company or other form of entity, or an Affiliate of Tenant, if the transferee or its constituent members has a net worth equal to or greater than sixty percent (60%) the value of the leasehold estate created by this Lease and senior management that individually have more than ten (10) years of experience managing, maintaining and operating developments like that on the Premises, or (iii) any encumbrance to a Leasehold Mortgagee; provided, however, that in each case (1) Tenant shall notify County of such Transfer at least sixty (60) days prior to the consummation of such Transfer, and shall provide County with complete information regarding the transferee and information evidencing that the Transfer falls within the parameters of this paragraph, and (2) if such Transfer involves an assignment of Tenant's rights under this Lease, Tenant or such transferee shall provide County with a written assumption of Tenant's obligations under this Lease executed by such transferee in a form approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease. Any transfer of an indirect equity interest in Tenant or any Affiliate of Tenant shall not constitute a Transfer and shall not require County's consent.

10.4 **Transfer Procedure**. If Tenant desires at any time to enter into a Transfer for which County's consent is required hereunder, Tenant shall provide County with written notice ("**Transfer Notice**") at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (*i.e.*, whether an assignment, sublease or encumbrance), (iii) the proposed effective date of the Transfer, (iv) income statements and "fair market" balance sheets of the proposed transferee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed transferee is a newly formed entity and has not been in existence for such two (2) year period, the financial statements submitted shall be those if its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee meets the criteria for a Tenant as established by this Lease, and (vi) a bank or other credit reference. Thereafter, Tenant shall furnish such supplemental information as County may

reasonably request concerning the proposed transferee. County shall, no later than thirty (30) days after County's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether County gives or withholds its consents to the proposed Transfer, and (ii) if County withholds its consent to the proposed Transfer, setting forth a detailed explanation of County's grounds for doing so. If County consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee. If County fails to respond to Tenant's request for consent to such Transfer by Tenant, then Tenant may provide a second written notice which shall include the following statement set forth in all capital letters and 10 point or larger type: "NOTE: YOU HAVE FAILED TO RESPOND TO A REQUEST FOR CONSENT TO A TRANSFER OF A LEASE AT THE [EL TORO PROJECT]. THE TRANSFER WILL BE DEEMED APPROVED WITHOUT YOUR CONSENT IF YOU DO NOT CONSENT OR INDICATE YOUR FAILURE TO CONSENT ON OR BEFORE THIRTY (30) DAYS FOLLOWING THE DATE HEREOF." If County still fails to respond within a thirty (30) day period after receipt of that second written notice, then it shall be conclusively presumed that County has consented to the proposed Transfer.

10.5 **Liability of Transferors/Transferees For Lease Obligations**. Each permitted assignee of this Lease shall assume in writing all of Tenant's obligations under this Lease. All transferees of any interest in this Lease or the Premises or Improvements (whether or not directly liable on this Lease) shall be subject to the terms and provisions of this Lease.

10.6 **Conditions of Certain County Approvals**.

10.6.1. County agrees that it will not arbitrarily withhold consent of any Transfer which is not expressly permitted pursuant to this Article X, but County may withhold consent at its sole discretion if any of the following conditions exist:

(a) An Event of Default exists under this Lease.

(b) The prospective Transferee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

(c) The Stabilization Date has not passed.

(d) The construction required of Tenant as a condition of this Lease has not been completed.

(e) All the material terms, covenants, and conditions of the Transfer that are relevant to the County approval of the Transfer have not been revealed in writing to County.

(f) The processing fee required by County and set out below has not been paid to County by delivery of said fee to County.

(1) A fee of $3,000 shall be paid to County for processing each consent to Transfer submitted to County as required by this Lease. This processing fee shall be deemed earned by County when paid and shall not be refundable.

(2) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged. Such fee shall be increased every ten years during the Lease term based on any increase in the CPI Index. Under no circumstances shall the fee decrease.

10.7 **Conditions Deemed Reasonable**. Tenant acknowledges that each of the conditions to a Transfer, and the rights of County set forth in this Article X in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

ARTICLE XI
DEFAULT AND REMEDIES

11.1 **Event of Default**. Each of the following events shall constitute an "**Event of Default**" by Tenant:

11.1.1. **Failure to Pay**. Tenant's failure or omission to pay any Rent or other sum payable hereunder on or before the date due where such failure shall continue for a period of ten (10) business days after written notice thereof from County to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et. seq*.

11.1.2. **Failure to Perform**. Tenant's failure or omission to observe, keep or perform in any material respect any of the other terms, agreements or conditions contained in this Lease to be performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof from County to Tenant. If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as Tenant commences a cure within such thirty (30) day period and thereafter diligently and continuously pursues such cure to completion.

11.1.3. **Abandonment**. The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant.

11.2 **County's Remedies**. If an Event of Default occurs and is continuing, County shall have the following remedies in addition to all rights and remedies provided by law or equity to which County may resort cumulatively or in the alternative:

11.2.1. **Termination of Lease**. County shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that County shall elect to so terminate this Lease then County may recover from Tenant:

(a) the worth at the time of award of any unpaid rent and other charges which had been earned at the time of such termination; plus

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

(c) the worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate County for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; Plus

(e) any other amount which County may by law hereafter be permitted to recover from Tenant to compensate County for the detriment caused by Tenant's default.

As used in clauses (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted to charge by law. As used in clause (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). In determining the amount of rental loss that Tenant proves could have been reasonably avoided (as referred to in clauses (b) and (c) above), the parties' shall take into account the value added by the Improvements that have reverted to County as a result of the termination of the Lease.

11.2.2. **Continue Lease in Effect**. County shall have the remedy described in California Civil Code Section 1951.4 (*i.e.*, County may continue the Lease in effect after Tenant's breach and abandonment and recover Rent, as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

11.2.3. **Removal of Personal Property Following Termination of Lease**. County shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable law, to remove Tenant's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant in accordance with applicable California law.

11.3 **County's Right to Cure Tenant Defaults**. If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, County may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be additional rent payable by Tenant on County's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render County liable for any loss or damage resulting from the same.

11.4 **County's Default**. County shall not be considered to be in default under this Lease unless Tenant has given County written notice specifying the default, and either (i) as to monetary defaults, County has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, County has failed to cure the same within thirty (30) days after written notice from

Tenant, or if the nature of Tenant's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as County commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by County under this Lease against Monthly Rent owing by Tenant under this Lease, except that Tenant shall have the right to fully offset against Monthly Rent or any other amounts owing under this Lease the full amount of any final arbitration award or final judgment in any court proceeding that County fails to pay within sixty (60) days after such award or judgment is entered.

11.5 **Remedies Cumulative**. All rights and remedies of County contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and County shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

11.6 **Waiver by County**. No waiver of any default of Tenant hereunder shall be implied from any acceptance by County of any Rent or other payments due hereunder or any omission by County to take any action on account of such default if such default persists or is repeated. County's waiver of any breach by Tenant of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, covenant or condition herein contained. The consent or approval of County to or of any act by Tenant requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent or approval to or of any subsequent similar acts by Tenant. The acceptance of Rent hereunder by County shall not be deemed to be a waiver of any preceding breach by Tenant or any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted. Acceptance by County of a sum less than the Monthly Rent or other sum then due shall not be deemed to be other than on account of the earliest installment of such Rent or other amount due, nor shall any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease.

11.7 **Waiver by Tenant**. Tenant's waiver of any breach by County of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.8 **Interest.** Any installment of rent due under this Lease or any other sums not paid to County when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

11.9 **Tenant Covenants and Agreements.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, County may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance

of any act or the provision of any such insurance by County on Tenant's behalf shall not give rise to any responsibility of County to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by County in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by County shall be deemed to be additional rent hereunder and shall be paid by Tenant with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute an Event of Default under this Lease.

ARTICLE XII
HOLDING OVER

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of County, Tenant shall become a Tenant at sufferance only, at a monthly rental rate equal to the greater of (i) one hundred fifty percent (150%) of the last Monthly Rental in effect, or (ii) the then fair market rental value of the Premises, and otherwise subject to the terms, covenants and conditions herein specified. Acceptance by County of Rent after such expiration or earlier termination shall not result in an extension of this Lease. If Tenant fails to surrender the Premises and the Improvements upon the expiration of this Lease despite demand to do so by County, Tenant shall indemnify and hold County harmless from all loss or liability, including any claim made by any succeeding tenant founded on or resulting from such failure to surrender and any attorneys' fees and costs incurred by County.

ARTICLE XIII
ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either County or Tenant (the "**requesting party**"), the other party (the "**responding party**") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either County or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender).

ARTICLE XIV
FORCE MAJEURE

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of County, Tenant, or their respective agents or representatives (collectively, "**Force**

Majeure Events"). In no event, however, shall Force Majeure Events include the financial inability of a party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant's obligation to pay Rent owing hereunder).

ARTICLE XV
FINANCIAL STATEMENTS

Tenant acknowledges that it has made available to County its financial statement(s) as a material inducement to County's agreement to lease the Premises to Tenant, and that County has relied on the accuracy of such financial statement(s) in entering into this Lease. Tenant represents and warrants that such statements have been prepared in accordance with generally accepted accounting principles consistently applied (with such variations thereto as Tenant ordinarily and customarily makes in preparing such financial statements), and the information contained in such financial statement(s) is true, complete and correct in all material aspects. If requested by County in connection with the sale or financing of the Premises by County, Tenant shall, within fifteen (15) business days following Tenant's receipt of such written request from County, make available to County financial statements for the current year and the two (2) years prior to the current year for review. Such statements shall be prepared in accordance with Tenant's normal accounting standards and shall be certified by Tenant, except that Tenant will provide audited financial statements if audited financial statements are otherwise available. At any time that Tenant is a publicly traded company, or is owned by a publicly traded company, Tenant's obligations under this Section shall be deemed satisfied by making available to County any public financial statements that have been filed with applicable regulatory authorities (which may be consolidated financial statements). County shall use such financial information only for its own purposes, and may disclose any financial information which is not otherwise available to the public only to third parties with a reasonable need to know (such as prospective purchaser or lenders) or as required by law, and shall otherwise maintain the confidentiality of such financial information.

ARTICLE XVI
COUNTY MORTGAGES

County shall have the right to hereafter assign, mortgage, convey and encumber its fee interest in the Premises at any time, and Tenant hereby consents thereto. County represents and warrants to Tenant that no County mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument, exists as of the Commencement Date. Any County Mortgage shall be subject and subordinate in all respects to, and no default, foreclosure or other enforcement of remedies under any County Mortgage shall extinguish or otherwise affect in any manner, and any person who acquires title to the County's Fee Interest pursuant to any foreclosure, assignment in lieu of foreclosure or other exercise of remedies under any County Mortgage shall take title to the County's Fee Interest subject to, (i) this Lease and all of Tenant's rights hereunder, (ii) any Leasehold Mortgage and the rights of any Leasehold Mortgagee thereunder, and (iii) any New Lease and the rights of the tenant thereunder.

ARTICLE XVII
LEASEHOLD MORTGAGES

17.1 **Definitions**. The following definitions are used in this Article (and in other Sections of this Lease):

Exhibit D

17.1.1. "**Leasehold Estate**" means Tenant's leasehold estate in and to this Lease, including Tenant's rights, title and interest in and to the Premises and Improvements, or any applicable portion thereof or interest therein.

17.1.2. "**Leasehold Foreclosure Transferee**" means any person (which may, but need not be, a Leasehold Mortgagee) which acquires the Leasehold Estate pursuant to a foreclosure, assignment in lieu of foreclosure or other enforcement of remedies under or in connection with a Leasehold Mortgage.

17.1.3. "**Leasehold Mortgage**" means and includes a mortgage, deed of trust, security deed, conditional deed, deed to secure debt or any other security instrument (including any assignment of leases and rents, security agreement and financing statements) held by an Institutional Lender by which Tenant's Leasehold Estate is mortgaged, conveyed, assigned, or otherwise transferred to secure a debt or other obligation, including a purchase money obligation.

17.1.4. "**Leasehold Mortgagee**" means an Institutional Lender which is the holder of a Leasehold Mortgage.

17.1.5. "**Tenant**" as used in this Article XVII only shall mean all of the following: (i) the Tenant under this Lease; (ii) an assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to County; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to County.

17.2 **Tenant's Right to Encumber Leasehold Estate; No Right to Encumber County's Fee Interest**. Tenant may, at any time during the Term of this Lease, without the consent of County (but with prior written notice providing evidence that all requirements of this Lease have been complied with) encumber all or any portion of Tenant's Leasehold Estate with one (1) or more Leasehold Mortgages; provided, however:

17.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed 80% of project costs prior to completion and 80% of the Leasehold Estate value after completion;

17.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, County's Fee Interest;

17.2.3. The Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of County hereunder, except as otherwise provided in this Lease, and;

17.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the County's Fee Interest to any Leasehold Mortgage.

17.2.5. In the event of any conflict between the provisions of this Lease and the provisions of any such trust Leasehold Mortgage, the provisions of this Lease shall control.

17.3 **Notification to County of Leasehold Mortgage**. Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide County with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant shall furnish to County

Executive Officer a complete copy of any trust deed and note to be secured thereby, together with the name and address of the holder thereof. Thereafter, Tenant or any Leasehold Mortgagee shall notify County of any change in the identity or address of such Leasehold Mortgagee. County shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVII.

17.4 **Notice Procedures**. All notices given by County to any Leasehold Mortgagee shall be given in the manner required by Section 19.19 below, and to the address provided to County pursuant to Section 17.3. All notices given by any Leasehold Mortgagee to County shall be given in the manner required and to the address specified in Section 19.19 below (provided that County may change its address for notice purposes by giving written notice to any Leasehold Mortgagee of such change of address in the manner provided in this Section).

17.5 **Recorded Request for Notice of Leasehold Mortgage Default**. Upon and immediately after the recording of a Leasehold Mortgage affecting the Premises (which shall only be recorded against Tenant's Leasehold Estate), Tenant at Tenant's expense, shall cause to be recorded in the office of the Recorder, County of Orange, California, a written request, executed and acknowledged by County, for a copy of any notice of default and of any notice of sale under the Leasehold Mortgage provided by the statutes of the State of California relating thereto.

17.6 **Cancellation or Modification of Lease**. No cancellation, surrender, modification or termination of this Lease shall be effective as to any Leasehold Mortgagee unless either consented to in writing by such Leasehold Mortgagee or effected in accordance with the provisions of this Article XVII.

17.7 **Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults**. County, upon delivery to Tenant of any notice of a default under this Lease or a matter as to which County may predicate or claim a default, shall concurrently deliver a copy of such notice to each Leasehold Mortgagee. No such notice by County to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Leasehold Mortgagee in the manner provided in Section 17.3 From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee shall have the same cure period (measured from its receipt of such notice) for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease (plus the additional time specified in Sections 17.8 and 17.9 if County gives a notice under Section 17.8 of County's intention to terminate this Lease), to commence and complete a cure of such default (or act or omission which is the subject matter of such notice) specified in County's notice. County shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant (and whether or not any applicable cure periods provided to Tenant in this Lease have expired). Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option, and hereby authorizes any Leasehold Mortgagee (or any receiver or agent) to enter upon the Premises for such purpose.

17.8 **Limitation on County's Termination Right**. If any Event of Default occurs and is continuing (and is not cured by any Leasehold Mortgagee under Section 17.7 above) which entitles County to terminate this Lease, County shall have no right to terminate this Lease unless County shall notify each and every Leasehold Mortgagee who has complied with Section 17.3 of County's intent to so terminate (and shall include in such notice a description of each Event of Default upon which such intent to terminate is based and stating the aggregate amount necessary to cure any monetary Events of Default stated in such

notice) at least thirty (30) days in advance of the proposed effective date of such termination. If any Leasehold Mortgagee, within such thirty (30) day period, (i) notifies County of such Leasehold Mortgagee's desire to nullify such notice, and (ii) pays or cause to be paid the amount that is necessary to cure any monetary Events of Default as stated in such notice, then Section 17.7 shall apply.

17.9 **Leasehold Mortgagee Foreclosure Period**. If any Leasehold Mortgagee gives to County the notice and makes the payment described in the last sentence of Section 17.8 above, then the following provisions shall apply:

17.9.1. If County's notice under Section 17.8 specified as the basis for County's election to terminate only monetary Events of Default, and Leasehold Mortgagee has fully paid the monetary amount designed by County in its notice, then such payment shall be deemed to have cured the Event of Default. If any remaining Event of Default specified in County's notice is continuing notwithstanding any such payment, then the date of termination specified in County's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee shall, during such twelve (12) month period:

(a) pay or cause to be paid all Rent under this Lease as the same becomes due; and

(b) continue (subject to any stay as described in Section 17.9.2 below) its good faith efforts to perform (and complete performance of) all of Tenant's nonmonetary obligations under this Lease, excepting nonmonetary obligations (whether or not a default exists with respect thereto) that are not reasonably susceptible of being cured by Leasehold Mortgagee; and

(c) commence and pursue with reasonable diligence until completion (subject to any stay as described in Section 17.9.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

17.9.2. The twelve (12) month period described in Section 17.9.1 above shall automatically be extended by the length of any delay caused by any stay (including any automatic stay arising from any bankruptcy or insolvency proceeding involving Tenant), injunction or other order arising under applicable Laws or issued by any court (which term as used herein includes any other governmental or quasi-governmental authority having such power) (the foregoing being collectively referred to as a "**stay**"). Further, Leasehold Mortgagee's obligations stated in Section 17.9.1(b) and (c) shall be automatically suspended during any period that any stay prevents Leasehold Mortgagee from taking any such actions. Nothing herein, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default has been cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

17.9.3. So long as any Leasehold Mortgagee is complying with Sections 17.9.1 and 17.9.2 above, then upon the acquisition of Tenant's Leasehold Estate by a Leasehold Foreclosure Transferee, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

17.9.4. Tenant's encumbrance of its Leasehold Estate with a Leasehold Mortgage shall not constitute an assignment or other Transfer under Article X or otherwise, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions

on the part of the Tenant to be performed hereunder; provided, however, that any Leasehold Foreclosure Transferee shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the effective date on which such Leasehold Foreclosure Transferee acquires title to the Leasehold Estate, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

17.9.5. Any Leasehold Mortgagee (or its designee) that becomes a Leasehold Foreclosure Transferee, upon acquiring title to Tenant's Leasehold Estate, without causing a default under this Lease and without obtaining County's consent, shall have a one-time right to assign the Leasehold Estate to an assignee having a net worth equal to or greater than sixty percent (60%) the value of the leasehold estate created by this Lease and senior management that individually have more than ten (10) years of experience managing, maintaining and operating developments like that on the Premises. Upon such assignment, the Leasehold Foreclosure Transferee shall automatically be released of all obligations thereafter accruing under this Lease, provided that, substantially concurrently with such assignment, the assignee delivers to County a written agreement assuming Tenant's obligations under the Lease thereafter accruing. Any subsequent Transfers occurring after the one-time assignment permitted under this Section shall be subject to Article X.

17.9.6. Notwithstanding any other provisions of this Lease to the contrary, any sale, assignment or other transfer of this Lease and the Leasehold Estate to any Leasehold Foreclosure Transferee completed in accordance with the terms of this Lease shall be deemed to be a permitted sale, assignment or transfer of this Lease and of the Leasehold Estate, and shall not cause any default under this Lease nor require the consent of County.

17.10 **Leasehold Mortgagee's Right to New Lease**.

17.10.1. Notwithstanding anything in this Lease to the contrary, if this Lease is terminated for any reason (including by reason of any Event of Default or rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights) without the prior written consent of all Leasehold Mortgagees, other than by reason of a Total Taking, County shall give prompt notice thereof to any Leasehold Mortgagee of whom County has received notice pursuant to Section 17.3 above. Such Leasehold Mortgagee (subject to Section 17.11 below if more than one Leasehold Mortgagee then exists) shall then have the right, exercisable by written notice to County at any time within thirty (30) days following receipt of such notice, to require County to enter into a new lease of the Premises with such Leasehold Mortgagee, or its designee, which new lease (a "**New Lease**") shall commence as of the date of such termination of this Lease and shall continue for the remainder of the scheduled term of this Lease, at the same Rent that is payable under this Lease, and on the same terms, covenants, conditions and agreements that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any residents under Resident Agreements or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees, provided that, substantially concurrently with the delivery of such notice requiring County to enter into a New Lease, Leasehold Mortgage shall pay to County all Rent or any other amounts payable by Tenant hereunder which is then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

17.10.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 17.10.1 above, then County and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease, but until such written New Lease is mutually executed and delivered, this Lease shall be deemed to constitute the New Lease, as modified by this Section 17.10, and Leasehold Mortgagee (or its designee) shall, from and after the giving of notice pursuant to Section 17.10.1, (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to County all Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under the New Lease on Tenant's part to be performed. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to County its reasonable expenses, including reasonable attorneys' fees, incurred in connection with the termination of this Lease and with the preparation, execution and delivery of such written New Lease.

17.10.3. In the event that County receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that County may control the same, then the tenant under the New Lease shall be entitled to an offset against the next Rent then owing under the New Lease in the amount of such net income received by County except to the extent that it was applied to cure any default of Tenant.

17.10.4. All rights and claims of Tenant under this Lease shall be subject and subordinate to all right and claims of the tenant under the New Lease.

17.10.5. Any New Lease made pursuant to this Section 17.10 (including any extensions or renewals thereof) with a Leasehold Mortgagee or its designee shall be prior to any County Mortgage or any other lien, charge or encumbrance on the County's fee interest in the Premises, and the tenant under the New Lease shall have the same right, title and interest in and to the Premises and the Improvements thereon as Tenant had under this Lease.

17.10.6. If a Leasehold Mortgagee elects to enter into a New Lease, County agrees, upon the request of any Leasehold Mortgagee, and on behalf of and at the expense of such Leasehold Mortgagee, to cooperate with such Leasehold Mortgagee in obtaining possession and control of the Premises and Improvements, including commencing and prosecuting appropriate legal proceedings in the name of County if reasonably necessary.

17.10.7. Unless and until County has received notice from each Leasehold Mortgagee that such Leasehold Mortgagee elects not to enter into a New Lease, or until the period provided for above within which such Leasehold Mortgagee must make such election has expired without any election having been made, County shall not, unless all Leasehold Mortgagees have consented in writing, cancel or agree to the termination or surrender of any subleases or occupancy agreements affecting the Premises or Improvements.

17.11 **Multiple Leasehold Mortgages**. If more than one Leasehold Mortgagee shall make a written request upon County for a New Lease in accordance with the provisions of Section 17.10, then such New Lease shall be entered into pursuant to the request of the Leasehold Mortgagee holding the Leasehold Mortgage that is junior in priority to all other requesting Leasehold Mortgagees, provided that: (a) any junior Leasehold Mortgagee whose Leasehold Mortgage was made in violation of any restrictions on junior encumbrances included in any bona fide senior Leasehold Mortgagee made in good faith and for value shall be disregarded for purposes of Sections 17.10 and 17.11 and shall have no rights under this Lease; (b) all

Exhibit D

Leasehold Mortgagees that are senior in priority shall have been paid all amounts then due and owing under such Leasehold Mortgagees, plus all expenses, including attorneys' fees, incurred by such senior Leasehold Mortgagees in connection with any default by Tenant under this Lease and in connection with the New Lease; (c) the new Tenant will assume, in writing, all of the obligations of the mortgagor(s) under all senior Leasehold Mortgages, subject to any nonrecourse or other exculpatory provisions (if any) therein contained; (d) the New Lease shall contain all of the same provisions and rights in favor of and for the benefit of Leasehold Mortgagees thereof as are contained in this Lease; and (e) all senior Leasehold Mortgagees (at no expense to such senior Leasehold Mortgagees or County) shall have received endorsements or other assurances satisfactory to such senior Leasehold Mortgagees from their respective title insurers insuring that their respective senior Leasehold Mortgages (and any assignment of rents and other security instruments executed in connection therewith) will continue as a Leasehold Mortgage with respect to such New Lease in the same manner and order of priority of lien as existed with respect to this Lease; and thereupon the leasehold estate of the new tenant under the New Lease shall be subject to the lien of each of the senior Leasehold Mortgages in the same manner and order of priority of lien as existed with respect to this Lease.

In the event that not all of the foregoing provisions shall have been satisfied by or with respect to any such junior Leasehold Mortgagee, the Leasehold Mortgagee next senior in priority to such junior Leasehold Mortgagee shall have paramount rights to the benefits set forth in Section 17.10 above, subject nevertheless to the provisions hereof respecting the senior Leasehold Mortgagees, if any. In the event of any dispute as to the respective senior and junior priorities of any such Leasehold Mortgages, the certification of a national title company licensed in the State of California shall be conclusively binding on all parties concerned. Should there be a dispute among Leasehold Mortgagees as to compliance with the foregoing provisions, County may rely on the affidavit of the most senior Leasehold Mortgagee as to compliance by any junior Leasehold Mortgagee. County's obligation to enter into a New Lease with any junior Leasehold Mortgagee shall be subject to the receipt by County of evidence reasonably satisfactory to it that the conditions set forth in clauses (a), (b) and (c) in the paragraph immediately above in this Section have been satisfied with respect to each senior Leasehold Mortgagee.

The right of a senior Leasehold Mortgagee under Section 17.10 above to request a New Lease may, notwithstanding any limitation of time set forth above in this Section 17.10, be exercised by the senior leasehold Mortgagee within twenty (20) days following the failure of a junior Leasehold Mortgagee to have exercised such right, but not more than sixty (60) days after the giving of notice by County of termination of this Lease as set forth in Section 17.10 above.

If a junior Leasehold Mortgagee shall fail or refuse to exercise the rights set forth in this Section 17.11, any senior Leasehold Mortgagee, in the inverse order of the seniority of their respective liens, shall have the right to exercise such rights subject to the provisions of this Lease.

Further, in addition to the above, at any time that more than one Leasehold Mortgagee exists, the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall have the first and prior right over any junior Leasehold Mortgagee to receive any payments or to exercise any rights afforded to Leasehold Mortgages under this Article XVII or any other provision of this Lease, subject to the provisions of any subordination or intercreditor agreements that may be entered into between such Leasehold Mortgagees.

Exhibit D

Notwithstanding anything herein to the contrary, County shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon County by multiple Leasehold Mortgagees, County may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

17.12 **Defaults Not Reasonably Susceptible of Cure by Leasehold Mortgagee**. Notwithstanding anything in this Lease to the contrary, nothing in this Article XVII or any other provision of this Lease shall require any Leasehold Mortgagee to cure any nonmonetary default of Tenant that is not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee. No failure of any Leasehold Mortgage or its designee to cure any nonmonetary default of Tenant that is not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee shall prevent such Leasehold Mortgagee or its designee from exercising its right to enter into a New Lease or any other right of a Leasehold Mortgagee as provided herein.

17.13 **Condemnation and Insurance Proceeds**. Any condemnation proceeds or insurance proceeds to which Tenant is entitled pursuant to this Lease shall be subject to and paid in accordance with the requirement of any Leasehold Mortgage, subject, however, to any requirement in this Lease that such proceeds must be used to repair and restore the Improvements to the Premises which were damaged or destroyed by such condemnation or casualty (including, without limitation, as required in Section 7.1(b) following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of any Leasehold Mortgage, so long as such proceeds are used towards repair or reconstruction of the Improvements to the Premises to the extent required by this Lease.

17.14 **Mortgagee Clauses**. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder, provided that any such Leasehold Mortgagee shall hold and apply such insurance proceeds subject to the provisions of this Lease.

17.15 **Proceedings**. County and Tenant shall give each Leasehold Mortgagee of whom County has been notified pursuant to Section 17.3 prompt notice of (i) any arbitration, litigation or other legal proceeding between County and Tenant, (ii) any Condemnation notices received by them, (iii) any pending adjustment of insurance claims, and (iv) any notices given between County and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to participate or intervene in any such negotiations or proceedings and to be made a party to any such proceedings, and the parties hereto do hereby consent to the same. If any Leasehold Mortgagee elects not to participate or intervene in or become a party to any proceeding, Tenant shall give each Leasehold Mortgagee notice and a copy of any award or decision made in connection with such proceeding.

17.16 **No Waiver**. No payment made to County by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to County pursuant to County's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

17.17 **No Merger**. There shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate

created by this Lease or any interest in this Lease or said leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including Leasehold Mortgagees) having an interest in this Lease or in the estate of County and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

17.18 **Amendments/Agreements/Acknowledgments Required by Leasehold Mortgagees**. County acknowledges that Tenant's ability to obtain construction, take-out and other financing pursuant to Leasehold Mortgages is a material consideration to Tenant's entering into this Lease. Accordingly, County agrees to reasonably cooperate with Tenant and any prospective Leasehold Mortgagee in entering into any reasonable amendment to this Lease (pending Board approval if required), or any supplemental agreement or written acknowledgment, reasonably requested by any proposed Leasehold Mortgagee, for the purposes of (i) updating or supplementing the mortgagee protection provisions of this Lease to comply with prevailing standards, (ii) otherwise providing such prospective Leasehold Mortgagee with additional reasonable means of protecting and preserving the existence of this Lease and the lien of the Leasehold Mortgage as an encumbrance on the Leasehold Estate, so long as County continues to be paid Rent owing under this Lease, and (iii) acknowledging that such prospective Leasehold Mortgagee is recognized by County as a Leasehold Mortgagee under this Lease and entitled to all of the rights and privileges afforded to Leasehold Mortgagees under this Lease; provided, however, that no such amendment, agreement or acknowledgment shall contain provisions that would materially adversely change the Term or Rent under the Lease or materially adversely change the obligations of Tenant or rights of or protections afforded the County under this Lease.

17.19 **Fees and Costs**. Tenant agrees to reimburse County for its reasonable attorneys fees and costs incurred in connection with County's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

17.20 **Restrictions on Liability of Leasehold Mortgagees**. Nothing herein shall be deemed or construed to require any Leasehold Mortgagee to cure any default of Tenant or to enter into a New Lease as provided herein, except to the extent that such Leasehold Mortgagee has elected in writing to do so in accordance with the procedures set forth in this Article XVII. In the event any Leasehold Mortgagee or its designee becomes the Tenant under this Lease or the tenant under any New Lease, such Leasehold Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or the tenant under the New Lease only to the extent that they arise during the period of time that the Leasehold Mortgagee or its designee constitutes the actual beneficial holder of the leasehold estate under this Lease or the New Lease.

ARTICLE XVIII
BEST MANAGEMENT PRACTICES

18.1 TENANT and all of TENANT's, subtenant, agents, employees and contractors 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).

Exhibit D

18.2 The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County of Orange, 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 of Orange, 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.

18.3 To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction that contains Best Management Practices ("**BMPs**") that parties 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 the 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.

18.4 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit E.** These BMP Fact Sheets may be modified during the term of the Lease; and the County Executive Officer shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its 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.

18.5 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 the County Executive Officer for review and approval prior to implementation.

18.6 County Executive Officer may enter the Premises and/or review Tenant's records at any reasonably time during normal business hours to assure that activities conducted on the Premises comply with the requirements of this section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

ARTICLE XIX
GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

19.1 **Nondiscrimination.** 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.

Exhibit D

19.2 **Taxes and Assessments**. Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

19.3 **Quitclaim of Interest upon Termination**. Upon termination of this Lease for any reason, 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 excluding any of Tenants property, chattel, or improvements. 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.

19.4 **Public Records**. County acknowledges Tenant's contention that financial statements and records (not including Gross Receipts Statements) are intended to constitute corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California, and shall be exempt from public disclosure as authorized by §6254.15 of the California Government Code. In the event that a public records act request is made for such financial statements and records (not including Gross Receipts Statements) and the County determines that he records must be turned over, the County will give Tenant fifteen (15) days written notice prior to turning over such records so that Tenant can take any necessary action. Tenant acknowledges that any other written information (other than the foregoing corporate financial statements and trade secrets) 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 §6250, *et seq*.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act.

19.5 **Child Support Enforcement**.

19.5.1. At all times during the term of this Lease, Tenant shall comply with all County, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

19.5.2. In order for Tenant to comply with County of Orange requirements, Tenant shall deliver to Director the required data and certifications, as shown in **Exhibit F** attached hereto concurrent with the execution of this Lease by County.

19.5.3. Failure of Tenant to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to

cure such breach within thirty (30) days of Tenant's receipt of written notice from County of such breach by Tenant shall constitute grounds for termination of this Lease.

19.6 **Attorney's Fees**. 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.

19.7 **Payment Card Compliance**. Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the County, on behalf of the County, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("**PCI/DSS**") and Payment Application Data Security Standard ("**PA/DSS**") compliant and will remain compliant during the entire duration of its conduct of such activities. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by County, Tenant shall provide to County written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

19.8 **Right to Work and Minimum Wage Laws**.

19.8.1. 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, pursuant to the 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, pursuant to the 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.

19.8.2. 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.

19.8.3. 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.

19.9 **Declaration of Knowledge by Tenant**. Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.

19.10 **Governing Law**. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Exhibit D

19.11 **Venue.** The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws 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. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

19.12 **Headings and Titles**. The captions of the Articles or Sections of this Lease are only to assist the parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

19.13 **Interpretation**. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "**Tenant**" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term "**County**" shall include County's agents, employees, contractors, invitees, successors or others using the Premises with County's expressed or implied permission.

19.14 **Ambiguities**. Each party hereto has reviewed this Lease with legal counsel, and has revised (or requested revisions of) this Lease based on the advice of counsel, and therefore any rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any exhibits hereto.

19.15 **Successors and Assigns**. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

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

19.17 **Severability**. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.18 **Integration**. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between County and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both County and Tenant. County and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

19.19 **Notices**. All 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 sent through the United States mail in the State of California, duly registered or certified, return receipt requested, with postage prepaid. If any notice is sent

by registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, County may also provide notices to Tenant by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.:

If to County:	County of Orange County Executive Office 333 West Santa Ana Boulevard, 3rd Floor Santa Ana, CA 92701-4084 Attn: Chief Real Estate Officer Facsimile: Email:
With a copy to:	Orange County Counsel Office of the County Counsel 333 West Santa Ana Blvd., 4th Floor Santa Ana, CA 92702 Attn: Thomas (Mat) Miller Phone: (714) 834-6019 Facsimile: (714) 834-2359 Email: thomas.miller@coco.ocgov.com
If to Tenant:	Attn: Facsimile:
With a copy to:	Attn: Facsimile:

19.20 **Brokers**. Tenant (i) has engaged _____ as its broker in this transaction pursuant to a separate agreement, and (ii) shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. County and Tenant each represent and warrant to the other that (except as disclosed in the immediately preceding sentence) it has not engaged or dealt with any broker, finder or other agent in connection with this Lease or the transactions contemplated hereby. County and

Exhibit D

Tenant (each, an "**indemnifying party**") each hereby agree to indemnify and hold the other (each, an "**indemnified party**") harmless from and against all costs, expenses or liabilities (including attorney fees and court costs, whether or not taxable and whether or not any action is prosecuted to judgment) incurred by the indemnified party in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee from the indemnified party in connection with the indemnifying party's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the indemnifying party. No broker, finder or other agent of any party hereto shall be a third-party beneficiary of this Lease.

19.21 **No Partnership**. This Lease shall not be construed to constitute any form of partnership or joint venture between County and Tenant. County and Tenant mutually acknowledge that no business or financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Tenant or any other party.

19.22 **Authorization**. County and Tenant (each, a "**signing party**") each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, each signing party shall deliver to the other a certified copy of a resolution of the signing party's board of directors or other governing board authorizing the execution of this Lease by the signing party.

19.23 **Recording**. This Lease itself shall not be recorded, but a memorandum hereof shall be recorded in the form of **Exhibit G** attached hereto (the "**Memorandum**"). The Memorandum shall be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder only after the Commencement Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

19.24 **Exhibits**. This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

Exhibit A	Legal Description of the Premises
Exhibit A-1	Rendering of the Premises
Exhibit B	Title Exceptions
Exhibit C	Initial Improvements
Exhibit D	Navy Quitclaim
Exhibit E	Best Management Practices Fact Sheets
Exhibit F	Child Support Enforcement Certification Requirements
Exhibit G	Memorandum of Lease

19.25 **Consent/Duty to Act Reasonably**. Except as otherwise expressly provided herein, whenever this Lease grants County or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other party's reasonable expectations concerning the benefits to be enjoyed under this Lease.

Exhibit D

19.26 **No liability of Officers, Directors, Etc.** In consideration of the benefits accruing hereunder, County and Tenant each agree that the respective obligations of County and Tenant under this Lease do not constitute obligations of the officers, directors, members, partners, shareholders or Affiliates of such parties.

19.27 **Counterparts**. For the convenience of the parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

[Signatures On Following Pages]

Exhibit D

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

APPROVED AS TO FORM:
COUNTY COUNSEL

By: _____
Deputy

Date _____

RECOMMENDED FOR APPROVAL:

CEO/Corporate Real Estate

By: _____

TENANT

a California limited liability company

By:

By: _____
Name:
Title:

By: _____
Name:
Title:

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

ATTEST:

_____
SUSAN NOVAK
Clerk of the Board of Supervisors
Orange County, California

COUNTY

COUNTY OF ORANGE,
a political subdivision of the State of California

_____
Chair, Board of Supervisors
Orange County, California

Exhibit D

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[to be attached]

Exhibit D

EXHIBIT A-1

RENDERING OF THE PROPERTY

Exhibit D

EXHIBIT B

TITLE EXCEPTIONS

[see attached]

Exhibit D

EXHIBIT C

INITIAL IMPROVEMENTS

[see attached]

Exhibit D

EXHIBIT D

NAVY QUITCLAIM

[see attached]

Exhibit D

EXHIBIT E

Best Management Practices ("BMPs" Fact Sheets)

Best Management Practices can be found at: http://ocwatersheds.com/default.aspx which website may change from time to time.

TENANT shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this TENANT's operations. TENANT is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease. Although the Harbor is not the TENANT's leased Premises, BMPs apply to the TENANT's defined Premises and BMPs also apply to the TENANT in their conducting business operations throughout the Harbor.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:
http://ocwatersheds.com/IndustrialCommercialBusinessesActivities.aspx (which website may change from time to time):
IC3 Building Maintenance
IC4 Carpet Cleaning
IC6 Contaminated or Erodible Surface Areas
IC9 Outdoor Drainage from Indoor Areas
IC10 Outdoor Loading/Unloading of Materials
IC12 Outdoor Storage of Raw Materials, Products, and Containers
IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment
IC17 Spill Prevention and Cleanup
IC21 Waste Handling and Disposal
IC22 Eating and Drinking Establishments
IC23 Fire Sprinkler Testing/Maintenance
IC24 Wastewater Disposal Guidelines

Exhibit D

EXHIBIT F

COUNTY OF ORANGE
CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS

A. In the case of a COUNTY doing business as an individual, his/her name, date of birth, the last four digits of the Social Security number, and residence address:

Name:_____
Date of Birth:_____
Last Four Digits of Social Security No: _____
Residence Address: _____

B. In the case of a COUNTY doing business in a form other than as an individual, the name, date of birth, the last four digits of the Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the leased Premises:

Name:_____
Date of Birth:_____
Last Four Digits of Social Security No: _____
Residence Address: _____

Name:_____
Date of Birth:_____
Last Four Digits of Social Security No: _____
Residence Address: _____

Name:_____
Date of Birth:_____
Last Four Digits of Social Security No: _____
Residence Address: _____

(Attach additional sheets if necessary)

I certify that _____ *is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease agreement with the County of Orange dated* _____ *. I understand that failure to comply shall constitute a material breach of the Lease and that failure to cure such breach within sixty (60) calendar days of notice from the County of Orange shall constitute grounds for termination of the Lease agreement without cost to the County.*

_____

Exhibit D

Authorized Signature	Print Name	Title	Date

Exhibit D

EXHIBIT G

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this _____ day of _____, 20___, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), and _____, ("**Tenant**"), residing at _____, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated _____ ("**Lease**"), are hereby incorporated by reference into this Memorandum.

2. **Subject Premises.** The Premises which are the subject of the Lease are more particularly described as on Exhibit A, attached hereto

3. **Commencement Date of Lease.** The Lease shall be deemed to have commenced _____ as set forth within the terms of the Lease.

4. **Term.** The Term of the Lease shall be _____ years from the Commencement Date as stated in the written Lease. The initial term shall commence on the date hereof and terminate on _____. Tenant shall have the right to extend the term of the Lease by _____ extension periods of _____ years each or in any other such manner as prescribed in the Lease.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the County and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for County and Tenant are as follows:

COUNTY:

TENANT:

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum o is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between County and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

Exhibit D

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

COUNTY:

By: _____

Name: _____
Title: _____

TENANT:

By: _____

Name: _____
Title: _____

By: _____

Name: _____
Title: _____

EXHIBIT E

MASTER GROUND LEASE

Exhibit E

El Toro Parcel

MASTER GROUND LEASE

This **MASTER GROUND LEASE** ("**Lease**") is made as of _____, 20___ ("**Execution Date**") by and between the **COUNTY OF ORANGE,** a political subdivision of the State of California (hereinafter referred to as "**COUNTY**") and **LOWE ENTERPRISES REAL ESTATE GROUP,** a California corporation (hereinafter referred to as "**TENANT**") without regard to number and gender. COUNTY and TENANT are sometimes referred to hereinafter individually as a "**Party**" or jointly as the "**Parties.**"

R E C I T A L S

1. COUNTY owns or it expects it will own a portion of the former Marine Corps Air Station at El Toro ("**MCAS EL Toro**") on the southwest corner of the former base as more particularly described on **Exhibit A** hereto ("**Property**") in the City of Irvine, California ("**City**").

2. COUNTY is pursuing development of the Property in conjunction with the development of the neighboring Great Park, being developed by the City.

3. TENANT has entered into that certain Disposition and Development Agreement for the Master Planning, Entitlement, and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California By And Between the County of Orange and Lowe Enterprises Real Estate Group dated as of ____, 2013 ("**DDA**") pursuant to which TENANT will undertake the master planning, entitlement, and infrastructure development for the Property, entitling and developing the Property for its highest, best and most economically viable use (the "**Project**").

4. TENANT now desires to lease from COUNTY, and COUNTY is willing to lease to TENANT, the Premises, as defined below, on the terms and conditions set forth herein. But for TENANT's agreement to lease both the Initial Acreage and the Remainder Acreage, as defined below, pursuant to terms of this Lease, COUNTY would not have entered into this Lease with TENANT for the Initial Acreage.

NOW, THEREFORE, in consideration of the above recitals which are hereby incorporated into this Lease by reference, and mutual covenants and agreements hereinafter contained, COUNTY and TENANT mutually agree to the following:

1. DEFINITIONS (AMA2.1 N)

The following words in this Lease have the meanings set forth in this Section unless otherwise apparent from context:

(a) "**Acquisition Notice**" shall have the meaning set forth in Section 7.2.

(b) "**Affiliate**" means, with respect to any person (which as used herein includes an individual, trust or entity), any other person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such person.

(c) **"Alternative Secondary Access Point"** means either Barranca Parkway, Alton Parkway or, if TENANT and COUNTY agree in writing, another road.

(d) "**Alternative Secondary Access Point Improvements**" has the meaning set forth in Section 2.3.

(e) "**Applicable Laws**" shall mean all standards, laws, statutes, restrictions, ordinances, requirements, and regulations applicable to the Project.

(f) "**Appraisal**" means the determination of value made in accordance with the process described in Article 13.

(g) "**Auditor-Controller**" means the Auditor-Controller (from time to time) of the County.

(h) "**business days**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

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

(j) "**City**" means the City of Irvine, California.

(k) "**Completion Date**" has the meaning set forth in Section 6(a).

(l) "**control**" means, for purposes of evaluating a proposed Transfer, the power to direct and have final approval of the day to day decision-making, management and policies of the entity subject to limited customary arms-length approval rights of the members set forth in a governing document, which governing document is consistent with the TENANT's obligations under this Lease. The terms "controlling" or "controlled" have meanings correlative to the foregoing.

(m) "**Corporate Real Estate**" means the County Executive Officer, Corporate Real Estate, County of Orange, or upon written notice to TENANT, such other entity as may be designated by the Project Lead, County Executive Officer or the Board of Supervisors.

(n) "**County Counsel**" means the County Counsel, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as may be designated by the County Executive Officer or the Board of Supervisors.

(o) "**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 as may be designated by the Board of Supervisors.

(p) "**DDA**" means that certain Disposition and Development Agreement for the Master Planning, Entitlement, and Development of a Portion of the Former El Toro Marine Corps Air Station in the City of Irvine, California Between the County of Orange and Lowe Enterprises Real Estate Group dated as of ____, 2013.

(q) "**Developer Party**" means any entity (i) that is controlled by Lowe Enterprises Real Estate Group or Robert J. Lowe or his family; or (ii) whose managing member, manager or general partner that has control over the entity is controlled by Developer or Robert J. Lowe or his family, and in either (i) or (ii) that entity has a minimum net worth (excluding any interest in the Premises) at all times of at least

Twenty Million Dollars ($20,000,000) and it employs the Key People as that term is defined in the DDA. For purposes of this definition, (i) the term "family" means the spouse and descendants of Robert J. Lowe, each of their respective spouses and descendants and any trusts established for the benefit of the same.

(r) "**Development Agreement**" If adopted by City or COUNTY , refers to that certain development agreement between _____ and _____ pursuant to Government Code section 65864 et seq. dated as of _____, 20__.

(s) "**Entitlement(s)**" refers collectively (or individually as the case may be) to the COUNTY and City approvals required to develop the Project including [the Specific Plan, General Plan Amendment, Zoning Change, Final EIR, Vesting Tentative Map, Vesting Final Map, Development Agreement and _____].

(t) "**Final Approval**" means approval of (an) Entitlement(s) by the COUNTY, City or other governmental agency and expiration of any applicable appeals period or statute of limitations and no appeal or challenge having been filed, or, if an appeal or challenge is filed, such appeal or challenge has been finally and successfully resolved to the satisfaction of the COUNTY and TENANT.

(u) "**Final EIR**" refers to a final environmental impact report (SCH No. _____) for the Project certified by the _____ on _____, 20__.

(v) "**Final Map**" refers to a final vesting subdivision tract map that substantially conforms to the Tentative Map.

(w) "**General Plan Amendment**" refers to an amendment to the City of Irvine General Plan for the Project approved by the City on _____, 20__ by Resolution No. _____.

(x) "**Ground Lease**" shall mean a ground lease substantially in the form of **Exhibit C** hereto for the leasing of any portion of the Premises in conformance with the terms of this Lease and the DDA.

(y) "**Ground Rent**" means the rent TENANT must pay to the COUNTY pursuant to a Ground Lease as specified in Sections 12 and 13 hereof.

(z) **"Ground Rent Appraisal"** means the valuation for purposes of establishing the Ground Rent in accordance with Section 12 hereof, as determined by the Appraisal process described in Section 13 hereof, for the portion of the Master Ground Lease Parcel described in a proposed Ground Lease.

(aa) "**Improvements**" shall have the meaning set forth in Section 15.1 hereof.

(bb) "**Initial Acreage**" means the portion of the Property as defined in Section 2.1 hereof.

(cc) "**Master Ground Rent**" means the Rent TENANT must pay to the COUNTY pursuant to this Lease as specified in Section 7 hereof.

(dd) "**Net Acreage**" means the acreage of the Premises or a portion thereof after deducting the square footage of the Premises or portion thereof allocated in the Specific Plan to be used for infrastructure and therefore not available for sale or lease.

(ee) "**net worth**" means total assets minus total liabilities of a person or entity as determined by using U.S. Generally Accepted Accounting Principles.

(ff) "**Phase 2 Improvements**" has the meaning set forth in the DDA.

(gg) "**Premises**" means the term defined in Section 2 hereof.

(hh) "**Property**" means the real property described on **Exhibit A** hereto as reduced or expanded from time to time in accordance with the terms of this Lease. ||***Exclude the Alton parcels from this description.***|| Notwithstanding the attachment of the description of the Property as a whole to this Lease, all rights of possession and the incidence of a leasehold real estate interest granted to TENANT hereunder relate solely to the Premises.

(ii) "**Project Lead**" refers to James Campbell or another person selected by the County Executive Officer.

(jj) "**Purchase Agreement**" means an agreement for the purchase and sale of all or a portion of the Premises after the Execution Date as defined in Section 12.5.

(kk) "**Remainder Acreage**" means the portion of the Property as described in Section 2.3 hereof.

(ll) "**Rent Per Net Acre**" has the meaning set forth in Section 7.1(d).

(mm) "**Risk Manager**" means the Manager of County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to TENANT, such other person as may be designated by the County Executive Officer.

(nn) "**Specific Plan**" refers to the specific plan as defined in the California Government Code approved for the Project by the _____ on _____, 20__, by Ordinance No. _____, which shall govern, among other things, use and development of the Project.

(oo) "**TENANT Parties**" shall have the meaning set forth in Section 22.3.

(pp) "**Tentative Map**" refers to vesting tentative map no. _____ approved by the City on _____, 20__.

(qq) "**Term**" means that period commencing on the date hereof, and ending on the date that this Lease terminates for any reason.

(rr) "**Transfer**" means the term defined in Section 22.1 hereof.

(ss) "**Treasurer-Tax Collector**" means the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to TENANT, such other person or entity as may be designated by the Board of Supervisors.

(tt) "**Zoning Change**" means that change in the zoning for the Property approved by the City and/or COUNTY on _____, 20__, by Ordinance No. _____.

2. PREMISES (AMA3.1 N)

2.1 COUNTY hereby leases to TENANT, and TENANT hereby leases from COUNTY, the portion of the Property ("**Initial Acreage")**, more particularly described in **Exhibit B** and shown on **Exhibit C** as of the Execution Date, which exhibits are attached hereto and by reference made a part hereof.

2.2 The portion of the Property leased to the TENANT is hereinafter referred to as "**Premises**," The Premises may be revised as necessary to add or subtract land as the COUNTY refines the area which is subject to the DDA and pursuant to the process described in this Article 2 hereof.

2.3 The remaining portion of the Property other than the Initial Acreage is referred to in this Lease as the "**Remainder Acreage**" until that portion is added to the Premises as provided for in this Article 2. No later than ten (10) business days after the COUNTY notifies TENANT that Marine Way has been substantially completed to a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point ("**Alternative Secondary Access Point Improvements**"), the Parties shall execute an amendment to this Lease for the sole purpose of adding the Remainder Acreage to the definition of the Premises.

2.4 If TENANT wishes to amend the definition of the Premises to add the entire Remainder Acreage prior to substantial completion of the Alternative Secondary Access Point Improvements, TENANT shall notify COUNTY in writing. Unless a default by TENANT exists under this Lease or the DDA, the Parties shall execute an amendment to this Lease for the sole purpose of adding the Remainder Acreage to the definition of the Premises within ten (10) business days of COUNTY's receipt of the above notice.

2.5 If TENANT wishes to amend the definition of the Premises to add only a portion of the Remainder Acreage prior to substantial completion of the Alternative Secondary Access Point Improvements, TENANT shall notify COUNTY in writing. COUNTY, in its sole and absolute discretion, may accept or reject TENANT's request in writing. If the COUNTY accepts TENANT's request, and unless a default by TENANT exists under this Lease or the DDA, the Parties shall execute an amendment to this Lease for the sole purpose of adding the agreed upon portion of the Remainder Acreage to the definition of the Premises within ten (10) business days of COUNTY's acceptance of TENANT's request.

2.6 Once Marine Way is substantially completed to a four (4) lane road between Sand Canyon Road and Great Park Boulevard West, upon substantial completion of each four hundred (400) linear foot extension, or such greater distance as is reasonably acceptable to the Project Lead, of Marine Way east of Great Park Boulevard West to a four (4) land road, COUNTY may add the portion of the Remainder Parcel with frontage along that extended portion of Marine Way to the Premises provided the portion of the Remainder Parcel to be added is twenty (20) acres or more. The Parties shall execute an amendment to this Lease for the sole purpose of adding the COUNTY designated portion of the Remainder Acreage to the definition of the Premises within ten (10) business days of TENANT's receipt of written notice from the COUNTY.

2.7 If the COUNTY had not acquired fee simple title to a portion of the Remainder Acreage prior to full execution of an amended Lease purporting to add that portion of the Property to the Premises, the relevant portion of the Remainder Acreage as of that date will not include that portion of the Property not owned in fee title by the COUNTY. Following the full execution of the amended Lease, to the extent that the COUNTY acquires fee simple title to a portion of the Remainder Acreage during the Term, the definition of the Premises shall be automatically revised to include that additional real property and the Parties agree to attach a revised legal description and depiction as **Exhibit A** and **Exhibit C** and those documents will be deemed to replace the then existing legal description and depiction as if originally attached thereto.

2.8 With respect to any additions to or subtraction from the Premises, other than the addition of the Remainder Acreage as provided for in this Article 2, if the COUNTY and TENANT agree to the change and upon written notice from COUNTY to TENANT of such revision, the revised legal description shall be substituted for **Exhibit B** and **Exhibit C** attached hereto. Such written notice, when provided by Project

Lead, shall amend this Lease and the new legal description and depiction will be deemed to replace the then existing legal description and depiction as if originally attached hereto.

3. LIMITATIONS OF THE LEASEHOLD (AMA5.1 S)

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 expressly grant or 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 acknowledges that TENANT has conducted a complete and adequate investigation of the Premises and TENANT accepts the Premises in its "as is" condition including, without limitation, the conditions described in Article 22 hereof.

4. USE (AMB1.1 N)

TENANT's use of the Premises shall be limited to the construction, development, entitlement, operation, maintenance and repair of the Phase 2 Improvements and the Premises and such other activities expressly authorized by the DDA. TENANT agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises, except as set forth herein and in Section 6 below. TENANT agrees not to knowingly conduct or permit to be conducted any activities in, on or from the Premises that would be considered a public or private nuisance (as defined in California Civil Code Sections 3479 and 3480).

5. TERM (AMB2.1 S)

The term of this Lease ("**Term**") shall commence on the Execution Date, as defined below, and shall expire on the tenth (10^{th}) anniversary of the Execution Date, subject to extension as provided herein or earlier termination in accordance with the terms of this Lease, Article 6 and General Condition 15 below or by mutual agreement of the Parties.

6. OPTION TO EXTEND TERM (2.3 S)

6.1 Option to Extend Term

TENANT shall have the option ("**Extension Option(s)**") to extend the Term for three (3) five (5) year option terms ("**Option Term(s)**") on the terms and conditions set forth in this Section 6. Upon TENANT's proper exercise of the Extension Option in accordance with this Section and the COUNTY's acceptance thereof, the Term shall be extended for the additional five (5) year period.

6.2 Exercise of Extension Option

The Extension Options may only be exercised by TENANT in the following manner: (a) not earlier than two hundred seventy (270) days or later than one-hundred and eighty (180) days prior to the expiration of the Term or prior Option Term, as applicable, TENANT shall deliver to COUNTY a written notice signed by TENANT stating that TENANT is interested in exercising the Extension Option ("**Notice of Interest**"); (b) within ninety (90) days of COUNTY's receipt of a Notice of Interest, COUNTY shall deliver to TENANT a written notice stating COUNTY's determination as to whether the request to exercise the Extension Option is approved based on the standards specified in this Article 6 ("**Option Determination Notice**"); and (c) if the Option Determination Notice gives COUNTY's consent to an Extension Option, on or before 5:00 p.m.

(Pacific Time) of the thirtieth (30th) day after the date of COUNTY's delivery of the Option Determination Notice ("**Extension Election Deadline**"), TENANT shall deliver to COUNTY a written notice signed by TENANT ("**Extension Election Notice**") indicating TENANT's exercise of one of the following elections: (i) TENANT elects to waive its Extension Option which will result in this Lease terminating at the expiration of the Term or the previously exercised Option Term, as applicable, or (ii) TENANT elects to exercise the Extension Option at the Option Rent provided for in Article 7 hereof. If COUNTY does not timely receive the Notice of Interest or receives the Extension Election Notice after the Extension Election Deadline, TENANT shall be deemed to have waived its Extension Option (as well as any future Extension Option(s), if any), the terms and conditions of this Section shall automatically expire, and the Extension Option shall no longer be exercisable.

6.3 Limitation on Extension Options

Notwithstanding anything to the contrary set forth above, TENANT shall not have the right to exercise the Extension Option and neither the Term nor any Option Term, as applicable, shall be extended (i) during the time commencing from the date COUNTY gives TENANT a written notice that TENANT is in default under any material provision of this Lease and continuing until the default described in said notice is cured, (ii) during the period of time commencing on the day after a monetary obligation to COUNTY is due from TENANT and unpaid and continuing until the obligation is paid, (iii) at any time that a default exists under the DDA by a party other than the COUNTY and such default has not been cured, (iv) if the Parties have not fully executed an amended Lease that adds the entire Remainder Acreage owned by the County in fee title to the Premises; or (iv) if the DDA has terminated. The period of time within which the Extension Option may be exercised shall not be extended or enlarged by reason of TENANT's inability to exercise such option prior to satisfaction of the foregoing conditions precedent.

7. RENT (AMC 3.1 N)

Commencing on the Execution Date until the expiration of the Term, TENANT shall pay COUNTY for the rights granted to TENANT under this Lease, including, without limitation, those described in Section 12 hereof, as "**Rent**" in the following sums:

7.1 Master Ground Rent

(a) For the period commencing on the Execution Date and terminating on the date that is the first anniversary of Marine Way (4 lanes) between Sand Canyon Road and Great Park Boulevard West having been substantially completed (the "**Completion Date**"), the sum of Fifty Thousand Dollars ($50,000.00) per year, payable in twelve (12) equal installments with the first payment due in advance on the Execution Date and the remaining payments due on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(b) For the period commencing on the first anniversary of the Completion Date and continuing for the balance of the initial Term and through the last day of the first Extension Option, if exercised, the sum of One Hundred Fifty Thousand Dollars ($150,000.00) per year, payable in twelve (12) equal installments on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(c) During the second and third Extension Options, if exercised, once Marine Way has been substantially completed to a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point, the Rent shall be increased from One Hundred Fifty Thousand Dollars ($150,000.00) per year to the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) per year, payable

in twelve (12) equal installments on the first day of each month during such period, prorated for any partial months at the beginning or end of such period.

(d) Rent payable pursuant to Sections 6(b) and 6(c) shall be reduced as Ground Leases or Purchase Agreements become effective or close escrow, respectively, for portions of the Premises. Such reduction shall be pro rata based on dividing the annual Rent per each year by the Net Acreage (as defined in the DDA) of the Property, to determine the "**Rent Per Net Acre,**" and then reducing the Rent for such year by the number which results from multiplying (x) the Net Acreage being removed from this Lease as Ground Leases or Purchase Agreements become effective or close escrow, respectively, by (y) the Rent per Net Acre.

7.2 Place of Payment and Filing

Rent payments shall be delivered to the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 11 Civic Center Plaza, Room G58, Santa Ana 92702). The designated place of payment and filing may be changed at any time by Project Lead upon ten (10) days' written notice to TENANT. Rent payments may be made by check made payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail. The COUNTY offers electronic payment for any payments hereunder, thus the TENANT shall utilize such COUNTY electronic payment system for any payments under this Lease, unless otherwise directed in writing by the Project Lead. For electronic payments, the TENANT shall submit their payment using the following information:

Bank Name: Wells Fargo Bank
Account Name: Revenue Recovery
Routing / ABA: _____
Account #: _____
Lease Name: El Toro Master Ground Lease

7.3 Insufficient Funds

(a) If any payment of Rent or other fees made by check is returned due to insufficient funds, or otherwise, more than once during the Term, COUNTY shall have the right to require TENANT to make all subsequent Rent payments by cashier's check, certified check or ACH automatic debit system.

(b) All Rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by TENANT or receipt by COUNTY of a lesser amount than the Rent due shall be deemed to be other than on account of the Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of said Rent or pursue any other remedy in this Lease.

7.4 Processing Fee (AMC6.4 S)

Within thirty (30) days of the Execution Date of this Lease, TENANT shall pay to COUNTY a processing fee of three thousand dollars ($3,000) for issuance of this Lease. Said processing fee is deemed earned by COUNTY and is not refundable. COUNTY shall provide TENANT with an invoice for processing fee and TENANT shall promptly pay the total processing fee amount within thirty (30) days after receipt of invoice and delivered to COUNTY at the address provided in Section 29 (NOTICES), below.

7.5 Charge for Late Payment (AMC7.1 S)

(a) TENANT hereby acknowledges that the late payment of Rent or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

(b) Accordingly, if any payment of Rent as specified in Section 7 (RENT) or of any other sum due COUNTY is not received by COUNTY within three (3) business days of TENANT's receipt of notice from COUNTY that such payment is due, a late charge of one and one half percent (1.5%) of the payment due and unpaid plus $100 shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

(c) TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

8. CONSTRUCTION BY TENANT (AMD1.1 S)

8.1 DDA Obligations

All TENANT's construction related obligations under the DDA, including, without limitation Article 5, are incorporated herein by this reference.

8.2 Additional Construction and/or Alteration by TENANT (AMD2.1 N)

Other than the Phase 2 Improvements approved by Project Lead (including the maintenance, repair and replacement thereof), no additional structures, improvements, or facilities shall be constructed, erected, altered, or made within the Premises without prior written consent of Project Lead, which consent may be withheld, conditioned or delayed in the COUNTY's sole and absolute discretion. Any obligations relating to the manner, method, design, and construction of the Phase 2 Improvements or the other approved structures, improvements, or facilities authorized by the Project Lead and the applicable issuing governmental agency as a condition to granting such consent, shall be conditions hereof as though originally stated herein.

8.3 Payment of the Cost of Constructing the Phase 2 Improvements

The DDA describes the Parties respective obligations to pay the costs of constructing the Phase 2 Improvements.

9. TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION (AMD3.1 S)

9.1 Completion Bond, Letter of Credit or Cash

Prior to commencement of any Phase 2 Improvements or other construction authorized by Article 8 hereof, TENANT shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to complete the proposed construction. The amount of money available shall be equal to at least the total

estimated construction cost that must be paid by an entity other than COUNTY pursuant to Section 8.3 hereof and such evidence of funds may take one or more combinations of the following forms:

(a) Completion bond issued to COUNTY as oblige;

(b) Irrevocable letter of credit issued to COUNTY from a financial institution to be in effect until COUNTY acknowledges satisfactory completion of construction;

(c) Cash deposited with COUNTY; and/or

(d) Evidence satisfactory to the County from the entity financing the Phase 2 Improvements that (i) sufficient funds exist to pay for TENANT's share of the Phase 2 Improvements Costs, (ii) those funds are set aside for the Phase 2 Improvements and, (iii) subject to appropriate holdbacks, that those funds will only be disbursed to TENANT or the contractor for the Phase 2 Improvements as construction work is completed on a lien free basis.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Project Lead. All bonds and letters of credit shall be in a form acceptable to Project Lead 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. Bonds may be provided by TENANT or TENANT's contractor, provided said bonds are issued jointly to TENANT and COUNTY as obligees.

10. MECHANICS LIENS OR STOP NOTICES (AMD4.1 S)

10.1 Indemnification

So long as COUNTY has timely made any payment required by Section 8.3 hereof, TENANT shall not permit any lien or charge to attach to the Property or Premises and 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.

10.2 Recordation of Lien or Stop-Notice

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

(a) Record a valid Release of Lien,

(b) 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

(c) Should TENANT fail to accomplish either of the two optional actions above within 15 days after TENANT receives notice of the filing of such a lien or stop notice, TENANT shall be in default and this Lease shall be subject to immediate termination by COUNTY.

Exhibit E

11. "AS BUILT" PLANS AND CONSTRUCTION COSTS (AMD5.1 N)

Within sixty (60) days following completion of any substantial improvement within the Premises, TENANT shall furnish the Project Lead a complete set of reproducibles 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 to the Project Lead an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by TENANT or his responsible agent under penalty of perjury. TENANT must obtain the Project Lead's approval of "As Built" plans, and the form and content of the itemized statement.

12. GROUND LEASES AND PURCHASE AGREEMENTS

12.1 Takedown Thresholds

Following completion of the Phase 2 Improvements for the portion of the Premises identified in an Acquisition Notice for a proposed Ground Lease, Developer Party shall have the right to enter into a Ground Lease in accordance with the takedown plan specified in the approved Phase 2 Business Plan required by the DDA. To comply with its obligations under this Lease, Developer Party must enter into the first Ground Lease within one (1) year after substantial completion of Marine Way (4 lanes) between Sand Canyon Road and Great Park Boulevard West ("**First Takedown Threshold**"), and the Net Acreage of that portion of the Premises included within that first Ground Lease must be a minimum of ten (10) acres. Developer Party must enter into additional Ground Leases for either (i) a Net Acreage of at least ten (10) acres per year, or (ii) no fewer than a Net Acreage of thirty (30) acres by the third (3rd) anniversary of the earlier of the effective date of the first Ground Lease or the date of the First Takedown Threshold. Once Marine Way has been substantially completed as a four (4) lane road between Sand Canyon Road and an Alternative Secondary Access Point ("**Second Takedown Threshold**"), Developer Party must enter into a Ground Lease for an additional minimum Net Acreage of (A) ten (10) acres per year, or (B) thirty (30) acres (for a cumulative total Net Acreage subject to Ground Leases of at least sixty (60) acres) within three (3) years of the Second Takedown Threshold. Thereafter, Developer Party must enter into additional Ground Leases for an additional minimum Net Acreage of (I) ten (10) acres per year, and (II) the remainder of the Premises within six (6) years of the Second Takedown Threshold. The COUNTY shall have the right to terminate this Lease for cause if Developer Party does not timely satisfy any of its obligations hereunder. For purposes of determining TENANT's compliance with this Section, if the COUNTY designates a portion of the Premises for sale, close of escrow on that portion of the Premises will be treated the same as a Ground Lease.

12.2 Delivery of Acquisition Notice

TENANT shall deliver to COUNTY a written notice (the "**Acquisition Notice**") designating the parcel or parcels within the Premises that the Developer Party wishes to Ground Lease. If (i) the Acquisition Notice is consistent with the takedown plan identified in the approved Phase 2 Business Plan required by the DDA, (ii) the TENANT has secured Final Approval of the Final Map, (iii) the Ground Rent has been established as provided for in Sections 13.1-13.3 or, to the extent applicable, updated as provided for in Section 13.4, (iv) the on-site and off-site Phase 2 Improvements are substantially complete for the portion of the Premises at issue in the Acquisition Notice, (v) the proposed use and development the Developer Party identified in the Acquisition Notice conforms to the Entitlements, (vi) no default by TENANT exists with respect to this Lease or the DDA, and (vii) the TENANT is in compliance with the above Takedown Thresholds (collectively, "**Ground Lease Preconditions**"), the delivery of an Acquisition Notice shall trigger the

COUNTY's obligation to enter into the Ground Lease contemplated in the Acquisition Notice with the Developer Party within the later of sixty five (65) business days after (a) delivery of an applicable Acquisition Notice that complies with this Section; or (b) the establishment of the Ground Rent pursuant to Article 13 hereof. Unless the Acquisition Notice satisfies the criteria established in the previous sentence, the delivery of the Acquisition Notice shall not be deemed effective and shall not create any COUNTY obligations.

12.3 Establishment of Ground Rent for a Ground Lease

In accordance with the process established by Article 13 hereof, the Ground Rent Appraisal(s) process shall be commenced for each applicable lot or parcel within the Premises that is addressed in an Acquisition Notice within ten (10) business days of the occurrence of the: (i) commencement of construction of the off-site and on-site Phase 2 Improvements required for the use and occupancy of such lot or parcel; and (ii) subsequent receipt by COUNTY of written notice and appropriate documentation from TENANT demonstrating TENANT's reasonable belief that TENANT will have satisfied all the Ground Lease Preconditions (other than the establishment of the applicable Ground Rent) no later than eighty five (85) business days after the date of the written notice. The Ground Rent Appraisal(s) shall address the portion of the Premises identified in the Acquisition Notice and determine (1) the current fee simple value of each applicable lot or parcel, (2) the current market rate of return utilized in the market area to establish ground rent for new ground leases; and (3) the resultant annual Ground Rent for each applicable lot or parcel. The appraisers shall assume that all Phase 2 Improvements have been installed and the completion of all other off-site improvements, including without limitation Marine Way, that will be reasonably likely to be available to the tenant at the time of occupancy of the improvements contemplated by the Ground Lease. The appraisers shall also reduce the fee simple value of the applicable lot or parcel by the dollar amount determined by multiplying the Net Acreage of that lot or parcel by _____ dollars ($_____) [**insert the Developer Phase 2 Improvement Costs per Net Acre as determined in accordance with Section 8.3 of the DDA**]. The appraisers shall take into account all requirements for development imposed in the Entitlements or by Applicable Laws.

12.4 Third Party Ground Leases

TENANT acknowledges that the Acquisition Notice procedures described above, and any COUNTY obligations to enter into a Ground Lease based thereon, cannot and do not apply to any potential Ground Lease to an entity other than a Developer Party. Nothing in this Article 12 authorizes the COUNTY to enter into a Ground Lease with a party other than a Developer Party if such an action is otherwise prohibited under this Lease, the DDA or Applicable Laws.

12.5 Purchase Agreement

If TENANT recommends the sale of all or a portion of the Premises in a transaction that would terminate this Lease as it relates to the property at issue in that sale, the COUNTY will decide in its sole and absolute discretion whether it wishes to enter into a contract to sell ("**Purchase Agreement**") and then sell the property at issue. The process for the COUNTY selling all or a portion of the Premises pursuant to this Section will be conducted in accordance with the Applicable Laws. Upon the close of escrow of a sale pursuant to this Section, this Lease will terminate as to the property sold. Nothing in this Lease restricts or limits the COUNTY's right, in its sole and absolute discretion, to sell all or a portion of the Premises in a transaction that does not terminate this Lease as to the property at issue.

12.6 Execution of Ground Lease; Modification of Master Ground Lease

After the delivery of an effective Acquisition Notice as specified above, the COUNTY and Developer Party shall enter into a ground lease for such parcel substantially in the form of the Ground Lease. Each Ground Lease shall lease a separate developable area of the Premises. Such area may consist of one parcel which is intended for further subdivision, or may consist of multiple subdivided lots which will be developed as one coordinated development but the minimum Net Acreage of a Ground Lease shall be ten (10) acres. As of the date that Ground Rent payments commence for a Ground Lease, or upon the close of escrow under a Purchase Agreement, the applicable lot or parcel shall be removed from this Lease and the Rent under this Lease shall be proportionately reduced as set forth in Section 7.1(d) hereof.

13. GROUND RENT APPRAISAL

13.1 Appraisal by COUNTY and TENANT

Within the time frame required by Section 12 to conduct a Ground Rent Appraisal, the COUNTY and TENANT shall each engage an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease, with each Party paying the expense for its own appraiser. Each Party shall give the other notice of engagement of its appraiser within five (5) business days after such engagement. Upon receipt of its Appraisal, each Party shall, within five (5) business days, deliver a copy thereof to the other Party.

13.2 Differences in the Appraisals

If the Party's Appraisals of the resultant Ground Rent are within 10% (higher or lower) of each other, then the two Appraisals shall be averaged to set the applicable value. Under all other circumstances, Section 13.3 hereof shall apply.

13.3 Third Appraisal to Determine Ground Rent

(a) If the two Appraisals of the resultant Ground Rent are not within 10% (higher or lower) of each other, then the two appraisers shall choose a third appraiser within twenty (20) business days, and the two closest of the three appraisals will be averaged to determine the value at issue. The Parties shall each pay 50% of the costs and fees charged by the third appraiser. The third appraiser shall not be affiliated in any business relationship with either of the Parties.

(b) All Appraisals pursuant to this Article must be completed within eighty five (85) business days by an MAI (or a successor organization of appraisers) appraiser with at least ten (10) years of experience appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

13.4 Reappraisal

Ground Rent Appraisals shall be valid for six (6) months from the date issued. After the expiration of such period, the appraiser(s) who issued the Ground Rent Appraisal(s) shall be engaged to update the no longer valid Ground Rent Appraisal(s) and shall be directed to do so within twenty (20) business days from the date engaged. If a Party's original appraiser is not reasonably available to conduct the reappraisal, the Party shall select a new MAI (or a successor organization of appraisers) with at least ten (10) years of experience

appraising (i) undeveloped, but entitled, land similar to the applicable lot or parcel, located in Orange, Los Angeles or San Diego Counties; and (ii) land that is subject to a ground lease.

14. OWNERSHIP OF IMPROVEMENTS (AMD 6.1 S)

All Improvements and facilities constructed or placed within the Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material. After the expiration of the Term or earlier termination of this Lease any Improvements shall become the property of COUNTY.

15. MAINTENANCE OBLIGATIONS OF TENANT (AM2.1 N)

15.1 Maintenance

TENANT shall, to the satisfaction of the Project Lead and at TENANT's sole cost and expense, keep and maintain the Premises and any improvements thereon (hereinafter referred to as "**Improvements**") of any kind which may be erected, installed, or made thereon, in good condition and substantial repair. Maintenance and repair shall be in accordance with all Applicable Laws of:

(a) Federal, State, County, City and other governmental agencies, authorities, and bodies having or claiming jurisdiction, and all their respective departments, bureaus, and officials;

(b) The insurance underwriting board or insurance inspection bureau having or claiming jurisdiction;

(c) All insurance companies insuring all or any part of the Premises or improvements, installations, or facilities.

15.2 Repair

TENANT shall promptly and diligently repair, restore and replace said Improvements and the Premises, at TENANT's sole cost and expense, as required to remedy all damages to or destruction of all or any part of the Improvements resulting wholly or in part from causes covered by fire or extended coverage insurance.

15.3 Quality

All workmanship and materials used in the maintenance, repair, restoration, or replacement of the Improvements shall be equal in quality, and durability of workmanship and materials of the Improvements existing before the event giving rise to the work.

15.4 COUNTY's Right to Repair

If TENANT fails to maintain or make repairs or replacements as required by this Lease, the Project Lead may notify TENANT in writing of said failure. Should TENANT fail to correct the situation within (i) three (3) business days or (ii) if the Project Lead determines additional time is required to effectuate the maintenance, repair or replacement, the time frame set forth in an action plan prepared by TENANT and approved by the Project Lead, then the COUNTY may make such maintenance, repairs, replacements, and necessary correction(s) or cause them to be made and the cost thereof, including but not limited to the cost of labor, materials, and 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 of said cost from Project Lead. Should TENANT fail to correct the situation within the time frame identified in the COUNTY's written

notice, the COUNTY may also, at its option, choose other remedies available herein or by law including, without limitation, termination of the Lease.

15.5 Regulations

(a) TENANT shall at all times comply with all Applicable Laws.

(b) 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 such notice. If within thirty (30) days of date of such notice, TENANT fails to comply with the provisions of this Section, TENANT's failure to comply shall constitute a material default under this Lease, and without providing TENANT with an additional notice or opportunity to cure, COUNTY may exercise the remedies for a default and this Lease may be subject to immediate termination. Notwithstanding the foregoing, if the inspection notice or deficiency notice is of such a nature that the condition or deficiency cannot reasonably be remedied within thirty (30) days, the time period for TENANT's obligation to correct such condition or deficiency shall be extended to a commercially reasonable period of time for correction. In the event that the TENANT alleges that the condition or deficiency cannot reasonably be remedied within thirty (30) days, TENANT shall provide evidence of such and an estimate of completion of the remedial work.

16. OBLIGATIONS OF TENANT DURING THE TERM (PSB3.1 N)

16.1 Compliance with DDA

TENANT shall comply with the terms of the DDA during the Term and a breach or default by a party other than the COUNTY under the DDA shall be deemed to be a material default under the Lease. In the event that the DDA is terminated pursuant to its terms, then the COUNTY shall have the right, in its sole and absolute discretion, to terminate this Lease. Unless otherwise provided for therein, such termination shall not act to terminate any Ground Lease or Purchase Agreement that has been duly executed prior to the date of such termination.

16.2 Protection of Environment

TENANT shall take all reasonable measures available to:

(a) Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about the Premises.

(b) Prevent pollutants from the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any Applicable Laws. TENANT and all of TENANT's agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter the municipal storm drain system (including but not limited to curbs and gutters that are part of the street systems), or directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries, lakes, harbors, bays and the ocean), except as may be permitted by any Applicable Laws.

(c) The COUNTY may enter the Premises and/or review TENANT records at any time to assure that activities conducted on the Premises comply with the requirements of this Section.

16.3 On Site Manager

TENANT shall employ a competent manager who shall be responsible for the day-to-day construction management and the level of maintenance, cleanliness, and general order for the Premises. Such person shall be vested with the authority of TENANT with respect to the supervision over the construction and maintenance of the Premises, including the authority to enforce compliance by TENANT's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. TENANT expressly agrees that any notice herein required to be served upon TENANT may, at the option of COUNTY or Project Lead, be personally served upon said manager and that such service shall have the same force and effect as service upon TENANT. TENANT shall notify COUNTY in writing of the name of the manager currently so employed as provided in Section 30 (NOTICES) of this Lease.

16.4 Preparation and Recordation of CCRs

Within ninety (90) days of the Execution Date, TENANT shall prepare a Declaration of Covenants, Conditions and Restrictions for the Premises that establishes such use rights and restrictions, common area management and financial obligations, and other provisions as TENANT may deem appropriate and submit that document for review and approval by the COUNTY in the COUNTY's sole and absolute discretion. Within thirty (30) days of the addition of any portion of the Remainder Acreage to the Premises, TENANT shall prepare an amendment to the Declaration of Covenants, Conditions and Restrictions that includes the revised Premises and that establishes such use rights and restrictions, common area management and financial obligations, and other provisions as TENANT may deem appropriate and submit that document for review and approval by the COUNTY in the COUNTY's sole and absolute discretion. Following COUNTY approval, TENANT shall record that Declaration of Covenants, Conditions, and Restrictions against the Premises. TENANT shall establish any owners' association required under such document and manage such association until such management is, by the terms of the recorded document, assigned.

17. MAINTENANCE RESPONSIBILITY OF COUNTY (PME3.1 N)

COUNTY shall have no obligation or responsibility to remove debris, or to otherwise maintain, repair, restore or replace the Improvements or the Premises.

18. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (AM6.5 S)

In the event of damage to or destruction of Improvements or Phase 2 Improvements on the Premises or in the event such Improvements or Phase 2 Improvements on the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, TENANT shall, within thirty (30) days, commence and diligently pursue to complete the repair, replacement, or reconstruction to the condition that existed immediately prior to the event causing the damage or destruction at TENANT's sole cost and expense. Repair, replacement, or reconstruction of Improvements off of or Phase 2 Improvements shall be accomplished in a manner and according to plans approved by the Project Lead.

19. CONDEMNATION (N)

19.1 Total Taking

If the entire Premises are taken for any public or quasi-public use under any statute by right of eminent domain, or by purchase by public authority in lieu thereof, this Lease shall terminate as of the date that possession of the Premises is taken by the public authority or TENANT is deprived of its practical use of the

Premises, whichever date is earlier. The net proceeds of the award shall be distributed in the following order of priority:

(a) COUNTY shall receive that portion of the award which shall constitute compensation for the value of its fee simple interest in the Premises as encumbered by this Lease;

(b) TENANT shall be compensated for its interest in the Premises, including direct loss of investment in improvements constructed on the Premises at TENANT's cost and expense, the cost of removal of any fixtures and equipment paid for by TENANT, and the loss of the economic benefit of TENANT's leasehold estate.

(c) The remainder of the award, if any, shall go to the COUNTY.

19.2 Partial Taking

If any portion of the Premises is taken for any public or quasi-public use under, any statute by right of eminent domain, or by purchase by public authority in lieu thereof, then:

(a) The Lease shall continue in full force and effect;

(b) The net proceeds of the award shall be allocated in the following order of priority:

(i) The payment of the costs of prompt restoration by TENANT, of the Premises to a safe condition;

(ii) Compensation to COUNTY for the value of its fee interest in the portion of the Premises taken as encumbered by this Lease;

(iii) Compensation to TENANT for its interest in the portion of the Premises taken, including without limitation, the value of the leasehold estate, direct loss of investment in improvements constructed on the Premises at TENANT's sole cost and expense, the cost of removal and reinstallation of any fixtures and equipment paid for by TENANT, and the loss of the economic benefit of that portion of TENANT's leasehold estate; and

(iv) The remainder of the award, if any, shall go to the COUNTY.

19.3 Temporary Taking.

If all or a portion of the Premises shall be taken for any public or quasi-public use on a temporary basis, then:

(a) This Lease shall continue in full force and effect without reduction of Rent; and

(b) TENANT shall be entitled to claim, recover and retain any award with respect to such taking, except that if such taking shall be for a period extending beyond the expiration of the Term of the Lease, COUNTY shall be entitled to receive such portion of the award as shall be attributable to the period occurring after such expiration.

19.4 Miscellaneous

(a) COUNTY and TENANT each agree to promptly notify the other Party upon receipt of any notice from a condemning authority or agency expressing an intention to commence a taking or

condemnation of any part of the Premises. The foregoing shall include not only a formal service of legal process received by either COUNTY or TENANT, but also any preliminary indication of such intent. Thereafter, COUNTY and TENANT shall keep each other fully informed as to all aspects of such proceedings and/or negotiations.

(b) COUNTY and TENANT shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of their respective claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of COUNTY and TENANT. COUNTY and TENANT each agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

20. INSURANCE (AME5.1.1 N)

20.1 Insurance Requirements. Prior to Effective Date of this Lease, the TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this Lease. The COUNTY reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all consultants, agents and general contractors/subcontractors (hereinafter referred to as "**TENANT Parties**"), performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions exclusive of insurance limits as set forth herein for TENANT. Subcontractor insurance limits will be established by mutual agreement between COUNTY and TENANT.

TENANT shall ensure that all TENANT Parties performing work on behalf of TENANT pursuant to this Lease shall be covered under TENANT's insurance or maintain insurance subject to the terms and conditions as set forth herein. TENANT shall not allow any TENANT Parties to commence work until the insurance requirements have been satisfied. It is the obligation of the TENANT to provide notice of the insurance requirements to all TENANT Parties and to obtain evidence of insurance prior to allowing any TENANT Parties to commence work. Evidence of insurance must be maintained by TENANT through the entirety of this Lease for inspection by COUNTY at any reasonable time.

TENANT will require Builders Risk insurance during any construction. The Builders Risk policy shall be written on a Special Causes of Loss Form with the exclusion of earthquake and flood. The limit of insurance shall be 100% of the completed project value with no coinsurance and replacement cost valuation.

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, TENANT shall indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) in an amount in excess of $25,000 ($5,000 for automobile liability) carried by TENANT or a TENANT Party, shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management. TENANT shall be responsible for reimbursement of any deductible to the insurer. Upon notice of any actual or alleged claim or loss arising out of TENANT Parties work hereunder, such TENANT Party shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the TENANT and additional insureds.

If the TENANT fails to maintain insurance required by this Lease, the COUNTY may terminate this Lease after providing TENANT a thirty (30) day period in which to cure. If within ten (10) business days after termination under this section, TENANT obtains and provides evidence of the required insurance coverage acceptable to Project Lead, this Lease may be reinstated at the sole discretion of the Project Lead. TENANT

shall pay COUNTY Seven Hundred Fifty Dollars ($750), or such greater cost recovery amount as identified by the COUNTY, for processing the reinstatement of this Lease.

20.2 Qualified Insurer. The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VII (Financial Size Category) as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**.

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

Insurance Requirements for TENANT

Commercial General Liability	$5,000,000 per occurrence $5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence $2,000,000 aggregate

Insurance Requirements for Architects, Engineers and other Licensed Professionals

Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$2,000,000 per claims made or per occurrence $4,000,000 aggregate

Insurance Requirements for Contractors

Commercial General Liability	$5,000,000 per occurrence $5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	$5,000,000 per occurrence

Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence

Subcontractor insurance limits will be established by mutual agreement between COUNTY and Developer.

If the TENANT's insurance carrier is not an admitted carrier in the State of California and does not have an A.M. Best rating of A-/VII, 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. TENANT is responsible to enforce this requirement with the TENANT Parties.

20.3 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 equivalent liability coverage. The Business Auto Liability coverage shall be written on ISO form CA 00 01, or a substitute form providing equivalent liability coverage.

20.4 Required Endorsements. The Commercial General Liability shall contain the following endorsements, which shall accompany the Certificate of Insurance:

(a) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or an equivalent form naming the COUNTY, the members of the Board, its elected and appointed officials, officers, employees and agents as Additional Insureds.

(b) A primary non-contributing endorsement evidencing that the TENANT's insurance is primary and any insurance maintained by the 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 and members of the Board, its elected and appointed officials, officers, employees and agents.

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

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

20.5 Other Terms. TENANT shall notify COUNTY in writing prior to any lapse of insurance coverage and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of this Lease, upon which the COUNTY may suspend or terminate this Lease.

If the Professional Liability policy is a "claims made" policy, TENANT and/or the TENANT Party shall agree to maintain professional liability coverage for three years following completion of the applicable contract.

The TENANT is granted the option of procuring insurance under a single policy or by a combination of underlying policies with the balance provided by an excess or Umbrella policy with Follow Form coverage to the total per occurrence and aggregate limits required under this Lease.

COUNTY will have the right, but not the obligation of prohibiting the TENANT from entering the Premises until such evidence of insurance has been submitted to the COUNTY.

Failure of COUNTY to demand delivery of or identify deficiency with such evidence of insurance shall not be construed as a waiver of TENANT's obligations under this section.

By requiring insurance, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect the TENANT. Insurance procured by the TENANT will not reduce or limit the TENANT's contractual obligation to indemnify and defend the COUNTY as required by this Lease or otherwise.

TENANT shall not be relieved of its responsibility for any and all loss, damage or liability stemming from any risk or exposure that is not insured, or not covered within any deductibles or self-insured retentions, or not covered as a result of policy exclusions or limitations.

Insurance certificates should be forwarded to the Project Lead.

COUNTY expressly retains the right to request a change in insurance requirements. If so requested, TENANT and COUNTY will strive to mutually agree 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 the COUNTY Risk Manager as appropriate to adequately protect COUNTY.

Following mutual agreement, TENANT will then deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of procuring such revised insurance.

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 act in any way to reduce the policy coverage and limits available from the insurer.

21. ASSIGNING, SUBLETTING, AND ENCUMBERING PROHIBITED (AME7.1 N)

21.1 General.

(a) Except as expressly provided for in this Lease, no mortgage, pledge, hypothecation, transfer or encumbrance ("**Transfer**") of TENANT's interest in the Premises or this Lease, or any part or portion thereof, shall be permitted during the Term absent the COUNTY's written consent, which consent may be withheld or granted in the COUNTY's sole and absolute discretion.

(b) Any attempt by TENANT to Transfer TENANT's interest in the Premises or Lease, or any part or portion thereof, except as expressly provided for in this Lease shall be invalid and shall constitute a material default under this Lease which default must be cured within the time frame provided for in this Lease.

21.2 Permitted Transfers

(a) Subject to the COUNTY's reasonable, prior written approval based on factors such as the proposed transferee's financial capability and relevant experience being equal to or better than TENANT's, TENANT shall be permitted to assign all its rights and obligations under this Lease to a Developer Party that is also the Developer under the DDA. Further, TENANT shall deliver to the COUNTY

a copy of an assignment and assumption agreement by and between TENANT and the approved transferee whereby the transferee agrees to assume all of the duties and obligations of TENANT hereunder, for consideration by COUNTY.

(b) A Transfer, whether in one transaction or a series of transactions, of any stock or ownership interest in the TENANT entity in the aggregate in excess of twenty-five percent (25%) shall be deemed a Transfer, and will require the prior written consent of the COUNTY, which consent may be withheld or granted in the COUNTY's sole and absolute discretion.

(c) With prior COUNTY written consent, TENANT may assign its interest in this Lease to any Subsidiary. At a minimum the TENANT must be the managing member that controls the entity and directly owns fifty percent (50%) or more of the equity interest therein (a "**Subsidiary**") and TENANT must demonstrate to the reasonable satisfaction of the COUNTY that the Subsidiary has sufficient net worth and relevant experience to ensure performance of TENANT's obligations under this Lease and that the Subsidiary employs the Key People (as defined in the DDA) to perform the TENANT's obligations. Further, TENANT shall deliver to the COUNTY a copy of an assignment and assumption agreement by and between TENANT and Subsidiary whereby Subsidiary agrees to assume all of the duties and obligations of TENANT hereunder, for consideration by COUNTY.

(d) Any Transfer permitted by COUNTY shall not be entered into as a subterfuge to avoid the obligations and restrictions of the Lease. Absent the express written approval of the County, TENANT originally named in the Lease shall remain liable for all obligations under the Lease notwithstanding the Transfer.

(e) All Transfers consented to by COUNTY shall be subject to the COUNTY receiving, at or prior to the effectiveness of the Transfer, a monetary payment from TENANT equal to fifty percent (50%) of the amount of consideration to be received by TENANT as a result of the approved Transfer less the reasonable transaction costs incurred by TENANT in making the approved Transfer. TENANT shall also pay a processing fee of $5,000 to the COUNTY at the time TENANT requests approval of the Transfer and that fee shall be deemed earned by COUNTY when paid and shall not be refundable.

22. HAZARDOUS MATERIALS (AMF9.1 S)

22.1 Definition of Hazardous Materials For purposes of this Lease, the term "Hazardous Material" or "Hazardous Materials" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, , including, without limitation, petroleum (including crude oil or any fraction or additive thereof), asbestos or asbestos containing materials, radon, radiation and radioactive materials, lead-based paints, and polychlorinated biphenyls, which is or shall become regulated by any governmental entity, including, without limitation, the COUNTY acting in its governmental capacity, the State of California or the United States government.

22.2 Prior Use. The Parties acknowledge that the Property is part of the former Marine Corps Air Station ("**MCAS**") El Toro and that environmental conditions exist, including but not limited to, the release of Hazardous Materials to soil and groundwater. MCAS El Toro is listed on the U.S. Environmental Protection Agency National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") and the United States Department of the Navy has taken, and is currently undertaking, corrective action pursuant to CERCLA, the Resource Conservation and Recovery Act, and associated state laws and regulations. Information regarding the environmental conditions has been provided by the COUNTY to TENANT. TENANT further acknowledges and accepts the disclosures, restrictions and obligations established by and identified in that certain Quitclaim Deed and Environmental

Restriction Pursuant to Civil Code Section 1471 (For Parcels: _____) Recorded on _____, in Official Records, Orange County, as Instrument Number _____, and attached hereto as Exhibit ____ ("**Navy Quitclaim**").

22.3 Use of Hazardous Materials. Except for those Hazardous Materials which are customarily used in connection with any permitted use of the Premises and Improvements under this Lease (which Hazardous Materials shall be used in compliance with all Applicable Laws), TENANT or TENANT's employees, agents, independent contractors or invitees (collectively "**TENANT Parties**") shall not cause or permit 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 Section shall include the subsurface soil and ground water).

22.4 TENANT Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by TENANT or TENANT Parties, or otherwise located on the Premises for any reason (unless deposited there by the COUNTY) results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of COUNTY under this Lease, TENANT shall pay the cost of any 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 located on 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, 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 COUNTY. 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 COUNTY. If there are Hazardous Materials on the Premises caused by the United States Department of the Navy, then TENANT may assert and pursue any and all claims available against the United States Department of the Navy and use commercially reasonable efforts to cause the United States Department of the Navy to remediate or otherwise address such Hazardous Materials, with regard to which the COUNTY shall reasonably cooperate and assist at no out-of-pocket expense to the COUNTY, other than customary office supplies. This section and the obligations herein are intended to address the respective rights and obligations of the TENANT and COUNTY and not intended to relieve or affect any legal obligations of the United Stated Department of the Navy under the Navy Quitclaim or the Applicable Laws.

22.5 Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, TENANT shall indemnify, hold harmless, protect and defend (with attorneys acceptable to COUNTY) COUNTY, its elected officials, officers, employees, agents, independent contractors, and the Premises from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises but not damages arising from any adverse impact on marketing or diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable ("**Claims**"), arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises, and Claims relating to Hazardous Materials

arising out of the actions or use of the Premises by TENANT or TENANT Parties, unless the Hazardous Materials are deposited onto the Premises by the COUNTY.

(b) The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

22.6 Pollution Legal Liability Insurance Policy. Unless the Parties mutually agree otherwise, prior to TENANT's commencement of the Phase 2 Improvements on the Premises, the COUNTY shall procure, as part of the costs of the Phase 2 Improvements, the Legal Liability insurance policy identified in Section 11.34 of the DDA. Provided TENANT gave COUNTY written notice forty five (45) business days prior to the anticipated date of the commencement of construction, the policy will name the COUNTY and TENANT as Named Insureds.

23. BEST MANAGEMENT PRACTICES (AMF 9.2 S)

(a) TENANT and all of TENANT's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

(b) The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System ("**NPDES**") permits ("**Stormwater Permits**") to the County of Orange, 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 of Orange, 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 Parties have developed a Drainage Area Management Plan ("**DAMP**") which includes a Local Implementation Plan ("**LIP**") for each jurisdiction that contains Best Management Practices ("**BMPs**") that parties 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 the COUNTY's LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "**BMP Fact Sheets**") and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

(d) BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit E.** These BMP Fact Sheets may be modified during the term of the Lease; and the Project Lead shall provide TENANT with any such modified BMP Fact Sheets. TENANT, its 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 the Project Lead for review and approval prior to implementation.

(f) COUNTY's Project Lead 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 section. TENANT may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

24. NOTICES (AMF10.1 S)

(a) All 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 sent through the United States mail in the State of California, duly registered or certified, return receipt requested, with postage prepaid.

(b) If any notice is sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, COUNTY may also provide notices to TENANT by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.

TO COUNTY:	Name:	County of Orange
	Address:	County Executive Office 445 Civic Center Drive West Santa Ana, CA 92701
	Attn:	James Campbell
	Name:	County of Orange
	Address:	County Executive Office 333 West Santa Ana Boulevard, 3rd Floor Santa Ana, CA 92701-4084
	Attn:	Scott Mayer, Chief Real Estate Officer
	Name:	County of Orange
	Address:	Counsel's Office 333 W. Santa Ana Boulevard, 4th Floor Santa Ana, CA 92701-4084
	Attn:	Mat Miller
TO TENANT:	Name:	Lowe Enterprises Real Estate Group
	Address:	11777 San Vicente Boulevard, Suite 900 Los Angeles, CA 90049
	Attn:	Corporate Counsel

and a copy to: Lowe Enterprises Real Estate Group
5560 Overland Avenue, Suite 210
San Diego, CA 92123
Attn: Michael W. McNerney

and a copy to: Manatt, Phelps & Phillips, LLP
11355 W. Olympic Boulevard
Los Angeles, CA 90064
Attn: Timi Anyon Hallem

25. ATTACHMENTS TO LEASE (AMF11.1 S)

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

I. GENERAL CONDITIONS
II. EXHIBITS
Exhibit A – Property Legal Description
Exhibit B – Premises Legal Description
Exhibit C – Depiction of Premises
Exhibit D –Ground Lease
Exhibit E – Best Management Practices (BMP Fact Sheets)
Exhibit F – Child Support Enforcement Certificate

[SIGNATURES ON NEXT PAGE]

Exhibit E

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

APPROVED AS TO FORM:

COUNTY COUNSEL

By: _____
Deputy

Date _____

RECOMMENDED FOR APPROVAL:

Chief Real Estate Officer, County Executive Office

By: _____

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

ATTEST:

_____
SUSAN NOVAK
Clerk of the Board of Supervisors
Orange County, California

TENANT

LOWE ENTERPRISES REAL ESTATE GROUP,
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COUNTY

COUNTY OF ORANGE,
a political subdivision of the State of California

_____
Chair, Board of Supervisors
Orange County, California

Exhibit E
I. GENERAL CONDITIONS (PMGl.1-29.1)

1. TIME (PMG1.1 S)

Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease, subject to any notice and cure periods prescribed.

2. SIGNS (PMG2.1 S)

TENANT agrees not to construct permanent wall or freestanding signage without the benefit of appropriate County permits and any other approvals required by the Applicable Laws.

3. PERMITS AND LICENSES (PMG3.1 S)

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the Phase 2 Improvements, the Improvements and the maintenance, operation, repair and use 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.

4. LEASE ORGANIZATION (PMG5.1 S)

The various headings and numbers herein, the grouping of provisions of this Lease into separate Sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

5. AMENDMENTS (PMG6.1 S)

This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both Parties.

6. UNLAWFUL USE (PMG7.1 S)

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

7. NONDISCRIMINATION (PMG8.1 S)

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.

8. INSPECTION (PMG9.1 S)

COUNTY or its authorized representative shall have the right at all reasonable times to inspect the Premises to determine if the provisions of this Lease are being complied with.

9. HOLD HARMLESS (PMGE10.1 S)

TENANT hereby releases and waives all Claims and recourse against COUNTY, including the right of contribution for injury to or death of any person or loss of or damage to property, arising from, growing out of or in any way connected with or related to this Lease, except claims arising from the concurrent active or sole negligence of COUNTY, its officers, agents, employees and contractors. TENANT shall indemnify, defend (with counsel approved in writing by COUNTY), protect and hold COUNTY and the COUNTY Parties harmless from all Claims arising from or related to (i) the lease, use or occupancy of the Premises, the Phase 2 Improvements and the Improvements, (ii) Claims made by any tenant, resident, employee, agent, contractor or invitee to the Premises, (iii) the conduct of TENANT's business, or (iv) any activity, work or thing done, permitted or suffered by TENANT in or about the Premises, the Phase 2 Improvements or the Improvements. TENANT shall further indemnify, defend and hold COUNTY and the COUNTY Parties harmless from all Claims arising from any breach or default in the performance of any obligation to be performed by TENANT under the terms of this Lease, or arising from any act, neglect, fault or omission of TENANT or of its agents or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in or about such Claim or any action or proceeding brought thereon. In case any action or proceeding shall be brought against COUNTY or a member of the COUNTY Parties by reason of any such Claim, TENANT, upon notice from COUNTY, shall defend the same at TENANT's expense, by counsel designated by TENANT and approved in writing by COUNTY, which approval shall not be unreasonably withheld. TENANT, as a material part of the consideration to COUNTY, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises from any cause whatsoever except that which is caused by COUNTY's concurrent active or sole negligence or willful misconduct. Neither COUNTY nor the COUNTY Parties shall be liable to TENANT or any TENANT Party for any loss, injury or damage to TENANT or to the TENANT Parties or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss, unless and to the extent caused by or resulting from the concurrent active or sole negligence or willful misconduct of COUNTY or the COUNTY Parties. The provisions of this Section shall survive the expiration or earlier termination of this Lease as to all matters arising prior to such expiration or termination or prior to TENANT's vacation of the Premises. If judgment is entered against COUNTY and TENANT by a court of competent jurisdiction because of the concurrent active negligence of COUNTY and TENANT, COUNTY and TENANT agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

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

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor."

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

10. TAXES AND ASSESSMENTS (PMG11.1 S)

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

11. SUCCESSORS IN INTEREST (PMG12.1 S)

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.

12. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.1 S)

If the Parties are delayed or prevented from the performance of any act required hereunder by reason of war, terrorism, Acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

13. PARTIAL INVALIDITY (PMG14.1 S)

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.

14. WAIVER OF RIGHTS (PMG15.1 S)

The failure of COUNTY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

15. DEFAULT AND REMEDIES (PMG16.1 S)

15.1 Events Of TENANT Default

The occurrence of any one or more of the following events shall constitute a default hereunder by TENANT:

(a) The abandonment or vacation of the Premises by TENANT.

(b) The failure by TENANT to make any payment of Rent or any other sum payable hereunder by TENANT, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from COUNTY to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 et seq.

(c) The default by TENANT under the DDA which is not timely cured.

(d) The failure or inability by TENANT to observe or perform any of the provisions of this Lease to be observed or performed by TENANT, other than specified in subparagraphs (a) or (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from COUNTY to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 et seq.; provided, further, that if the nature of such failure is such that it can be cured by TENANT but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then TENANT shall not be deemed to be in default if TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecutes such cure to completion.

(e) The making by TENANT of any general assignment for the benefit of creditors;

(f) A case is commenced by or against TENANT under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against TENANT, the same is not dismissed within sixty (60) days of such commencement;

(g) The appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days; or

(h) TENANT's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of TENANT in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the COUNTY hereunder or by law; provided, it shall be lawful for the COUNTY to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and TENANT and its creditors (other than COUNTY) shall have no further claim thereon or hereunder.

15.2 COUNTY Remedies.

(a) In the event of any default by TENANT, then, in addition to any other remedies available to COUNTY under this Lease, at law or in equity, COUNTY may exercise the following remedies:

(i) COUNTY may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT**.** In the event that COUNTY shall so elect to terminate this Lease, then COUNTY may recover from TENANT:

(A) The worth at the time of award of the unpaid Rent and other charges, which had been earned as of the date of the termination hereof;

(B) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;

(C) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;

(D) Any other amount necessary to compensate COUNTY for all the detriment proximately caused by TENANT's failure to perform its obligations under this Lease or which in

the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; and

(E) Any other amount which COUNTY may by law hereafter be permitted to recover from TENANT to compensate COUNTY for the detriment caused by TENANT's default.

(ii) Continue this Lease in effect without terminating TENANT's right to possession even though TENANT has breached this Lease and abandoned the Premises and to enforce all of COUNTY's rights and remedies under this Lease, at law or in equity, including the right to recover the Rent as it becomes due under this Lease; provided, however, that COUNTY may at any time thereafter elect to terminate this Lease for such previous breach by notifying TENANT in writing that TENANT's right to possession of the Premises has been terminated.

(iii) COUNTY shall have the right, following a termination of this Lease and TENANT's rights of possession of the Premises, to re-enter the Premises and, subject to Applicable Laws, to remove TENANT's personal property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of TENANT in accordance with applicable California law.

(b) Nothing in this Section shall be deemed to affect TENANT's indemnity of COUNTY liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

(c) No delay or omission of COUNTY to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by TENANT hereunder. The acceptance by COUNTY of Rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by TENANT of any provision thereof, other than the failure of TENANT to pay the particular Rent or sum accepted, regardless of COUNTY's knowledge of such preceding breach or default at the time of acceptance of such Rent or sum, or (b) waiver of COUNTY's right to exercise any remedy available to COUNTY by virtue of such breach or default. No act or thing done by COUNTY or COUNTY's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by COUNTY.

(d) Any installment or Rent due under this Lease or any other sums not paid to COUNTY when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

(e) All covenants and agreements to be performed by TENANT under any of the terms of this Lease shall be performed by TENANT at TENANT's sole cost and expenses and without any abatement of Rent. If TENANT shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein, COUNTY may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by COUNTY on TENANT's behalf shall not give rise to any responsibility of COUNTY to continue making the same or similar payments or performing the same or similar acts. All

costs, expenses, and other sums incurred or paid by COUNTY in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by COUNTY shall be deemed to be additional rent hereunder and shall be paid by TENANT within ten (10) days of written notice thereof specifying the payment and enclosing copies of any invoices therefor, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

15.3 COUNTY Default

COUNTY shall not be considered to be in default under this Lease unless TENANT has given COUNTY written notice specifying the default, and either (i) as to monetary defaults, COUNTY has failed to cure the same within ten (10) business days after written notice from TENANT, or (ii) as to nonmonetary defaults, COUNTY has failed to cure the same within thirty (30) days after written notice from TENANT, or if the nature of TENANT's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as COUNTY commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. TENANT shall have no right to offset or abate alleged amounts owing by COUNTY under this Lease against Rent owing by TENANT under this Lease, except that TENANT shall have the right to fully offset against Rent or any other amounts owing under this Lease the full amount of any final arbitration award or final judgment in any court proceeding that COUNTY fails to pay within sixty (60) days after such award or judgment is entered.

15.4 Remedies Cumulative

All rights and remedies of COUNTY contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and COUNTY shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

16. RESERVATIONS TO COUNTY (PMG17.1 N)

The Premises are accepted as is and where is by TENANT subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes, provided that COUNTY does not unreasonably interfere with TENANT's business operations on the Premises and TENANT's access to and use of the Premises for the permitted uses. COUNTY also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises, but only to the extent that COUNTY's exercise of such rights does not unreasonably interfere with TENANT's business operations on the Premises and TENANT's access to and use of the Premises for the permitted uses. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the Premises shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the Rent shall be reduced in proportion to the interference with TENANT's use of the Premises.

17. HOLDING OVER (PMG18.1 S)

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

18. CONDITION OF PREMISES UPON TERMINATION (PMG19.1 S)

Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall re-deliver possession of said Premises to COUNTY in good condition, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the Term.

19. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMG20.1 N)

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 thirty (30) 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 at TENANT's cost, without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefore.

20. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMG21.1 S)

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, 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 excluding any of TENANT's property, chattel, or improvements. 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.

21. COUNTY'S RIGHT TO RE-ENTER (PMG22.1 S)

21.1 TENANT agrees to yield and peaceably deliver possession of the Premises to COUNTY on the date of termination of this Lease, whatsoever the reason for such termination.

21.2 Upon giving written notice of termination to TENANT, COUNTY shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by COUNTY shall in no way alter or diminish any obligation of TENANT under the lease terms and shall not constitute an acceptance or surrender.

21.3 TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Premises in a lawful manner.

22. AUTHORITY OF TENANT (PMG 23.1 S)

If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

23. PUBLIC RECORDS (PMG24.1 N)

COUNTY acknowledges TENANT's contention that financial statements and records (not including Gross Receipts Statements) are intended to constitute corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California, and shall be exempt from public disclosure as authorized by §6254.15 of the California Government Code. In the event that a public records act request is made for such financial statements and records (not including Gross Receipts Statements) and the COUNTY determines that he records must be turned over, the COUNTY will give TENANT fifteen (15) days written notice prior to turning over such records so that TENANT can take any necessary action. TENANT acknowledges that any other written information (other than the foregoing corporate financial statements and trade secrets) 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 §6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act.

24. RELATIONSHIP OF PARTIES (PMG25.1 S)

The relationship of the parties hereto is that of COUNTY 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.

25. CHILD SUPPORT ENFORCEMENT (PMG26.1S)

25.1 At all times during the term of this Lease, TENANT shall comply with all County, State and Federal reporting requirements for child support enforcement and comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment.

25.2 In order for TENANT to comply with County of Orange requirements, TENANT shall deliver to Project Lead the required data and certifications, as shown in **Exhibit G** attached hereto concurrent with the execution of this Lease by COUNTY.

25.3 Failure of TENANT to comply with all County, State, and Federal reporting requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within thirty (30) days of TENANT's receipt of written notice from COUNTY of such breach by TENANT shall constitute grounds for termination of this Lease.

26. ATTORNEYS' FEES (PMG27.1)

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.

27. VENUE (PMG28.1)

The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws 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. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

28. RIGHT TO WORK AND MINIMUM WAGE LAWS (PMG 29.1 S)

28.1 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, pursuant to the 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, pursuant to the 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.

28.2 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.

28.3 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.

29. PROTECTION OF PREMISES (PSB13.1 N)

TENANT shall maintain its facilities in such a manner as to protect COUNTY's property from damage, injury, loss, or liability arising from rainfall and other action of the elements, excepting such as may be caused by the active concurrent or sole negligence of officers, agents, or employees of COUNTY.

30. DECLARATION OF KNOWLEDGE BY TENANT (PSB10.1 N)

TENANT warrants that TENANT has carefully examined this Lease and by investigation of the Premises and Property and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Phase 2 Improvements and the Improvements and business practices required in the operation and management of the uses contemplated hereunder.

Exhibit E
EXHIBIT A
PROPERTY LEGAL DESCRIPTION

PROJECT NO: WRITTEN BY: DATE:

PROJECT: El Toro Parcel – DATE: March 7, 2012

[To be attached]

Exhibit E

NOT TO BE RECORDED

EXHIBIT B
PREMISES LEGAL DESCRIPTION

El Toro Parcel –

Date:

Exhibit E
EXHIBIT C
DEPICTION OF PREMISES

Exhibit E
EXHIBIT D
GROUND LEASE

Exhibit E

EXHIBIT E
Best Management Practices ("BMPs" Fact Sheets)

Best Management Practices can be found at: http://ocwatersheds.com/default.aspx which website may change from time to time.

TENANT shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this TENANT's operations. TENANT is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease. Although the Harbor is not the TENANT's leased Premises, BMPs apply to the TENANT's defined Premises and BMPs also apply to the TENANT in their conducting business operations throughout the Harbor.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

http://ocwatersheds.com/IndustrialCommercialBusinessesActivities.aspx (which website may change from time to time):

IC3 Building Maintenance

IC4 Carpet Cleaning

IC6 Contaminated or Erodible Surface Areas

IC9 Outdoor Drainage from Indoor Areas

IC10 Outdoor Loading/Unloading of Materials

IC12 Outdoor Storage of Raw Materials, Products, and Containers

IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment

IC17 Spill Prevention and Cleanup

IC21 Waste Handling and Disposal

IC22 Eating and Drinking Establishments

IC23 Fire Sprinkler Testing/Maintenance

IC24 Wastewater Disposal Guidelines

Exhibit E
EXHIBIT F
COUNTY OF ORANGE
CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS

A. In the case of a COUNTY doing business as an individual, his/her name, date of birth, the last four digits of the Social Security number, and residence address:

Name: _____

Date of Birth: _____

Last Four Digits of Social Security No: _____

Residence Address: _____

B. In the case of a COUNTY doing business in a form other than as an individual, the name, date of birth, the last four digits of the Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the leased Premises:

Name: _____

Date of Birth: _____

Last Four Digits of Social Security No: _____

Residence Address: _____

Name: _____

Date of Birth: _____

Last Four Digits of Social Security No: _____

Residence Address: _____

Name: _____

Date of Birth: _____

Last Four Digits of Social Security No: _____

Residence Address: _____

Name: _____

Date of Birth: _____

Last Four Digits of Social Security No: _____

Residence Address: _____

(Attach additional sheets if necessary)

Exhibit E

I certify that _____ *is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease agreement with the County of Orange dated* _____. *I understand that failure to comply shall constitute a material breach of the Lease and that failure to cure such breach within sixty (60) calendar days of notice from the County of Orange shall constitute grounds for termination of the Lease agreement without cost to the County.*

_____

Authorized Signature Print Name Title Date

EXHIBIT F

DRAFT PHASE 1 BUSINESS PLAN

Exhibit F

PHASE 1 BUSINESS PLAN SUMMARY
100 ACRE AND ALTON PARCELS

The Business Plan for development of the 100 Acre and Alton Parcels is comprised of three phases: 1) master planning and entitlements; 2) master ground lease and design, permitting and horizontal improvements; and 3) individual parcel ground leases or disposition and vertical development (collectively, the "Project").

This Business Plan Summary establishes the scope of work, schedule and budget required to implement Phase 1 of the Project. The Phase 1 Business Plan includes seven tasks. These tasks are identified and described below. This phase of the plan culminates in the entitlement of the 100 Acres and Alton Parcels. Attached is an entitlements schedule and budget depicting the seven tasks included in Phase 1. The Phase 2 Business Plan Summary will be prepared prior to the commencement of that phase.

Phase 1- Master Planning

- **Task 1: Site Investigation and Assessment (100 Acre and Alton Parcels)**

    - Compile and review existing documentation, plans, and proposed improvement plans to determine their compatibility with the planned development and the improvements required to support its anticipated use.
    - Prepare base maps and conduct a boundary survey, hydrology report, environmental due diligence, preliminary geotechnical report, and a traffic sensitivity studies to evaluate the maximum development density that can be supported by the existing and proposed infrastructure and roadway improvements.

- **Task 2:Master Planning (100 Acre and Alton Parcels)**

    - Prepare two or three preliminary Master Land Use Plans for County consideration and conceptual approval, and Developer's subsequent preparation of the Master Land Use Plan (MLUP).
    - Prepare a preliminary grading plan based on the MLUP.
    - MLUP will be further developed as a combined Specific Plan/Master Plan under Task #6, including preparation of Development Standards and Guidelines.
    - Conduct community outreach to garner public support for the planned land uses
    - Coordinate meetings and reviews with the County and City in accordance with the preparation of a Memorandum of Understanding
    - Prepare a schedule (the Preliminary Phase 2 Business Plan Schedule) identifying the anticipated timing of the horizontal (Phase 2) development (100 Acres only).

- **Task 3: Infrastructure and Financing Phasing Plan (100 Acres only)**

    - Identify the access requirements and utility services to be extended from the utility backbone and roadway improvements provided by others. These services will be extended into the 100 Acre Parcel during Phase 2 of the project.
    - Expand the schedule to identify the required timing of the infrastructure improvements necessary to facilitate the horizontal development (the Phasing Plan).
    - Prepare a "Not to Exceed" budget for the completion of Phase 2 of the project. This schedule and cost estimate will be used to prepare a financing plan, which may be the basis for the formation

of a Community Facilities District (CFD) and preparation of bond financing to provide funding for the Phase 2 improvements.

- **Task 4: Research and Technical Studies (100 Acre and Alton Parcels)**

    - Prepare an Initial Study and Notice of Preparation and conduct the technical studies required for preparation of the Draft EIR. These studies will likely include environmental, biology, traffic, cultural, water quality, air quality, noise, and greenhouse gases.

- **Task 5: CEQA (100 Acre and Alton Parcels)**

    - Prepare a screencheck Draft EIR (DEIR) and a DEIR for circulation based on the findings of the technical studies
    - Conduct community outreach in support of the DEIR, receive, analyze, and respond to comments to the DEIR, and prepare the Final EIR.
    - Attend and present at public hearings as required.

- **Task 6: Entitlement (100 Acre and Alton Parcels)**

    - Submit applications to the City of Irvine for a General Plan Amendment, Zone Change(s), and Master Plan. The Master Plan will be prepared such that it will also be submitted to the County of Orange for a Specific Plan/Master Plan approval (a single document).
    - Prepare and process through approval, a Tentative Tract Map for the 100 Acre Parcel and Alton Parcels.
    - Negotiate Development Agreement between the County and City, if required.
    - Attend and present at public hearings as required.
    - Upon certification of the EIR, to the extent applicable, the Specific Plan/Master Plan, Zone Change, Development Agreement, and General Plan Amendment will be approved by the authorities having jurisdiction.
    - Conduct community outreach

- **Task 7: Phase 1- Project Management Services**
    - Accelerate the infrastructure and roadway improvements (to be designed and installed by others) required to complete the Marine Way realignment from Sand Canyon to Bake Parkway.
    - Coordination with the City of Irvine for Great Park activities.
    - Update the Phase 1 Business Plan as required.
    - Prepare the Phase 2 Business Plan for County approval.
    - Perform other Project Management responsibilities contemplated by the DDA.

El Toro 100 Acre Parcel and Alton Parcels Business Plan
Summary Scope of Work and Cost Estimate
January 8, 2014

Phase 1 Budget

Phase 1 Discipline	Total
As-builting of Existing Conditions	$238,600
Branding/Logo/Collateral	$70,000
City Consultant	$100,000
Civil Engineering	$672,000
Community Outreach	$100,000
Dry Utilities	$70,000
EIR Preparation	$573,115
Environmental (EPA Base Closure)	$85,000
Environmental Due Diligence	$500,000
Environmental Insureance (Lowe)	$50,000
Erosion Control/SWPPP	$10,000
OCFA Consultant	$10,000
Geotechnical	$183,238
Government Relations/Public Affairs	$105,000
Land Planning	$510,000
Landscape Architect	$229,570
Marine Way Funding Strategies	$50,000
Market Studies	$50,000
Misc. Tools and Supplies	$30,000
Offsite Engineering Studies	$225,000
Property Maintenance and Security	$100,000
Project Management Fee	$1,200,000
Public Financing Consultant	$75,000
Reimbursibles	$125,000
Utility Studies	$190,000
Sustainability Consultant	$30,000
Supplemental Studies	$481,047
Temp Jobsite Office	$150,000
Temp Sanitary	$10,000
Traffic (EIR)	$178,950
Traffic (On site circulation planning)	$30,000
Transporation Planning/Finance	$60,000
Subtotal: Phase 1 Developer Budget	**$6,491,520**
Contingency (10%)	$529,152
PHASE 1 DEVELOPER BUDGET	**$7,020,672**

Exhibit F

County of Orange
El Toro Redevelopment
Phase 1 Summary Schedule

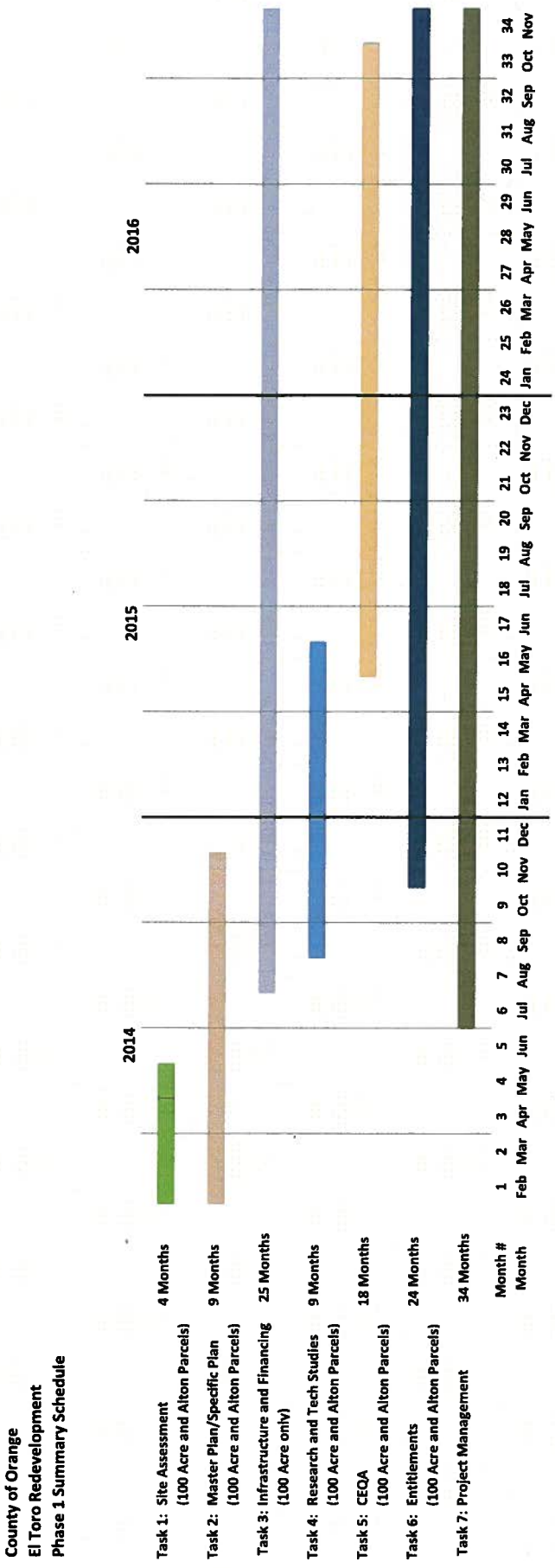

EXHIBIT G

[INTENTIONALLY OMITTED]

EXHIBIT H-1

ORANGE COUNTY CHILD SUPPORT ENFORCEMENT

In order to comply with child support enforcement requirements of Orange County, within 30 days of award of contract, the successful Developer must furnish to the contract administrator, Purchasing Agent or the agency/department deputy purchasing agent:

A. In the case of an individual Developer, his/her name, date of birth, Social Security number, and residence address;

B. In the case of a Developer doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten 10 percent or more in the contracting entity;

C. A certification that the Developer has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the Developer has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Developer to timely submit the data and/or certifications required or to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

The certifications will be stated as follows:

"I certify that COMPANY is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of DDA with Orange County

I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract."

_____

Signature Name (Please Print)

_____

Title Date

_____

Company Name

_____

DDA Number Amount

**Two signatures required if a corporation*

EXHIBIT H-2

ORANGE COUNTY CHILD SUPPORT ENFORCEMENT CERTIFICATION REQUIREMENTS

A. In the case of an individual Developer, his/her name, date of birth, Social Security number, and residence address:

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

B. For Developer doing business in a form other than as an individual:

Name, Date of Birth, Social Security Number and Residence address of each individual who owns an interest of 10 percent or more in the Contracting Entity (if no individual owns 10 percent or more, write "N/A"):

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____