



# Revision to ASR and/or Attachments

**Date:** May 19, 2016  
**To:** Clerk of the Board of Supervisors  
**CC:** County Executive Office  
**From:** Frank Kim, County Executive Officer *ma bar*  
**Re:** ASR Control #: 16-000606, Meeting Date 5/24/16 Agenda Item No. # 91  
**Subject:** Master Ground Lease with Ganahl Lumber

2016 MAY 19 PM 2:17  
 CLERK OF THE BOARD OF SUPERVISORS  
 ORANGE COUNTY  
 BOARD OF SUPERVISORS

Explanation: Please revise the language in the Background Information Section

Revised Recommended Action(s)

Make modifications to the:

Subject       Background Information       Summary

~~“In order to assist the District with the easement swap with Caltrans, Ganahl expended \$266,000. As a result of their costs, Ganahl will be receiving a \$3,150 per month rent credit from month one through month 83 of the Lease term and a \$4,550 rent credit for month 84. Starting in month 85 (the first month of the second term), rent credits will cease. The total rent credit received by Ganahl will be \$266,000.”~~  
 “In order to assist the District with the easement swap with Caltrans, Ganahl expended \$266,000. As a result of their costs, Ganahl will be receiving a \$4,430 per month rent credit from month 25 through month 83 of the Lease term and a \$4,630 rent credit for month 84. Starting in month 85 (the first month of the second term), rent credits will cease. The total rent credit received by Ganahl will be \$266,000.”

Revised Attachments (attach copy of revised attachment(s))

Attachment B: Master Ground Lease



## Attachment B

### GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the \_\_\_ day of \_\_\_\_\_, 2014 (“**Effective Date**”), by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (hereinafter called “**District**”) and GANAHL LUMBER COMPANY, a California Corporation (hereinafter called “**Tenant**”) (each a “**Party**” and collectively, the “**Parties**”).

#### Recitals

- A. District is the fee owner and easement holder of the Premises (as hereinafter defined).
- B. The Parties have executed an Option Agreement, dated April 29, 2014 (“**Option Agreement**”), pursuant to which the District had agreed to lease the Premises to the Tenant upon the fulfillment of certain conditions precedent.
- C. The Parties acknowledge that the conditions precedent required by the Option Agreement have been fulfilled and therefore the Tenant and District desire that Tenant shall ground lease the Premises from District on the terms set forth herein.
- D. District 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, District 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 3.10.

1.1.2. “**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.

1.1.3. “**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**.”

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1.1.4. “**Basic Rent**” means the monthly rent payable commencing on the Operational Date as set forth in Section 3.2 below.

1.1.5. “**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 prorata 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 Net Transfer Proceeds, 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 Transfer Proceeds was calculated, and the basis of the interest that was transferred and for which the Net Transfer Proceeds 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.

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

1.1.7. “**CalTrans Easement**” shall mean that certain Easement Agreement by and between the State of California Department of Transportation and the District, dated as of May 18, 2016, and recorded in the Official Records of Orange County on \_\_\_\_\_, 2016 as Instrument No. \_\_\_\_\_.

1.1.8. “**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.

1.1.9. “**Chief Real Estate Officer**” means the Chief Real Estate 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.

1.1.10. “**City**” means the City of Costa Mesa, 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 attorney’s fees and expert witness costs, and costs of suit), and sums reasonably paid in settlement of any of the foregoing.

1.1.12. “**Construction Rent Period**” means the period commencing on the Effective Date and ending on the earlier of: (a) the date Tenant opens the Initial Improvements to any portion of the public for business, or (b) fifteen (15) months following the Effective Date.

1.1.13. “**Construction Period Rent**” shall mean the monthly rent payable as set forth in Section 3.1 during the Construction Rent Period.

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

1.1.15. “**CPI**” means the Consumer Price 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 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, or the CPI is no longer published, then District shall select such other commodity index that produces substantially the same result as would be obtained if the CPI had not been discontinued or revised.

1.1.16. “**District**” means the Orange County Flood Control District, a body corporate and politic. Any reference to the District herein, unless expressly stated to the contrary, shall refer to the District solely in its capacity as owner of the Premises and not the District in its capacity as a land use or other governmental approval authority.

1.1.17. “**District’s Fee Interest**” means the District’s fee ownership of the Premises.

1.1.18. “**District Parties**” means the District and District’s Affiliates, agents, employees, members, officers, directors and attorneys, including the County of Orange.

1.1.19. “**Effective Date**” is defined in the introductory paragraph to this Lease.

1.1.20. “**Event of Default**” is defined in Section 11.1 below.

1.1.21. “**Excluded Financing**” shall mean:

- (a) Leasehold Mortgage secured in accordance with the terms of this Lease solely for the purpose of financing the construction of the Improvements, and nothing more;
- (b) A District approved Financing Event that solely pays off only the principal remaining balance of 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 of more than twenty-five percent (25%) of the Beneficial Residual Interests in Tenant.

1.1.22. “**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

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owner in Tenant's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of that partner, member or shareholder 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, parents, siblings, nieces, nephews, grandchildren and great-grandchildren); (ii) to a trust for the benefit of a member of the 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 (a) – (e) above;

(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; or

(g) Any direct or indirect transfer of an interest in Tenant (not including an assignment of the entire Leasehold Estate) by (i) any member of the Ganahl Family (as defined below) or Senior Management (as defined below) to any other member of the Ganahl Family or Senior Management, or (ii) any member of the Ganahl Family or Senior Management to any other person for purposes of corporate succession. For purposes of this Lease, the term "**Ganahl Family**" means one or more of the following: (A) the descendants of Ernest Ganahl, (B) the spouses of any persons set forth in (A), and (C) any estates and/or trusts of or for the benefit of any persons set forth in (A) or (B). For purpose of this Lease, "**Senior Management**" means any person who is a manager, officer or board member of Tenant as of the Effective Date.

1.1.23. "**Extension Term(s)**" is defined in Section 2.2.2.

1.1.24. "**Financing Event**" shall mean any financing or refinancing to the extent attributable to the Leasehold Estate (it being expressly acknowledged and agreed that any financing or refinancing specifically attributable to Tenant's business operations shall not be considered attributable to the Leasehold Estate) 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

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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.

1.1.25. “**Force Majeure Event**” is defined in Article XIV below.

1.1.26. “**Gross Transfer Proceeds**” shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred to the extent attributable to the Leasehold Estate (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 interest transferred). It is expressly acknowledged and agreed that any gross sale or transfer proceeds or other consideration given specifically for Tenant's business operations shall not be considered attributable to the Leasehold Estate.

1.1.27. “**Hazardous Material(s)**” shall have the meaning set forth in Section 4.5.

1.1.28. “**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.

1.1.29. “**includes**” means “includes but is not limited to” and “**including**” means “including but is not limited to.”

1.1.30. “**Initial Improvements**” means the improvements first constructed by Tenant on the Premises at its sole cost and expense as more particularly described in Exhibit C attached hereto and incorporated herein.

1.1.31. “**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).

1.1.32. “**Interest Rate**” means the highest rate of interest permissible under the Laws not to exceed the rate of twelve percent (12%) per annum.

1.1.33. “**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.

1.1.34. “**Lease**” means this Ground Lease (including any and all addenda, amendments and exhibits hereto), as now or hereafter amended.

1.1.35. “**Leasehold Estate**” is defined in Section 16.1.1.

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1.1.36. “**Leasehold Foreclosure Transferee**” is defined in Section 16.1.2.

1.1.37. “**Leasehold Mortgage**” is defined in Section 16.1.3.

1.1.38. “**Leasehold Mortgagee**” is defined in Section 16.1.4.

1.1.39. “**Monthly Rent**” means the monthly payment of Construction Period Rent or Basic Rent, as applicable, due hereunder.

1.1.40. “**Net Transfer Proceeds—Original Tenant**” shall mean, in the case of a Transfer of the Leasehold Estate 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 (District acknowledges and agrees that Tenant shall not be required to make available the information and documentation described below unless, if ever, there is a Transfer triggering Value Appreciation Rent as expressly set forth in this Lease):

(a) “**Improvement Costs**” shall mean the final actually incurred reasonable entitlement, development and construction costs (not including any cost of financing) incurred by Tenant in connection with the design, planning, entitlement, and construction of the Improvements in accordance with the terms of the Option Agreement and this Lease, including an allowance for Tenant’s construction management and general contracting services equal to seven percent (7%) of the final actually incurred direct construction costs, but excluding ordinary repair and maintenance costs and any Permitted Capital Expenditures paid for out of the Capital Improvement Fund. All Improvement Costs shall be supported by reasonable documentation and proof of payment to substantiate the actual cost incurred by Tenant and be made available for District’s review at Tenant’s corporate offices. Such documentation shall be consistent with the itemized construction cost statement provided pursuant to Section 5.5, below. Any unsubstantiated costs shall not be included in the ultimate calculation of the Improvement Costs. District shall have the right to audit the supporting documents and any supporting data made available by Tenant at its corporate offices and used in the preparation of the Improvement Costs and/or request additional documentation to substantiate any costs or services.

(b) “**Documented Transaction Costs**” shall mean commissions, title and escrow costs, attorneys’ fees, documentary transfer taxes, sales and use taxes, prepayment fees, penalties, or other similar charges (such as yield maintenance premiums or defeasance costs) and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of District, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay District 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 District the Value Appreciation Rent.

1.1.41. “**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

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Transaction Costs, each as defined below (District acknowledges and agrees that successor tenants shall not be required to make available the information and documentation described below unless, if ever, there is a Transfer triggering Value Appreciation Rent as expressly set forth in this Lease):

(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 District 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 the final actually incurred reasonable entitlement, development and construction costs of the Improvements (not including any cost of financing) 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 above, the proceeds of which were used to fund such Improvement) made in accordance with the terms of this Lease. All of Successor’s Improvement Costs shall be supported by reasonable documentation and proof of payment to substantiate the actual cost incurred by Tenant and be made available for District’s review at Tenant’s corporate offices. Such documentation shall be consistent with the itemized construction cost statement provided pursuant to Section 5.5, below. Any unsubstantiated costs shall not be included in the ultimate calculation of the Successor’s Improvement Costs. District shall have the right to audit the supporting documents and any supporting data made available for District’s review at Tenant’s corporate offices and used in the preparation of the Successor’s Improvement Costs and/or request additional documentation to substantiate any costs or services; and

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

1.1.42. **“Net Refinancing Proceeds”** shall mean the gross principal amount attributable to the Leasehold Estate of any Financing Event after the Effective Date (plus, in the case of secondary financing, the original principal balance of any existing financing attributable to the Leasehold Estate 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 District was paid Value Appreciation Rent plus, if the financing described in this clause (B) was secondary financing, the original principal balance 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 and it is expressly acknowledged and agreed that any gross principal amount specifically attributable to Tenant’s business operations shall not be considered attributable to the Leasehold Estate.

1.1.43. **“New Lease”** is defined in Section 16.7.1.

1.1.44. **“Operational Date”** has the meaning set forth in Section 3.2.



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1.1.45. “**Operational Period**” has the meaning set forth in Section 3.2.

1.1.46. “**Operating Costs**” shall have the meaning set forth in Section 3.10.5.

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

1.1.48. “**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.

1.1.49. “**Premises**” means that certain real property containing approximately 5.9 acres with an address of 1100 South Bristol Street, within 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, and a rendering showing the approximate boundaries of the Premises is attached hereto as Exhibit B. In the event that the CalTrans Easement is executed, the area of such easement shall be added to the Premises by amendment to the attached exhibits executed by the Chief Real Estate Officer and the Tenant.

1.1.50. “**Primary Term**” is defined in Section 2.2.1.

1.1.51. “**Project Lead**” refers to Scott Burns or another person selected by the Chief Real Estate Officer, at the Chief Real Estate Officer’s sole and absolute discretion, to provide coordination for all District rights and obligations hereunder. The Project Lead shall be the main District contact for the Tenant for the purposes of this Lease, and any approvals or notices to be provided to the Chief Real Estate Officer hereunder shall be provided to and coordinated by the Project Lead.

1.1.52. “**Rent**” means and includes the Monthly Rent and Additional Rent payable by Tenant under this Lease.

1.1.53. “**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 Board of Supervisors.

1.1.54. “**Security Deposit**” means a security deposit in the amount of \$100,000.

1.1.55. “**Tangible Net Worth**” shall mean the sum of liquid assets less (i) intangible assets (including cost in excess of book value for acquisitions), and (ii) liabilities, in each case determined in accordance with generally accepted accounting principles in effect as of the date of the calculation of Tangible Net Worth and consistently applied throughout the periods covered by the applicable financial statements. As used in this Section, “**liquid assets**” shall be defined as assets in the form of cash, cash equivalents, certificates of deposit issued by a commercial bank traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations and liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

1.1.56. “**Taxes**” has the meaning set forth in Section 3.10.2.

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1.1.57. “**Tenant Group**” means Tenant and Tenant’s Affiliates, agents, employees, members, officers, directors and attorneys.

1.1.58. “**Tenant Ownership Change**” shall mean (a) any transfer by Tenant of the entire Leasehold Estate or (b) any transaction or series of related transactions that constitute an “Aggregate Transfer” of more than 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 that is not an Excluded Transfer 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.

1.1.59. “**Term**” means the full term of this Lease including the Primary Term and any Extension Term(s).

1.1.60. “**Transfer**” has the meaning set forth in Section 10.1.1.

1.1.61. “**Transfer Notice**” has the meaning set forth in Section 10.4.

1.1.62. “**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.

1.1.63. “**Utility Costs**” shall have the meaning set forth in Section 3.10.6.

## ARTICLE II LEASE OF PROPERTY

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

### 2.2 **Term.**

2.2.1. **Primary Term.** The “**Primary Term**” of this Lease shall be twenty one (21) years, commencing on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Time on \_\_\_\_\_, unless sooner terminated as a result of a default under this Lease as hereinafter provided, after the failure to cure such default within the applicable notice and cure periods, if any.

2.2.2. **Option to Extend Primary Term.** Provided Tenant is not in material default of any term, covenant, condition, restriction or reservation of this Lease after applicable notice and cure periods, if any, Tenant shall have the option to extend the Primary Term of this Lease, for six (6) additional, consecutive terms of seven (7) years each (“**Extension Term(s)**”) under the same terms, covenants and conditions, except for Monthly Rent which shall be adjusted as set forth in Section 3.3. Tenant shall exercise each Extension Term by providing the Chief Real Estate Officer with written notice of its election to extend the Primary Term, together with the declared term of such Extension Term, a minimum of one hundred and twenty (120) days prior to the expiration of the Lease term then in effect, but in no event earlier than two hundred and seventy (270) days prior to the expiration of the Lease term then in effect.

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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 to Section 2.2.2, above).

2.4 **District Representations.** The District represents to Tenant that to the best of the Chief Real Estate Officer's current knowledge, there exist no conditions, encumbrances or unrecorded interests on the Premise [including the Santa Ana-Delhi Channel ("**Delhi Channel**") or pending disputes, legal actions or administrative proceedings that will interfere with development of the Premises as contemplated under this Lease. Additionally, to the best of the Chief Real Estate Officer's current knowledge the existence, use and maintenance of the Delhi Channel will not interfere with the development of Premises as contemplated under this Lease. The Chief Real Estate Officer has conducted no investigation or inquiry related to the Premises to determine the suitability of the Premises for the uses permitted hereunder.

2.5 **Condition of the Premises.** **TENANT HEREBY ACCEPTS THE PREMISES "AS IS.", AND ACKNOWLEDGES THAT THE PREMISES IS IN SATISFACTORY CONDITION. DISTRICT MAKES NO WARRANTY, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR TENANT'S PROPOSED USES. EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, DISTRICT MAKES NO COVENANTS OR WARRANTIES, IMPLIED OR OTHERWISE, RESPECTING THE CONDITION OF THE SOIL, SUBSOIL, OR ANY OTHER CONDITIONS OF THE PREMISES OR THE PRESENCE OF HAZARDOUS MATERIALS, NOR DOES DISTRICT COVENANT OR WARRANT, IMPLIED OR OTHERWISE, AS TO THE SUITABILITY OF THE PREMISES FOR THE PROPOSED DEVELOPMENT, CONSTRUCTION OR USE BY TENANT EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE. DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY LAND SUBSIDENCE, SLIPPAGE, SOIL INSTABILITY OR DAMAGE RESULTING THEREFROM. DISTRICT SHALL NOT BE REQUIRED OR OBLIGATED TO MAKE ANY CHANGES, ALTERATIONS, ADDITIONS, IMPROVEMENTS OR REPAIRS TO THE PREMISES EXCEPT TO THE EXTENT OF ANY DAMAGE CAUSED BY DISTRICT OR A DISTRICT PARTY. TENANT SHALL RELY ON ITS OWN INSPECTION AS TO THE SUITABILITY OF THE PREMISES FOR THE INTENDED USE.**

TENANT INITIALS: \_\_\_\_\_

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 District, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or District's interest therein.

2.7 **Priority of Lease.** As of the Effective Date, the Premises shall be free and clear of all mortgages, deeds of trust, security deed, deed to secure debt or any other security instrument. No default, foreclosure or other enforcement of remedies under any future mortgage, deed of trust, deed to secure debt or other security instrument shall extinguish or otherwise affect in any manner, and any person who acquires title to the District's Fee Interest pursuant to any foreclosure, assignment in lieu of foreclosure or other exercise of remedies under any future mortgage, deed of trust, deed to secure debt or other security instrument shall take title to the District's Fee Interest subject to, (a) this Lease and all of Tenant's rights hereunder, (b) any Leasehold Mortgage and the rights of any Leasehold Mortgagee thereunder, and (c) any New Lease and the rights of the tenant thereunder.

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2.8 **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 based on Tenant's investigations.

2.9 **Quiet Enjoyment.** If Tenant punctually and in accordance with the terms of this Lease performs the obligations herein contained to be performed by Tenant, Tenant shall have and enjoy, during the Term, the quiet and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto for the uses permitted herein subject to encumbrances of record senior to this Lease as of the Effective Date, if any. Tenant recognizes that the Premises include the boxed Delhi Channel and expressly understands that there may be some disruption to the Tenant's business on the Premises if any work is necessitated within, on, or about the Delhi Channel in furtherance of the District's flood control purposes; provided, however, that District shall cause any such work to be performed in a manner that does not materially disrupt or damage the Improvements or Tenant's operations on the Premises and District shall not permit any mechanic's or other liens to stand against the Leasehold Estate or the Improvements for work or material furnished by District in, on, under or adjacent to the Premises.

### ARTICLE III RENT & SECURITY

3.1 **Construction Period Rent.** Commencing on the Effective Date and continuing through the Construction Rent Period, Tenant shall pay to District Twenty-Seven Thousand Five Hundred Dollars (\$27,500) per month ("**Construction Period Rent**"). The Construction Period Rent shall be payable on or before the first (1<sup>st</sup>) day of each calendar month during the Construction Period; provided, however, that notwithstanding anything to the contrary contained in this Lease, the rent credits that Tenant is entitled to under the Option Agreement shall be applied towards the Construction Period Rent due under this Lease until such rent credits are exhausted.

3.2 **Operational Period Rent.** Commencing on the first day immediately following the last day of the Construction Rent Period ("**Operational Date**") and expiring upon the last day of the Term (the "**Operational Period**"), Tenant shall pay Basic Rent calculated pursuant to this Section 3.2 and Section 3.3 below, which Basic Rent shall be due on or before the first (1<sup>st</sup>) day of each calendar month.

3.2.1. Commencing on the Operational Date and continuing during the Primary Term, the Basic Rent due District shall be as follows ("**Basic Rent**"):

3.2.2. For the period commencing on the Operational Date and ending on the last day of the seventh (7<sup>th</sup>) year following the Effective Date of this Lease, the Basic Rent due District shall be Fifty Thousand Dollars (\$50,000) per month. However, Tenant will receive a \$4,430 per month rent credit for months 25 through 83 and receive a \$4,630 rent credit in month 84, totaling \$266,000 in rent credit. Tenant's Basic Rent due for months 25 through 83 of the Lease Term shall be Forty-Five Thousand, Five Hundred Seventy Dollars (\$45,570) and month 84 shall be Forty-Five Thousand, Three Hundred Seventy Dollars (\$45,370). Starting month 85 through the end of the Lease Term, Tenant will cease to receive rent credits and Basic Rent shall be as set forth hereinafter in this Section.

3.2.3. For the seven-year period commencing on the first day of the eighth (8<sup>th</sup>) year following the Effective Date of this Lease and ending at the last day of the fourteenth (14<sup>th</sup>) year following

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the Effective Date of this Lease, the Basic Rent due District shall be Fifty-Five Thousand Dollars (\$55,000) per month.

3.2.4. For the seven-year period commencing on the first day of the fifteenth (15<sup>th</sup>) year following the Effective Date of this Lease and ending on the last day of the twenty-first (21<sup>st</sup>) year following the Effective Date of this Lease, the Basic Rent due District shall be Sixty Thousand Five Hundred Dollars (\$60,500) per month.

3.3 **Extension Period Rent Revision.** At the commencement of any Extension Term, the Monthly Rent in effect during the seven (7) year period immediately prior to such Extension Term shall be increased by an amount proportionate to the percentage increase, if any, in the CPI (as defined in Section 1.1.15, above) during the period from the third (3<sup>rd</sup>) month prior to the commencement of each seven (7) year period through the third (3<sup>rd</sup>) month prior to the expiration of such prior seven (7) year period; provided, however, that no such increase shall be more than ten percent (10%). The Chief Real Estate Officer shall notify Tenant in writing of the increased Monthly Rent thirty (30) days prior to the applicable Extension Term, and shall set forth in such notice the basis for the amount of the increased Monthly Rent. Tenant shall commence paying the increased Monthly Rent upon commencement of the applicable Extension Term and continuing through the expiration of such Extension Term.

3.4 **Value Appreciation Rent.** In the event of a Tenant Ownership Change or a Financing Event, Tenant shall pay to District 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) four percent (4%) of the Gross Transfer Proceeds, or (b) fourteen percent (14%) of Net Transfer Proceeds. For a Financing Event, Tenant shall pay District fourteen percent (14%) of the Net Refinancing Proceeds. Before any Tenant Ownership Change or Financing Event for which Value Appreciation Rent may be due, Tenant shall provide District 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 District and Tenant make mutually acceptable arrangements for the preservation of any additional Value Appreciation Rent plus interest at the Interest Rate that might be due to District over and above that reflected in the Tenant's calculation should any such dispute be resolved in favor of District. 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.

### 3.5 **Payment of Rent.**

3.5.1. **Monthly Rent Generally.** Monthly Rent shall be payable in advance and without any deduction or offset (except as set forth herein), prior demand or notice, commencing upon the Effective 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 District under this Lease shall be paid, in lawful currency of the United States of America, by check delivered to District or by electronic payment as District shall direct. All monetary payments owing by Tenant to District under this Lease other than Monthly Rent shall be deemed additional rent owing under this Lease. Monthly Rent payments shall be

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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 Chief Real Estate Officer upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss if payments are made by mail. The District offers electronic payment for any payments hereunder, thus the Tenant shall utilize such District electronic payment system for any payments under this Lease, unless otherwise directed in writing by the Chief Real Estate Officer. 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: \_\_\_\_\_

3.6 **Triple Net Rent**. It is the intent of the parties that all Rent shall be absolutely net to District and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, Taxes (as defined below), 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, including all "Taxes, "Operating Costs" and "Utility Costs," as defined below. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall District be obligated or required to make any payment of any kind whatsoever for Taxes, Operating Costs and Utility Costs or be under any other obligation or liability under this Lease except as expressly provided in this Lease.

3.7 **Insufficient Funds**. If any payment of Monthly Rent or other fees made by check is returned due to insufficient funds, or otherwise, more than once during the Term, Chief Real Estate Officer 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 except as otherwise set forth herein. No payment by Tenant or receipt by District 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 District shall accept such check or payment without prejudice to District's right to recover the balance of said Rent or pursue any other remedy in this Lease.

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### **3.8 Charge for Late Payment.**

3.8.1. Tenant hereby acknowledges that the late payment of Monthly Rent or any other sums due hereunder will cause District 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.

3.8.2. Accordingly, if any payment of Monthly Rent or of any other sum due District is not received by District within three (3) business days of Tenant's receipt of notice from District 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 District. 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 Dollars (\$250.00). Payments will be first applied to accrued late payment, second to accrued interest, then to Monthly Rent and any remaining amount to any other outstanding costs or charges.

3.8.3. Tenant and District hereby agree that such late charges represent a fair and reasonable estimate of the costs that District will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any less than full amount of the overdue payment) by District shall in no event constitute a waiver of Tenant's default with respect to such overdue payment, or prevent District from exercising any of the other rights and remedies granted hereunder until Tenant has paid such amounts in full.

3.8.4. In the event that Tenant makes two (2) late payments in any twelve (12) month period, the Tenant shall thereafter pay Monthly Rent in quarterly installments in advance at the request and sole discretion of the Chief Real Estate Officer, in addition to any other remedies that the District may have at law or otherwise.

### **3.9 Security Deposit**

Upon the execution of this Lease, Tenant shall provide to District the Security Deposit which shall be held by District 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 District 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 District has a right to cure under this Lease, or (iii) any other amounts or damages to which District is entitled under this Lease. If District applies the Security Deposit as described in the immediately preceding sentence, District 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 District's application of such amount is not in violation of this Lease or applicable Laws), deposit with District an amount sufficient to restore the Security Deposit to its full amount (Failure to do so shall be deemed an Event of Default under this Lease.). The Security Deposit may be commingled by District with District'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

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- (b) The assignment to Orange County Flood Control District, of a savings deposit held in a financial institution in Orange County acceptable to Chief Real Estate Officer. At the minimum, such assignment shall be evidenced by the delivery to Chief Real Estate Officer of the original passbook (if a passbook exists) reflecting said savings deposit and a written assignment of said deposit to Orange County Flood Control District, in a form approved by Chief Real Estate Officer.
- (c) A Time Certificate of Deposit from a financial institution in Orange County wherein the principal sum is made payable to Orange County Flood Control District, or order. Both the financial institution and the form of the certificate must be approved by Chief Real Estate 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 Orange County Flood Control District, or order upon demand by Chief Real Estate Officer. Both the financial institution(s) and the form of the instrument(s) must be approved by Chief Real Estate 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 the District for correcting any default or breach of this Lease by Tenant, Tenant's successors or assigns, or for payment of expenses incurred by District 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 Orange County Flood Control District, or order upon demand by Chief Real Estate 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.

The security deposit shall be rebated, reassigned, released, or endorsed by Chief Real Estate 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. At Tenant's option by written notice to District, if Tenant is not then in default under this Lease (subject to applicable notice and cure periods) and has not exercised any remaining extension options, Tenant may direct District to apply the Security Deposit against the Monthly Rent due for the last two (2) months of the Term or Extension Term as applicable.

### 3.10 **Additional Rent.**

3.10.1. **Additional Rent.** During the Term, the Monthly Rent shall be absolutely net to District so that this Lease shall yield to District the Monthly Rent 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 (as defined below), charges, expenses, impositions and obligations of every kind incurred for, against or in connection with the Premises which arise or become due during the Term or any



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extension thereof as a result of Tenant's use and occupancy of the Premises shall be paid or discharged by Tenant as additional rent ("**Additional Rent**"). Tenant may pay, under protest, Additional Rent, and/or contest and defend against same. Any rebates shall belong to Tenant.

3.10.2. **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 (but specifically excluding the land component of such real estate taxes otherwise attributable to District's fee interest in the Premises), charge, possessory interest 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 a result of Tenant's use and occupancy of the Premises, 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 District 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 rent payable to Tenant in connection with the Premises, 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 rent by Tenant in connection with the Premises, 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, but specifically excluding 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 Rent by District (or its successors);

(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, such as 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 for the Improvements (but specifically excluding the land component of such real estate taxes) occasioned by increases in tax rates or increases in assessed valuations resulting from a sale of the Premises, this Lease or Tenants construction of the Improvements.

3.10.3. **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

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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 District a good and sufficient undertaking in an amount specified by District 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. District shall cooperate with Tenant in all reasonable respects in such contest; provide, however, that any such contest shall be without cost to District, and Tenant shall indemnify, defend and protect the Premises and District from Tenant's failure to observe or comply with the contested assessment during the pendency of the contest.

3.10.4. **Payment by District.** 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 District's written notice advising Tenant of such nonpayment, District 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 District reimburse District for the full amount paid by District 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.

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

3.10.6. **Utility Costs.** Tenant shall pay all Utility Costs during the Term prior to delinquency. 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 Tenant's use and occupancy of 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 (including without limitation all Tenant Parties) 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 wholly unrelated purpose nor to engage in or permit any other wholly unrelated activity within or from the Premises, except as set forth herein with the prior written approval of the Chief Real Estate Officer, which approval may be granted or withheld in the reasonable discretion of the Chief Real Estate Officer.

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### 4.2 Required and Optional Facilities and Services.

4.2.1. Required Services and Uses. District's primary purpose for entering into this Lease is to promote the development of the Improvements consistent with this Lease. In furtherance of that purpose, but subject to all other provisions of this Lease, Tenant shall construct and during the entire Term operate and maintain the Improvements in a manner consistent with the Laws and for a lumber, hardware and home improvement store and related services and all other uses permitted under this Lease.

4.2.2. Ancillary Services and Uses. Without notice to or consent of Chief Real Estate Officer, Tenant may provide those additional services and uses which are ancillary to and compatible with the permitted services and uses herein.

4.2.3. Additional Concessions or Services. Without notice to or consent of Chief Real Estate Officer, Tenant may establish, maintain, and operate such other additional facilities, concessions, and services consistent with Tenant's general business practices at other stores within Orange County and which are otherwise permitted by Law.

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 wholly unrelated purpose or engage in or permit any other wholly unrelated activity within or from the Premises except as approved in writing by the Chief Real Estate Officer as set forth herein, which approval may be granted or withheld in the reasonable discretion of the Chief Real Estate Officer.

4.2.5. Continuous Use. During the Term, and subject to all other provisions of this Lease, Tenant shall continuously conduct Tenant's business in the Premises in the manner provided under this Lease and shall not discontinue use of the Premises for a period in excess of six (6) continuous months except as permitted in advance and in writing by the Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed if the discontinuance is due to remodeling, fire, casualty, repairs, strike, temporary loss of licenses, or other causes beyond Tenant's control.

4.2.6. Alcohol Restrictions. Tenant shall not permit the sale or service of any beer, wine or alcoholic beverages on the Premises, provided that Tenant may serve beer, wine and/or alcoholic beverages at "special events" (*e.g.*, banquets, birthday parties) so long as Tenant obtains all necessary permits and licenses to permit the sale or service of beer, wine or alcoholic beverages on the Premises and otherwise complies with any applicable laws and ordinances.

4.2.7. Permits and Licenses. Tenant shall be solely responsible to obtain, at its sole cost and expense, any and all permits, licenses or other approvals required for the uses permitted herein and shall maintain such permits, licenses or other approvals for the entire Term.

4.3 Nuisance; Waste. Tenant shall not maintain, commit, or knowingly 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 knowingly 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 consistent with Tenant's general business practices at other stores within Orange County.

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4.4 **Compliance with Laws.** Tenant shall not use or knowingly 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). District shall cooperate with Tenant in all reasonable respects in such contest, including joining with Tenant in any such contest if District's joinder is required in order to maintain such contest; provide, however, that any such contest shall be without cost to District, and Tenant shall indemnify, defend and protect the Premises and District 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, 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. **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 knowingly 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).

4.5.3. **Tenant Obligations.** If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any adjacent real or personal property, 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 District 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 caused or permitted by Tenant or Tenant Parties. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by Tenant or Tenant Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the Chief Real Estate Officer. 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 reasonably approved by District. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be in violation of this Lease or have any obligation or responsibility in connection with any Hazardous Materials brought upon, generated, released into the environment or disposed of on, under, from or about the Premises by, through or in connection with the Delhi Channel and/or District's operations on or adjacent to the Premises (including

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the Delhi Channel), except, in either case, to the extent the presence of such Hazardous Materials are directly attributable to the actions of Tenant.

### 4.5.4. Indemnification for Hazardous Materials.

(a) To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys reasonably acceptable to District) the County of Orange, District, 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 and diminution in the value of the Premises, but specifically excluding damages arising from any adverse impact on marketing), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other reasonable professional or consultant's expenses), whether foreseeable or unforeseeable, 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 by Tenant or Tenant Parties; provided, however, that Tenant shall not be in violation of this Lease or have any indemnity or other obligation or responsibility in connection with any Hazardous Materials brought upon, generated, released into the environment or disposed of on, under, from or about the Premises by, through or in connection with the Delhi Channel and/or District's operations on or adjacent to the Premises (including the Delhi Channel), except, in either case, to the extent the presence of such Hazardous Materials are directly attributable to the actions of Tenant.

(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, to the extent required by applicable law.

4.6 **Access by District.** District reserves the right for District and District's authorized representatives to enter the Premises at any reasonable time during normal business hours, in order to (i) determine whether Tenant is complying with Tenant's obligations hereunder, or (ii) enforce any rights given to District under this Lease. District 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 the fulfillment of the Preconditions set forth in Section 5.1.2, below, and payment for and issuance of all permits required under the Laws (whether from County in its governmental capacity, or otherwise), 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 Chief Real Estate Officer of the proposed commencement of construction of the Premises or the delivery of construction materials in

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order to permit District to take all necessary actions under California Civil Code section 3094, including posting of a notice of non-responsibility at the Premises; and

(b) Tenant shall have provided evidence that Tenant has complied with Section 5.1.4 below, Section 5.2.1 below, and Section 5.3 below.

5.1.3. **Utilities.** Subject to Section 5.1.11 below, to the extent not already constructed, Tenant, at no cost to District, shall construct or cause to be constructed all water, gas, heat, light, power, air conditioning, telephone, and other utilities and services necessary for the purposes of conducting Tenant operations on the Premises at Tenant's sole cost and expense. All such utilities shall be separately metered from any existing utilities currently used by District in conducting its operations, if any, on or about the Premises, and all taxes, connection fees, or service fees arising from Tenant's operations on the Premises shall be Tenant's responsibility and shall be paid prior to the delinquency date.

5.1.4. **Construction Funding.** Prior to commencement of construction of the Initial Improvements, Tenant shall make available to District at Tenant's corporate office evidence reasonably satisfactory to District 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 District of any such change.

5.1.5. **Compliance With Laws and Permits.** Tenant shall cause all Improvements constructed 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. No permit, approval, or consent given hereunder by District, in its governmental capacity, shall affect or limit Tenant's obligations hereunder, nor shall any approvals or consents given by District, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

5.1.6. **Progress Inspections.** Not less than quarterly after the commencement of construction of the Initial Improvements, Tenant shall schedule "walk-throughs" at the Premises upon Chief Real Estate Officer's written request to inspect the construction status.

5.1.7. **Certificate of Occupancy.** Tenant shall provide Chief Real Estate Officer with a copy of the Certificate of Occupancy promptly following Tenant's receipt thereof.

5.1.8. **Insurance.** Tenant (or its contractors, as applicable) shall deliver to District: (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 District, the Premises or the Improvements as specified in Section 8.1. Tenant shall

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(or shall cause its contractors 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 as specified in Section 8.1.

### 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) in connection with the Improvements. Tenant shall not suffer or knowingly permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any such 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 District 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 reasonably approved in writing by District and save District and the County of Orange harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with Tenant's 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.** District 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. Promptly after the Improvements have been completed, Tenant shall (or shall cause its contractors to) record a notice of completion as defined and provided for in California Civil Code Section 3093.

(d) **District'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

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judgment by lawful means or to pay the judgment, District 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 District, Tenant shall immediately upon receipt of written request therefor by District, reimburse District for all sums paid by District under this paragraph together with all District's reasonable attorney's fees and costs, plus interest at the Interest Rate from the date of payment until the date of reimbursement.

5.1.10. **No Responsibility.** Any approvals by District with respect to any Improvements shall not make District responsible for the Improvement with respect to which approval is given, or the construction thereof.

5.1.11. **Easements and Rights of Way.** District hereby agrees to reasonably cooperate with Tenant in connection with the granting and/or relocating of rights of way for public roads and utility facilities as necessary or desirable by Tenant for development of the Premises and operation of the Improvements.

5.1.12. **CalTrans Easement.** Tenant acknowledges and agrees that it shall be responsible (at its sole cost and expense) for the design, construction and maintenance of the "Improvement Work" (defined in the Landscape Maintenance Agreement attached hereto as **Exhibit H**) within the CalTrans Easement; provided, however, if the Cal Trans Easement is not recorded as of the Effective Date, Tenant shall only be obligated to perform any such "Improvement Work" approved in writing by Tenant prior to the recordation of such CalTrans Easement. As of the Effective Date and to the extent the CalTrans Easement has been executed, District hereby grants Tenant for the Term the right to use the CalTrans Easement area as a part of the Premises and exercise the District's rights under the CalTrans Easement related to the construction, maintenance and use of Improvement Work consistent with the terms of this Lease.

### 5.2 **Construction Contracts.**

5.2.1. **Contract.** Tenant shall enter into a written contract or contracts for construction of the Initial Improvements based upon the "Construction Contract Documents" approved pursuant to the Option Agreement. 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 make available to District at Tenant's corporate office a true copy of the contract or contracts with the contractors.

5.2.2. **Assignment to District.** Tenant shall use commercially reasonable efforts obtain the written agreement of the contractors that, at District's election and in the event that Tenant fails to perform its contract with the contractor, such contractor will recognize District as the assignee of the contract with the contractor, and that District may, upon such election, assume such contract with credit for payments made prior thereto.

5.3 **Tenant's Construction Assurances.** Prior to commencement of construction of the Initial Improvements, or any phase thereof, within the Premises by Tenant and on a monthly basis thereafter, Tenant shall provide to District evidence that assures District that sufficient monies will be available to complete the lesser of (a) the proposed construction of the Initial Improvements or (b) the demolition of partially completed Initial Improvements pursuant to the demolition cost schedule set forth as **Exhibit G** attached hereto and incorporated herein. Such evidence may take one of the following forms:

5.3.1. Completion bond issued to District as obligee;



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5.3.2. Irrevocable letter of credit issued to District from a financial institution to be in effect until the earlier of when a Certificate of Occupancy is issued for the Initial Improvements or the Initial Improvements have been demolished;

5.3.3. Cash deposited with the District (may be in the form of cashier's check or money order or may be electronically deposited);

5.3.4. Cash deposited into an escrow account held in a financial institution in Orange County reasonably acceptable to Chief Real Estate Officer with such account and the funds therein available for the District to draw upon only as set forth in this Section 5.3.4. Such account shall be evidenced by an escrow agreement approved by the Parties which shall provide the District with a right to draw upon the account at District's discretion if there is both an Event of Default during the Construction Rent Period that results in this Lease being terminated and Tenant abandons the Premises before completing construction of the Initial Improvements or demolishing any partially constructed Initial Improvements. Any and all interest accrued under the account shall accrue for Tenant's benefit and be used to pay all escrow fees;

5.3.5. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and acceptable to Chief Real Estate Officer. All bonds and letters of credit shall be in a form acceptable to Chief Real Estate Officer and shall insure faithful and full observance and performance by Tenant of all terms, conditions, covenants, and agreements relating to the construction of improvements within the Premises. Tenant's obligations under this Section 5.3 shall terminate upon the earlier of the issuance of a Certificate of Occupancy for the Initial Improvements or completion of the demolition of the Initial Improvements, as the case may be.

### 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 (but specifically excluding trade fixtures, trade equipment, inventory, proprietary items and personal property) are real property.

5.4.2. Upon Expiration of Term. All Improvements (but specifically excluding trade fixtures, trade equipment, inventory, proprietary items and personal property) on the Premises at the expiration or earlier termination of the Term of this Lease shall, without additional payment to Tenant, then become District'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 but otherwise without representation or warranty of any kind from Tenant, 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 (but specifically excluding trade fixtures, trade equipment, inventory, proprietary items and personal property) to District in their then "as-is" condition without representation and warranty.

(a) District 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

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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 District, three (3) years prior to the expiration 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, District may request and, if requested, Tenant shall establish a separate account, in a bank or other financial establishment approved by Chief Real Estate Officer, containing sufficient funds to cover the anticipated expense of the demolition and clearing. Upon approval of Chief Real Estate Officer Tenant may provide assurance of removal in one of the forms set forth in Section 3.9. 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 District 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 District may 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 and Construction Costs.** Within sixty (60) days following completion of the Initial Improvements and of any improvements within the Premises requiring the District’s approval pursuant to Section 6.3, hereafter (each, a **“Plan/Cost Submittal Date”**), Tenant shall provide to the Chief Real Estate 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 District, to District’s satisfaction, on District’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, at each Plan/Cost Submittal Date, Tenant shall make available to Chief Real Estate Officer at Tenant’s corporate office an itemized statement of the actual construction cost of such improvement with all supporting documents in form reasonably acceptable to Chief Real Estate Officer. The statement of cost shall be signed by Tenant or Tenant’s responsible agent.

### 5.6 **Capital Improvement Fund**

5.6.1. Commencing with the month during which the fifth (5th) anniversary of the Operational Date occurs, and continuing until five (5) years prior to the expiration of the Term of the Lease, District may request and, if requested, 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 District 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

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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 Chief Real Estate Officer's approval as provided for in Section 5.6.4, below. Tenant shall furnish to the Chief Real Estate 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 District, 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 (15th) day of the month during which the fifth (5th) anniversary of the Operational Date occurs, and continuing on or before the fifteenth (15th) 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 Chief Real Estate Officer's prior approval of any Capital Improvement Fund disbursements, Tenant shall submit to the Chief Real Estate 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**"). Chief Real Estate 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 District (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 Chief Real Estate Officer for the Chief Real Estate 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 District and provide applicable documentation to the Chief Real Estate Officer thereafter for approval. If the Chief Real Estate Officer disapproves the emergency expenditure, Tenant shall refund the amount taken from the Capital Improvement Fund within thirty (30) days of written notice from the District 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

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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.

### 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, use commercially reasonable efforts to 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 in a manner consistent with Tenant's maintenance of its other lumber yards in Orange County, California (*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 in compliance with all applicable Laws in all material respects.

6.2 **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 District's prior written consent: (i) to make any interior improvements, revisions, modifications and other changes to the Improvements that are consistent with the District approved uses of the Premises as reflected in this Lease; (ii) with prior written notice to the District, 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) with prior written notice to District, to make changes, revisions or improvements to the Improvements for uses consistent with the District approved use of the Premises as reflected in this Lease, to the extent that such changes, revisions or improvements do not materially 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 that are structural or materially increases or decreases the square footage of the buildings shall require the prior written consent of the District, which consent shall not be unreasonably conditioned, delayed or withheld and may require Board of Supervisors approval. Tenant shall perform all work authorized by this 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 use commercially reasonable efforts to: (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; and (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).

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

### 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 (“**Casualty**”) which is covered by insurance required to be carried by Tenant pursuant to this Lease or in fact intentionally caused by Tenant or Tenant Parties and which Casualty occurs at any time during the Term, except for the last three (3) years of the then existing Term, Tenant shall, with all due diligence at Tenant’s sole costs and expense use commercially reasonable efforts to repair, restore and rebuild the Improvements to substantially the same plan and design as existed immediately prior to such Casualty, 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 District’s approval of such use change if required by Article IV above). This Article shall not apply to cosmetic damage or alterations.

7.2 **Damage and Restoration During Last Three (3) Years of Lease.** In the event the whole or any part of the Improvements shall be damaged or destroyed by Casualty during the last three (3) years of the then existing Term:

7.2.1. Tenant shall have the option to either terminate this Lease or restore the Premises as set forth in this Article VII.

7.2.2. If Tenant elects to terminate this Lease as set forth above, Tenant shall not be required to restore the Improvements and District shall have the option to either:

(a) Require Tenant to remove any and all remaining Improvements from the Premises pursuant to Section 5.4.2(a) and upon lien free completion thereof, Tenant shall be entitled to receive and retain any insurance proceeds, or

(b) Accept the Premises in its then ‘as is’ condition, in which case any insurance proceeds actually received by Tenant in connection with such Casualty shall be paid into an escrow account for use by the District to pay for costs incurred to restore the Improvements.

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 **Rental Abatement.** Tenant shall be entitled to a prorated abatement of Rent for the part or all of the Improvements that become untenable as a result of the partial or total destruction of the Improvements, but Tenant’s obligation to keep and perform all other covenants and agreements on its part to

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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 a Casualty 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. Upon lien free completion of the restoration, if applicable, any balance of the insurance proceeds remaining over and above the cost of such restoration shall be retained or paid to Tenant.

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. District 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. Tenant agrees to purchase all insurance required under this Lease at Tenant's expense. Tenant shall provide Chief Real Estate Officer with certificates of insurance coverage (including all endorsements required herein) as necessary to reasonably satisfy Chief Real Estate Officer that the insurance provisions of this Lease have been complied with and Tenant shall keep such insurance coverage and the certificates and endorsements on deposit with the Chief Real Estate Officer to review during the entire term of this Lease and any extension thereof. It shall constitute a material default hereunder if Tenant's insurance coverage is terminated and not reinstated within ten (10) business days after such termination. If Tenant fails to cure such breach within ten (10) business days after insurance termination, said default shall permit Chief Real Estate Officer to take whatever steps are necessary to interrupt Tenant's operation from or on the Premises and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein.

8.1.2. Subject to any applicable right to cure, Tenant agrees that it shall not operate on the Premises at any time that the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Chief Real Estate Officer; Rent however shall not be suspended. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Chief Real Estate Officer will only accept evidence of valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance.

8.1.3. If Tenant fails to provide Chief Real Estate Officer with valid certificate of insurance and endorsements or binder at any time during the term of the Lease within ten (10) business days after District requests the same in writing, District and Tenant agree that this shall constitute a material default of

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the Lease. If Tenant fails to cure such breach within ten (10) business days after receipt of a notice of default specifying the insurance breach, said default shall permit Chief Real Estate Officer to take whatever steps are necessary to interrupt Tenant's operation from or on the Premises and to prevent any persons, including, but not limited to, members of the general public, and Tenant's employees and agents, from entering the Premises until such time as the Chief Real Estate Officer is provided with adequate evidence of insurance required herein. Tenant further agrees to release District from, and not bring suit against District for, any claims or damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from Chief Real Estate Officer's action.

8.1.4. All contractors performing work on behalf of Tenant pursuant to this Lease shall obtain the commercial general liability (excluding any umbrella/excess coverage requirements, any requirements for "All Risk" or "Special Causes of Loss" coverage, whether during construction or operational periods, and any environmental/pollution coverage requirements), automobile liability and workers' compensation insurance required under this Lease subject to the same terms and conditions as set forth herein for Tenant ("**Contractor Insurance**"). Tenant shall not allow contractors or subcontractors to work if contractors have less than the Contractor Insurance. It is the obligation of the Tenant to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by Tenant through the entirety of this Lease and be available for inspection by Chief Real Estate Officer at any reasonable time.

8.1.5. All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a "0" by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability) shall specifically be approved by CEO/Office of Risk Management.

8.1.6. **Qualified Insurer.**

(a) The policy or policies of insurance must be issued by an insurer authorized or 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 VIII (Financial Size Category) as determined by the most current edition of the **Best's key Rating Guide/Property-Casualty/United States or ambest.com.**

(b) If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the County Executive Office (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.

(c) 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	\$1,000,000 per occurrence \$2,000,000 aggregate
Umbrella/Excess Liability with	\$15,000,000

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Follow Form Coverage	
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory Minimum
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit	100% of the Replacement Cost Value and no coinsurance provision
Builders Risk with All Risk coverage during construction	100% of insurable project value

### 8.1.7. **Required Coverage Forms.**

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

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

8.1.8. **Required Endorsements.** The Commercial General Liability policy 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 a form at least as broad naming the District, County of Orange, 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 or self-insurance maintained by District and County shall be excess and non-contributing.

(c) All insurance policies required by this contract 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.

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



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(e) Tenant shall notify District in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to District. Failure to provide written notice of cancellation may constitute a material breach of the Lease and the District may suspend or terminate this Lease if Tenant fails to reinstate or replace the cancelled insurance.

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

(g) Tenant has ten (10) business days after the Effective Date to provide Chief Real Estate Officer with adequate evidence of insurance or it shall constitute an Event of Default.

(h) District expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease provided that any such increase or decrease must be mutually agreed upon and commercially reasonable. Any proposed increase or decrease in insurance will be as deemed by CEO/Office of Risk Management as appropriate to adequately protect District.

(i) District shall notify Tenant in writing of the proposed changes in the insurance requirements. If Tenant does not deposit copies of acceptable certificates of insurance and endorsements with District incorporating such changes within thirty (30) days after mutual agreement, this Lease may be in breach, and District shall be entitled to all legal remedies.

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

8.2 **Tenant Indemnification.** Tenant hereby releases and waives all claims and recourse against District and the County of Orange, including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease except for claims arising from the active negligence, sole passive negligence or willful misconduct of the County of Orange, the District, or their officers, agents, employees and contractors (it being understood and agreed that this release and waiver do not release or waive District from any obligations under this Lease or prevent Tenant from exercising any remedies it may have hereunder). Tenant hereby agrees to indemnify, defend (with counsel reasonably approved in writing by District), and hold harmless, the County of Orange, the District, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of Tenant's operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for claims, losses, demands, damages, cost, expenses or liability arising out of the active negligence, sole passive negligence or willful misconduct of the County of Orange, the District, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If District or the County of Orange is named as co-defendant in a lawsuit covered by this indemnity, Tenant shall notify District of such fact and shall represent District and/or the County of Orange in such legal action unless District and/or the County of Orange undertakes to represent itself as co-defendant in such legal action, in which event, Tenant shall pay to District and/or the County of Orange its reasonable and actually incurred litigation costs, expenses, and attorneys' fees. If judgment is entered against District, the County of Orange and Tenant by a court of competent jurisdiction because of the negligence of

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District, the County of Orange and Tenant, District, the County of Orange 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 Section 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 Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

8.3 **Damage to Tenant's Premises**. Except to the extent of any damage caused by the District, a District Party or arising from or related to the Delhi Channel (except as directly attributable to the actions of Tenant), District 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 earlier of (i) the date possession is awarded to 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 (including any appurtenant easements) or Improvements or both that one or more of the following conditions

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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 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 (including any appurtenant easements) 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.** District 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 mutual consent of District and Tenant. District 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 District 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 District, 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 District 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.

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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 receipt of the award proceeds for a Partial Taking, Tenant shall use commercially reasonable efforts to repair, alter, modify or reconstruct the Improvements to the extent of such award proceeds ("**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, District 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 IX.

## ARTICLE X

### ASSIGNMENT, SUBLETTING AND ENCUMBERING

10.1 **General.** Prior to the Operational Date, and except as otherwise provided herein (and except that Tenant may acquire a Leasehold Mortgage as set forth in Article XVI), 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 Operational Date, Tenant may assign or sublet this Lease without District's consent to a Permitted Transferee (as defined below). All other Transfers shall require the consent of District, which may not be unreasonably withheld, conditioned or delayed. Pursuant to Section 3.4, Value Appreciation Rent may also be due on certain assignments, transfers or encumbrances, as more fully set forth therein.

10.1.1. Except for the Leasehold Mortgage allowed by Article XVI and transfers to a Permitted Transferee, any mortgage, pledge, hypothecation, encumbrance or transfer of the Leasehold Estate (but excluding trade debt incurred in the ordinary course of Tenant's business), any sublease of Tenant's

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entire Leasehold interest or any assignment (hereinafter in this section referred to collectively as “**Transfer**”) of Tenant’s Leasehold interest in the Premises, or assignment of any part or portion thereof, shall first be approved in writing by Chief Real Estate Officer, which approval shall not be unreasonably withheld, conditioned or delayed, unless otherwise provided herein. Failure to obtain Chief Real Estate 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 District shall constitute an Event of Default, subject to applicable notice and cure periods, if any.

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 or partnership in the aggregate exceeding 25% shall be deemed a Transfer within the meaning of this Lease that requires District written consent.

10.1.3. Should District 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 District’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 District approval for space leases (subleases of less than Tenant’s entire Lease interest) or concession agreements within the Improvements between the Tenant and a sub-tenant, which are consistent with the approved uses under this Lease.

10.2 **Mortgage of District’s Fee Interest.** Under no circumstances may Tenant mortgage, encumber or hypothecate District’s Fee Interest.

10.3 **Permitted Transfers.** Following the Operational Date, District’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, or (ii) any encumbrance to a Leasehold Mortgagee; provided, however, that in the case of subsection (ii) or an Excluded Transfer under Sections 1.1.22(e) or (f), (1) Tenant shall notify District of such Transfer at least thirty (30) days prior to the consummation of such Transfer, and shall provide District with complete information regarding the Leasehold Mortgagee 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 District with a written assumption of Tenant’s obligations under this Lease executed by such transferee in a form approved by the District, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease.

10.4 **Transfer Procedure.** If Tenant desires at any time to enter into a Transfer for which District’s consent is required hereunder, Tenant shall provide District with written notice (“**Transfer Notice**”) at least sixty (60) 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

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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 of its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee has similar or stronger qualifications and experience for a tenant as established by this Lease, (vi) a bank or other credit reference, and (viii) whether any Value Appreciation Rent is due pursuant to Section 3.4, above. Thereafter, Tenant shall furnish such supplemental information as District may reasonably request concerning the proposed transferee. District shall, no later than forty-five (45) days after District's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether District gives or withholds its consents to the proposed Transfer, which consent shall not be unreasonably withheld, conditioned or delayed, and (ii) if District withholds its consent to the proposed Transfer, setting forth a detailed explanation of District's grounds for doing so. If District consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee (which shall be deemed a Permitted Transferee) based upon the specific terms of the District's approval and after execution of a consent to assignment, in a form approved by the District. If the District fails to respond within the forty-five (45) day period, then as Tenant's sole remedy for District's failure to respond, Tenant's Rent shall automatically abate until such time as District does respond to the request for 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. Upon any Transfer of this Lease made in accordance with the provisions and conditions of this Lease, if (i) the transferee has a Tangible Net Worth equal to or greater than \$20,000,000 and (ii) senior management of the transferee on an individual basis has more than ten (10) years of experience managing, maintaining and operating businesses consistent with the uses permitted pursuant to Section 4.2.1, hereinabove, then Tenant shall have no further obligation under this Lease. In all other assignments of this Lease, the transferor of any interest in this Lease shall remain primarily liable for all obligations hereunder, shall be subject to the terms and provisions of this Lease, and District may proceed directly against the transferor in its sole and absolute discretion, with no obligation to exhaust its remedies against the transferee.

### 10.6 **Conditions of Certain District Approvals.**

10.6.1. District may withhold consent to a Transfer at its absolute and 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 Operational Date has not passed.
- (d) The construction of the Initial Improvements has not been completed.
- (e) All the material terms, covenants, and conditions of the Transfer that are relevant to the District approval of the Transfer as set forth in Section 10.4 above have not been revealed in writing to District.

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(f) The processing fee required by District and set out below has not been paid to District by delivery of said fee to District.

(1) A fee of \$3,000 shall be paid to District for processing each consent to Transfer submitted to District as required by this Lease. This processing fee shall be deemed earned by District 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. 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 District 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 five (5) business days after written notice thereof from District 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.** The failure or omission by Tenant to observe or perform any of the provisions of this Lease in any material respect to be observed or performed by Tenant, other than specified in Sections 11.1.1 or 11.1.4 herein, where such failure shall continue for a period of fifteen (15) business days after written notice thereof from District 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 Section 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 fifteen (15) business 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 fifteen (15) business days, and thereafter diligently prosecutes 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.

11.1.4. **Assignments.**

(a) The making by Tenant of any general assignment for the benefit of creditors;

(b) 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;

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(c) 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

(d) 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 District hereunder or by law; provided, it shall be lawful for the District 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 District) shall have no further claim thereon or hereunder.

11.2 **District's Remedies.** If an Event of Default occurs and is continuing, District shall have the following remedies in addition to all rights and remedies provided by law or equity to which District may resort cumulatively or in the alternative:

11.2.1. **Termination of Lease.** District 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 District shall elect to so terminate this Lease then District may recover from Tenant:

(a) The worth at the time of award of the unpaid Monthly Rent and other charges, which had been earned as of the date of the termination hereof; plus

(b) The worth at the time of award of the amount by which the unpaid Monthly 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; plus

(c) The worth at the time of award of the amount by which the unpaid Monthly 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; plus

(d) Any other amount necessary to compensate District 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; plus

(e) Any other amount which District may by law hereafter be permitted to recover from Tenant to compensate District for the detriment caused by Tenant's default.

As used in Sections 11.2.1(a) and 11.2.1(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in Sections 11.2.1 (c) above, the "worth at the time of award" shall be 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%), but not in excess of the Interest Rate.

11.2.2. **Continue Lease in Effect.** 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



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all of District's rights and remedies under this Lease, at law or in equity, including the right to recover the Monthly Rent as it becomes due under this Lease; provided, however, that District 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.

11.2.3. **Removal of Personal Property Following Termination of Lease.** District 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 and Section 18.22 below, to remove Tenant's personal property from the Premises.

11.3 **District'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, District 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 District's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default, or render District liable for any loss or damage resulting from the same.

11.4 **District's Default.** District shall not be considered to be in default under this Lease unless Tenant has given District written notice specifying the default, and either (i) as to monetary defaults, District has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, District 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 District 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 District 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 District fails to pay within sixty (60) days after such award or judgment is entered.

11.5 **Remedies Cumulative.** Except where Tenant's remedies are expressly limited under this Lease, all rights and remedies of District and Tenant contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and District and Tenant 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 or equity, whether or not stated in this Lease.

11.6 **Waiver by District.** No delay or omission of District 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 District 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 District's knowledge of such preceding breach or default at the time of acceptance of such Rent or sum, or (b) waiver of District's right to exercise any remedy available to District by virtue of such breach or default. No act or thing done by District or District'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 District.

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11.7 **Interest.** Any installment or Rent due under this Lease or any other sums not paid to District 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.

11.8 **Waiver by Tenant.** Tenant's waiver of any breach by District 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.

11.9 **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 using commercially reasonable efforts 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, District 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 District on Tenant's behalf shall not give rise to any responsibility of District 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 District in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by District 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 a breach of the covenants and conditions of 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 District, 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 District 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 (but specifically excluding trade fixtures, trade equipment, inventory, proprietary items and personal property) upon the expiration of this Lease despite demand to do so by District, Tenant shall indemnify and hold District 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 District.

### ARTICLE XIII ESTOPPEL CERTIFICATES

At any time and from time to time, within ten (10) business days after written request by either District 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,

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(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 District 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 District, 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) except to the extent caused by unexpected bank closures.

### ARTICLE XV OPERATIONAL OBLIGATIONS OF TENANT

#### 15.1 **Standards of Operation.**

15.1.1. Tenant shall operate the Premises in a manner reasonably comparable to Tenant’s other comparable facilities or businesses within the County of Orange. Tenant acknowledges that District shall not be required to provide security measures for the Premises and that, if Tenant desires security for the Premises, Tenant is responsible for providing such security.

15.1.2. The facilities on the Premises shall generally be operated during Tenant’s normal business hours, subject to Section 4.2.5 above and any other temporary interruptions in operations or closures due to ordinary maintenance and repair and any Force Majeure Event, defined in Article XIV above.

15.2 **Protection of Environment.** To the extent required by law, Tenant shall take all reasonable measures available to:

15.2.1. Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenant’s facilities.

15.2.2. Maintain a reasonable noise level on the Premises so that persons in the general neighborhood will be able to comfortably enjoy the other facilities and amenities in the area.

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15.2.3. Prevent the light fixtures of the Premises from emitting light that could negatively affect the operation of cars, boats, or airplanes in the area.

15.2.4. Prevent all pollutants from Tenant's operations on the Premises from being discharged, including petroleum products of any nature, except as may be permitted in accordance with any applicable permits. To the extent required by law, 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 permits.

15.2.5. The District 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.

15.3 **On-Site Manager**. Tenant shall employ a competent manager who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order for the Premises consistent with Tenant's normal business practices. Such person shall be vested with the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant's agents, employees, 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 District or Chief Real Estate Officer, be personally served upon said Manager and that such service shall have the same force and effect as service upon Tenant. Tenant shall notify District in writing of the name of the Manager currently so employed as provided in Section 18.20 of this Lease.

### ARTICLE XVI LEASEHOLD MORTGAGES

16.1 **Definitions**. The following definitions are used in this Article (and in other Sections of this Lease):

16.1.1. "**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.

16.1.2. "**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.

16.1.3. "**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 to secure a debt or other obligation, including a purchase money obligation.

16.1.4. "**Leasehold Mortgagee**" means an Institutional Lender which is the holder of a Leasehold Mortgage.

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16.1.5. “**Tenant**” shall mean all of the following: (i) the Tenant under this Lease; (ii) an approved assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to District; 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 District.

16.2 **Tenant’s Right to Encumber Leasehold Estate; No Right to Encumber District’s Fee Interest.** Tenant may, at any time during the Term of this Lease (with the consent of District after 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:

16.2.1. Such Leasehold Mortgage(s) (as of the date recorded) shall not exceed 80% of the costs of the Improvements prior to completion and 80% of the Leasehold Estate value after completion;

16.2.2. That Tenant shall not have the power to encumber, and no Leasehold Mortgage shall encumber, District’s Fee Interest;

16.2.3. 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 District hereunder, except as otherwise provided in this Lease;

16.2.4. 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 District’s Fee Interest to any Leasehold Mortgage, and:

16.2.5. 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.

16.3 **Notification to District of Leasehold Mortgage.** Tenant or any Leasehold Mortgagee shall, prior to making any Leasehold Mortgage, provide District with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. At the time of notice, Tenant shall furnish to Chief Real Estate 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 District of any change in the identity or address of such Leasehold Mortgagee. District shall be entitled to rely upon the addresses provided pursuant to this Section for purposes of giving any notices required by this Article XVI.

16.4 **Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** District, upon delivery to Tenant of any notice of a default under this Lease or a matter as to which District may predicate or claim a default, will endeavor to concurrently deliver a copy of such notice to each Leasehold Mortgagee. From and after the date such notice has been given to any Leasehold Mortgagee, such Leasehold Mortgagee shall have the same cure period for such default (or act or omission which is the subject matter of such notice) that is provided to Tenant under this Lease, to commence and complete a cure of such default (or act or omission which is the subject matter of such notice). District 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. 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.

16.5 **Limitation on District’s Termination Right.** If any Event of Default occurs and is continuing (and is not cured by any Leasehold Mortgagee under Section 16.4 above) which entitles District

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to terminate this Lease, District shall have no right to terminate this Lease unless District shall notify each and every Leasehold Mortgagee who has complied with Section 16.3 of District's intent to so terminate 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 District of such Leasehold Mortgagee's desire to cure such Event of Default, 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 16.6 shall apply.

16.6 **Leasehold Mortgagee Foreclosure Period.** If any Leasehold Mortgagee gives to District the notice and makes the payment described in the last sentence of Section 16.5 above, then the following provisions shall apply:

16.6.1. If District's notice under Section 16.5 specified as the basis for District's election to terminate only monetary Events of Default, and Leasehold Mortgagee has fully paid the monetary amount designed by District in its notice, then such payment shall be deemed to have cured the Event of Default. If any remaining Event of Default specified in District's notice is continuing notwithstanding any such payment, then the date of termination specified in District'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 16.6.2 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 16.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgage.

16.6.2. The twelve (12) month period described in Section 16.6.1 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 16.6.1(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.

16.6.3. So long as any Leasehold Mortgagee is complying with Sections 16.6.1 and 16.6.2 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.

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16.6.4. 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.

16.6.5. 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 District'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 two (2) times 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 District 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.

### 16.7 Leasehold Mortgagee's Right to New Lease.

16.7.1. 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, District shall give prompt notice thereof to any Leasehold Mortgagee of whom District has received notice pursuant to Section 16.3 above. Such Leasehold Mortgagee (subject to Section 16.8 below if more than one Leasehold Mortgagee then exists) shall then have the right, exercisable by written notice to District at any time within thirty (30) days following receipt of such notice, to require District to enter into a new lease of the Premises with such Leasehold Mortgagee, or its designee, which new lease ("**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 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 District to enter into a New Lease, Leasehold Mortgagee shall pay to District 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.

16.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 16.7.1 above, then District 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 16.7, and Leasehold Mortgagee (or

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its designee) shall, from and after the giving of notice pursuant to Section 16.7.1, (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to District 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 District 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.

16.7.3. In the event that District 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 District 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 District except to the extent that it was applied to cure any default of Tenant.

16.7.4. 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.

16.8 **Multiple Leasehold Mortgages.** If more than one Leasehold Mortgagee shall make a written request upon District for a New Lease in accordance with the provisions of Section 16.7, 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 16.7 and 16.8 and shall have no rights under this Lease; (b) all 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 District) 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 16.7 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, District may rely on the affidavit of the most senior Leasehold Mortgagee as to compliance by



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any junior Leasehold Mortgagee. District's obligation to enter into a New Lease with any junior Leasehold Mortgagee shall be subject to the receipt by District 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 16.7 above to request a New Lease may, notwithstanding any limitation of time set forth above in this Section 16.7, 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 District of termination of this Lease as set forth in Section 16.7 above.

If a junior Leasehold Mortgagee shall fail or refuse to exercise the rights set forth in this Section 16.8, 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.

Notwithstanding anything herein to the contrary, District 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 District by multiple Leasehold Mortgagees, District 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 District, as determined by any national title company.

16.9 **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 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.

16.10 **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.

16.11 **No Waiver**. No payment made to District 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 District pursuant to District's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

16.12 **Fees and Costs**. Tenant agrees to reimburse District for its reasonable attorney's fees and costs incurred in connection with District's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

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### ARTICLE XVII BEST MANAGEMENT PRACTICES

17.1 To the extent required by law or applicable permits, 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).

17.2 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 District and cities within Orange County, as co-permittees (hereinafter collectively referred to as "**District Parties**") which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The District Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

17.3 To assure compliance with the Stormwater Permits and water quality ordinances, the District 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 District'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.

17.4 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as **Exhibit D**. These BMP Fact Sheets may be modified during the term of the Lease; and the Chief Real Estate Officer shall provide Tenant with any such modified BMP Fact Sheets. To the extent required by law, 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. To the extent required by law, the BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

17.5 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 Chief Real Estate Officer for review and approval prior to implementation.

17.6 Chief Real Estate Officer may enter the Premises and/or review Tenant's records at any reasonable time during normal business hours to assure that activities conducted on the Premises comply

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with the requirements of this section. To the extent required by law, Tenant will implement a self-evaluation program to demonstrate compliance with the requirements of this section.

### ARTICLE XVIII GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS

#### 18.1 Signs.

18.1.1. With respect to signage related to Tenant's business on the Premises, permitted signage on the Premises shall be as approved by the City through the approval process set forth in the Option Agreement. Tenant agrees not to construct, maintain, or allow any additional signs, banners, flags, or other signage upon the Premises after completion of the Initial Improvements except (a) to advertise or otherwise promote Tenant's business activities thereon and (b) as approved by the Chief Real Estate Officer, which approval may be obtained through the processing of an approved sign proposal to the City, and shall not be unreasonably withheld, conditioned or delayed. Not less than ten (10) business days before Tenant intends to submit a sign proposal to the City, Tenant shall deliver a copy to the Chief Real Estate Officer. Within five (5) business days of receipt of the proposed sign, the Chief Real Estate Officer will provide Tenant with written comments, if any. If Chief Real Estate Officer provides any comments within such five (5) day period, then, Tenant shall endeavor to address Chief Real Estate Officer's comments prior to submission to the City.

18.1.2. Tenant further agrees not to construct, maintain, or allow third party advertising, advertising billboards or other outdoor advertising signs upon the Premises unless approved in writing by Chief Real Estate Officer, which approval may be withheld in the Chief Real Estate Officer's sole discretion.

18.1.3. Unapproved signage, banners, flags, advertising billboards or other outdoor advertising may be removed by Chief Real Estate Officer without prior notice to Tenant.

18.2 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.

18.3 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 (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 to be paid promptly.

18.4 Quitclaim of Interest upon Termination. Upon execution of this Lease, Tenant shall execute, acknowledge, and deliver to District, within thirty (30) days a good and sufficient deed, in a form as approved by the Chief Real Estate Officer, whereby all right, title, and interest of Tenant in the Premises is quitclaimed to District ("**Quitclaim Deed**"). The Quitclaim Deed shall be retained by the Chief Real Estate Officer for the Term and shall only be recorded in the event of the termination of this Lease as permitted hereunder for any reason to remove any cloud on title created by this Lease.

18.5 Public Records. Tenant acknowledges that any written information submitted to and/or obtained by District from Tenant or any other person or entity having to do with or related to this Lease

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and/or the Premises, either pursuant to this Lease or otherwise may be 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 Law 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. In the event that a public records act request is made for any financial statements and records submitted to District by Tenant and the District determines that the records must be turned over, the District will give Tenant fifteen (15) days written notice prior to turning over such records so that Tenant can take any necessary action.

### 18.6 **Child Support Enforcement.**

18.6.1. 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.

18.6.2. In order for Tenant to comply with County of Orange requirements, Tenant shall deliver to Chief Real Estate Officer the required data and certifications, as shown in **Exhibit E** attached hereto concurrent with the execution of this Lease by District.

18.6.3. 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, after the notice and cure periods provided in this Lease for nonmonetary obligations, shall constitute a material breach of this Lease.

18.7 **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.

18.8 **Payment Card Compliance.** Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the District, on behalf of the District, 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 District in the event Tenant should ever become knowingly 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 District, Tenant shall provide to District written certification of Tenant's PCI/DSS and/or PA/DSS compliance within ten (10) days of District's demand.

### 18.9 **Right to Work and Minimum Wage Laws.**

18.9.1. To the extent required under 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 that its contractors or other persons hired by Tenant to service the Premise, 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.

## Attachment B

18.9.2. 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 that its contractors and other persons hired by Tenant to service the Premises on behalf of the Tenant also pay their employees no less than the greater of the Federal or California Minimum Wage.

18.9.3. Tenant shall comply and require 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.

18.10 **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 known 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.

18.11 **Governing Law**. This Lease shall be governed by and construed in accordance with the laws of the State of California.

18.12 **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.

18.13 **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.

18.14 **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 District, the term “**District**” shall include District’s agents, employees, contractors, invitees, successors or others using the Premises with District’s expressed or implied permission.

18.15 **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.

## Attachment B

18.16 **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.

18.17 **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.

18.18 **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.

18.19 **Integration.** This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between District 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 District and Tenant. District 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.

18.20 **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, District and Tenant may also provide notices by (a) personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt, and (b) facsimile which shall be deemed delivered on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day:

If to District:

Orange County Flood Control District  
c/o CEO/Corporate Real Estate  
333 W. Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa, Ana, CA 92702  
Attn: Scott Mayer, Chief Real Estate Officer  
Facsimile: 714/834-3046

If to Tenant:

Ganahl Lumber  
1220 East Ball Road  
Anaheim, CA 92805  
Attn: Peter Ganahl  
Facsimile: 714/772-0639

## Attachment B

18.21 **Amendments**. 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.

18.22 **Dispositions of Abandon Property**. If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such event shall, at District's option, be deemed to have been transferred to District. District shall have the right to remove and to dispose of such property at Tenant's cost, including the cost of labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of such costs without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor. Such costs shall be deducted from any security deposit of Tenant, or at Chief Real Estate Officer's option, Chief Real Estate Officer may provide Tenant with an invoice for such costs, which invoice Tenant agrees to pay within fifteen (15) days of receipt.

18.23 **Brokers**. If Tenant or District has engaged a broker in this transaction pursuant to a separate agreement, Tenant or District, as applicable, shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Tenant and District each hereby agree respectively to indemnify and hold the other 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 other party in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee in connection with this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of that party. No broker, finder or other agent of any party hereto shall be a third-party beneficiary of this Lease. Notwithstanding anything to the contrary contained in this Lease, District has agreed to pay a broker commission in the amount of three percent (3%) of the sum of the Monthly Rent for the first three (3) years of the Operational Period to a broker licensed in the State of California and designated by Tenant as having been instrumental in obtaining this Lease.

18.24 **No Partnership**. This Lease shall not be construed to constitute any form of partnership or joint venture between District and Tenant. District and Tenant mutually acknowledge that no business or financial relationship exists between them other than as landlord and tenant, that District is not responsible in any way for the debts of Tenant or any other party, and that Tenant is not responsible in any way for the debts of District or any other party.

18.25 **Authorization**. District 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.

18.26 **Recording**. This Lease shall not be recorded. Upon execution of this Lease, however, District and Tenant shall execute, acknowledge and record a Memorandum of Lease against the Premises in substantially the form as attached hereto as Exhibit F.

18.27 **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:

## Attachment B

Exhibit A:	Legal Description of the Premises
Exhibit B:	Rendering of the Premises
Exhibit C:	Initial Improvements
Exhibit D:	Best Management Practices Fact Sheets
Exhibit E:	Child Support Enforcement Certification Requirements
Exhibit F:	Form of Memorandum of Lease
Exhibit G:	Demolition Cost Schedule

18.28 **Consent/Duty to Act Reasonably.** Except as otherwise expressly provided herein, whenever this Lease grants District or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, District 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.

18.29 **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.

18.30 **No liability of Officers, Directors, Etc.** In consideration of the benefits accruing hereunder, District and Tenant each agree that the respective obligations of District and Tenant under this Lease do not constitute personal obligations of the officers, directors, members, partners, shareholders or Affiliates of such parties.

18.31 **Tax Treatment.** Tenant or its assign shall have the benefit of all depreciation, depletion, amortization, deductions or allowances related to the Improvements now or hereafter located on the Premises during the term of this Lease.

18.32 **Notice of Conveyance.** If District intends to sell, convey, encumber or otherwise transfer the Premises, District shall notify Tenant in writing of such intent prior to receipt of proposals for such sale. However, failure to so notify Tenant shall not prevent any such sale of the Premises.

[Signatures On Following Pages]



**Attachment B**

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 \_\_\_\_\_

TENANT

GANAHL LUMBER COMPANY  
a California corporation

By:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

DISTRICT

ORANGE COUNTY FLOOD CONTROL DISTRICT,  
a body corporate and politic

\_\_\_\_\_  
Scott Mayer, Chief Real Estate Officer  
Orange County, California

**Attachment B**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

[to be attached]

**Attachment B**

**EXHIBIT B**

RENDERING OF THE PREMISES

**Attachment B**

**EXHIBIT C**

**INITIAL IMPROVEMENTS**

[see attached]

[This description of Initial Improvements shall include, among other things, a specific reference permitting placement of buildings within the existing Delhi Channel easement area as shown on Exhibit B]

## Attachment B

### EXHIBIT D

#### 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.

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](#)

**Attachment B**

**EXHIBIT E**

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*

**Attachment B**

**EXHIBIT F**

**FORM OF MEMORANDUM OF LEASE**

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”), and \_\_\_\_\_, (“**Tenant**”), 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 District 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 District and Tenant are as follows:

DISTRICT:

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 District 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.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged

## Attachment B

### EXHIBIT G

#### Demolition Cost Schedule

<b>Funding Date</b>	<b>Amount</b>	<b>Total</b>
1. Not later than five days prior to commencement of construction of the Initial Improvements, or any phase thereof.	\$150,000	\$150,000
2. Not later than 60 days after the date described in 1, above.	\$150,000	\$300,000
3. Not later than 60 days after the date described in 2, above.	\$150,000	\$450,000
4. Not later than 60 days after the date described in 3, above.	\$145,000	\$595,000
5. Not later than 60 days after the date described in 4, above.	\$143,857	\$738,857



**Attachment B**

**EXHIBIT H**

**LANDSCAPE MAINTENANCE AGREEMENT  
WITHIN STATE HIGHWAY RIGHT OF WAY  
ON ROUTE 55/73 WITHIN THE COUNTY OF ORANGE**

**Attachment B**

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

**Attachment B**

**LEGAL DESCRIPTION**

Santa Ana Delhi Channel  
Facility No.: F01  
Parcel No.: 311.1

That portion of Lot 4 of Tract No. 456, in the City of Costa Mesa, County of Orange, State of California, as shown on a map recorded in book 17, page 9 of Miscellaneous Maps in the office of the County Recorder of said county and that portion of Lot 142 in Block 6 of Irvine's Subdivision, per map recorded in book 1, page 88 of said Miscellaneous Maps, all as described in the deeds to the Orange County Flood Control District, recorded February 24, 1975 in book 11344, page 1625, and recorded July 26, 1961 in book 5795, page 857 of Official Records in the office of said County Recorder.

**EXCEPT** that portion thereof included within a strip of land, 130.00 feet wide, the easterly line of said strip of land being the easterly line of the land described in the deed to the Orange County Flood Control District recorded July 26, 1961 in book 5795, page 857 of said Official Records.

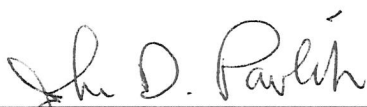
**ALSO EXCEPT** those portions thereof lying southwesterly of the northeasterly line of Bristol Street (formerly Palisades Road) as described in deeds to the County of Orange recorded October 5, 1949 in book 1912, page 90 and recorded July 3, 1952 in book 2352, page 389, both of said Official Records.

**ALSO EXCEPT** that portion thereof lying northerly of the southerly line of the land described in the deed to the State of California recorded February 24, 1975 in book 11344, page 1617 of said Official Records.

Containing 4.279 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

  
\_\_\_\_\_  
John D. Pavlik            L.S. 5168  
Expiration Date:    June 30, 2007

Date: 2/23/06



**Attachment B**

**LEGAL DESCRIPTION**

Santa Ana Delhi Channel  
Facility No.: F01  
Parcel No.: 311.2

That portion of Lot 4 of Tract No. 456, in the City of Costa Mesa, County of Orange, State of California, as shown on a map recorded in book 17, page 9 of Miscellaneous Maps in the office of the County Recorder of said county and that portion of Lot 142 in Block 6 of Irvine's Subdivision, per map recorded in book 1, page 88 of said Miscellaneous Maps, all as described in the deeds to the Orange County Flood Control District, recorded February 24, 1975 in book 11344, page 1625, and recorded July 26, 1961 in book 5795, page 857 of Official Records in the office of said County Recorder; that is included within a strip of land, 130.00 feet wide, the easterly line of said strip of land being the easterly line of said land described in the deed to the Orange County Flood Control District recorded July 26, 1961 in book 5795, page 857 of said Official Records.

**EXCEPT** that portion thereof lying southwesterly of the northeasterly line of Bristol Street (formerly Palisades Road) as described in deed to the County of Orange recorded July 3, 1952 in book 2352, page 389 of said Official Records.

**ALSO EXCEPT** that portion thereof lying northeasterly of the following described line:

Commencing at the northerly terminus of that certain curve cited as being a curve concave westerly and having a radius of 500.00 feet in said deed to the Orange County Flood Control District, recorded July 26, 1961 in book 5795, page 857; thence N.78°57'25"E. along a line radial to said curve, 75.00 feet to said easterly line of the land described in said deed; thence N.11°02'35"W., 320.47 feet along said easterly line to the TRUE POINT OF BEGINNING; thence S.78°57'25"W., 122.00 feet; thence N.11°02'35"W., 197.05 feet to a point on the southerly line of the land described in the deed to the State of California recorded February 24, 1975 in book 11344, page 1617 of said Official Records, said southerly line being a curve concave southerly and having a radius of 800.00 feet, a radial line of said curve to said point, bears N.23°51'08"E.; thence Westerly 9.71 feet along said curve and said southerly line through a central angle of 0°41'44" to the westerly line of said 130.00 foot strip.

Containing 1.658 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

*John D. Pavlik*  
John D. Pavlik L.S. 5168  
Expiration Date: June 30, 2007

Date: 2/23/06

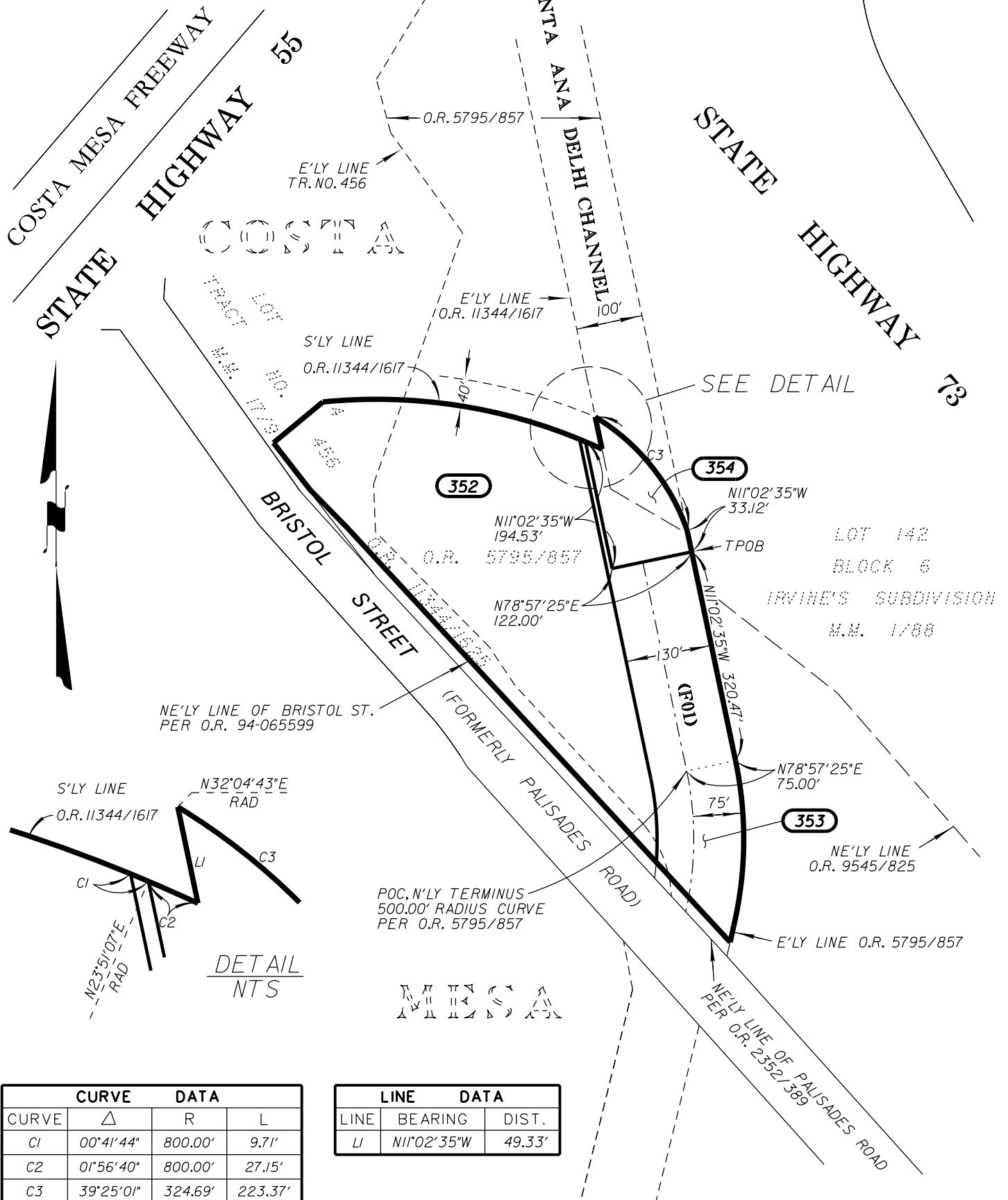


**Attachment B**

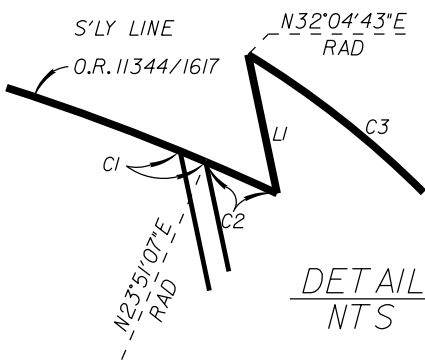
**EXHIBIT B**

RENDERING OF THE PREMISES

**Attachment B**



NE'LY LINE OF BRISTOL ST.  
PER O.R. 94-065599



POC, N'LY TERMINUS  
500.00' RADIUS CURVE  
PER O.R. 5795/857

CURVE	Δ	R	L
C1	00°41'44"	800.00'	9.71'
C2	01°56'40"	800.00'	27.15'
C3	39°25'01"	324.69'	223.37'

LINE	BEARING	DIST.
LI	N11°02'35"W	49.33'

**OC PUBLIC WORKS, OC SURVEY  
RIGHT - OF - WAY SERVICES**

**EXHIBIT B**

**Attachment B**

**EXHIBIT C**

INITIAL IMPROVEMENTS

[see attached]

[This description of Initial Improvements shall include, among other things, a specific reference permitting placement of buildings within the existing Delhi Channel easement area as shown on Exhibit B]

## Attachment B

### EXHIBIT D

#### 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.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

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[IC4 Carpet Cleaning](#)

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[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](#)



**Attachment B**

**EXHIBIT E**

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*

**Attachment B**

**EXHIBIT F**

**FORM OF MEMORANDUM OF LEASE**

This is a Memorandum of Lease (“**Memorandum**”) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”), and \_\_\_\_\_, (“**Tenant**”), 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 District 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 District and Tenant are as follows:

DISTRICT:

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 District 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.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged

## Attachment B

### EXHIBIT G

#### Demolition Cost Schedule

<b>Funding Date</b>	<b>Amount</b>	<b>Total</b>
1. Not later than five days prior to commencement of construction of the Initial Improvements, or any phase thereof.	\$150,000	\$150,000
2. Not later than 60 days after the date described in 1, above.	\$150,000	\$300,000
3. Not later than 60 days after the date described in 2, above.	\$150,000	\$450,000
4. Not later than 60 days after the date described in 3, above.	\$145,000	\$595,000
5. Not later than 60 days after the date described in 4, above.	\$143,857	\$738,857

**Attachment B**

**ATTACHMENT II**

ENTITLEMENT SCHEDULE

**Attachment B**



13914 - Ganahl Lumber, Costa Mesa



ID	Task Mod	Task Name	% Complet	Duration	Start	Finish	Predecessors	Oct 18, '15							Dec 6, '15				Jan 24, '16			Mar 13, '16		May 1, '16		Jun 19, '16		Aug 7, '16		Sep		
								W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T		
1		<b>GANAHL LUMBER, COSTA MESA</b>	5%	431 days?	Wed 11/18/15	Wed 7/12/17		11/18	GANAHL LUMBER, COSTA MESA																							
2																																
3		<b>DESIGN &amp; PRECONSTRUCTION</b>	9%	191 days?	Wed 11/18/15	Wed 8/10/16		11/18	DESIGN & PRECONSTRUCTION																							
4		<b>DESIGN DEVELOPMENT</b>	39%	97 days?	Wed 11/18/15	Thu 3/31/16		11/18	DESIGN DEVELOPMENT																							
5		MEP Kick-off Meeting	100%	0 days	Wed 12/16/15	Wed 12/16/15			Kick-off Meeting																							
6		Architectural & Structural DD Set	63%	60 days	Wed 11/18/15	Tue 2/9/16			Architectural DD Set																							
7		MEP DD Set	0%	10 days	Thu 2/4/16	Wed 2/17/16	6SS+20 days		MEP DD Set																							
8		Ganahl DD Set Review	0%	5 days	Thu 2/18/16	Wed 2/24/16	7		Ganahl DD Set Review																							
9		Oltmans Budget	0%	15 days	Thu 2/25/16	Wed 3/16/16	8		Oltmans Budget																							
10		DD Set Finalize	0%	5 days	Thu 3/17/16	Wed 3/23/16	8,9		DD Set Finalize																							
11		Ganahl Budget Review	0%	1 day?	Thu 3/31/16	Thu 3/31/16	10		Ganahl Budget Review																							
12																																
13		<b>CONSTRUCTION DRAWINGS</b>	0%	67 days	Tue 2/23/16	Wed 5/25/16			CONSTRUCTION DRAWINGS																							
14		Architectural & Structural CD SET	0%	45 days	Thu 3/24/16	Wed 5/25/16	10		Architectural & Structural CD SET																							
15		MEP CD Set	0%	25 days	Thu 4/7/16	Wed 5/11/16	14SS+10 days		MEP CD Set																							
16		Civil CD Set	0%	35 days	Tue 2/23/16	Mon 4/11/16	7FF-5 days		Civil CD Set																							
17		Traffic Control CD Set	0%	10 days	Tue 3/29/16	Mon 4/11/16	16FF		Traffic Control CD Set																							
18																																
19		<b>PERMITTING</b>	0%	112 days	Tue 3/8/16	Wed 8/10/16			PERMITTING																							
20		CALTRANS REVIEW	0%	45 days	Tue 3/8/16	Mon 5/9/16	16SS+10 days		CALTRANS REVIEW																							
21		Grading Permit	0%	45 days	Tue 4/12/16	Mon 6/13/16	16		Grading Permit																							
22		Off Site Permit	0%	55 days	Tue 4/12/16	Mon 6/27/16	17		Off Site Permit																							
23		Building Permit	0%	55 days	Thu 5/26/16	Wed 8/10/16	14		Building Permit																							
24																																
25		<b>ESTABLISH GMP</b>	0%	25 days	Wed 6/29/16	Wed 8/3/16			ESTABLISH GMP																							
26		WM Issue Bid Set	0%	0 days	Wed 6/29/16	Wed 6/29/16	23SS+25 days		WM Issue Bid Set																							
27		Ganahl & Oltmans Review GMP	0%	20 days	Thu 6/30/16	Wed 7/27/16	26		Ganahl & Oltmans Review GMP																							
28		Release Building Trades	0%	5 days	Thu 7/28/16	Wed 8/3/16	27		Release Building Trades																							
29																																
30		<b>CONSTRUCTION</b>	0%	282 days	Tue 6/14/16	Wed 7/12/17			CONSTRUCTION																							
31		Earthwork & Grading	0%	20 days	Tue 6/14/16	Mon 7/11/16	21		Earthwork & Grading																							
32		Building Construction	0%	12 mons	Thu 8/11/16	Wed 7/12/17	31,23,28		Building Construction																							

DATE: 01-20-16

PRECONSTRUCTION & DESIGN SCHEDULE

PAGE 1 OF 2

**Attachment B**

**ATTACHMENT III**

MEMORANDUM OF OPTION

This is a Memorandum of Option (“**Memorandum**”) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”), and \_\_\_\_\_, (“**Optionee**”) upon the following terms:

1. **Option.** The provisions set forth in a written Option Agreement between the parties hereto dated \_\_\_\_\_ (“**Option**”), are hereby incorporated by reference into this Memorandum.
2. **Subject Premises.** The Premises which are the subject of the Option are more particularly described as on Exhibit A, attached hereto
3. **Commencement Date of Option.** The Option shall be deemed to have commenced \_\_\_\_\_ as set forth within the terms of the Option.
4. **Term.** The Term of the Option shall be \_\_\_\_\_ years from the Effective Date as stated in the written Option. The initial term shall commence on the date hereof and terminate on \_\_\_\_\_. Optionee shall have the right to extend the term of the Option by \_\_\_\_\_ extension periods of \_\_\_\_\_ years each or in any other such manner as prescribed in the Option.
5. **Duplicate Copies** of the originals of the Option are in the possession of the District and Optionee and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for District and Optionee are as follows:

DISTRICT:

OPTIONEE:

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum is to give record notice of the Option; it being distinctly understood and agreed that said Option constitutes the entire lease and agreement between District and Optionee with respect to the Premises and is hereby incorporated by reference. The Option contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Option. 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 Option. In the event of any inconsistency between the terms of the Option and this instrument, the terms of the Option 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.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

**Attachment B**

6

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED RETURN TO:

Recorded in Official Records, Orange County  
Hugh Nguyen, Clerk-Recorder

Orange County Flood Control District  
c/o CEO/Corporate Real Estate  
County of Orange  
333 W. Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92702  
ATTN: Scott Mayer, Chief Real Estate Officer

 NO FEE  
\* \$ R 0 0 0 6 6 6 3 7 1 8 \$ \*  
2014000163715 4:17 pm 04/29/14  
65 414 M12 8  
0.00 0.00 0.00 0.00 21.00 0.00 0.00 0.00

Recording Fee Exempt  
Per Govt. Code 27383

MEMORANDUM OF OPTION

11  
870  
cc  
nf

This is a Memorandum of Option (“**Memorandum**”) made and entered into as of this 29 day of April, 2014, by and between the ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic (“**District**”), and GANAHL LUMBER COMPANY, a California corporation (“**Optionee**”), upon the following terms:

1. **Option.** The provisions set forth in a written Option Agreement between the parties hereto dated April 29, 2014 (“**Option**”), are hereby incorporated by reference into this Memorandum.
2. **Subject Premises.** The Premises which are the subject of the Option are more particularly described as on Exhibit A, attached hereto.
3. **Commencement Date of Option.** The Option shall be deemed to have commenced on April 29, 2014 (“**Effective Date**”) as set forth within the terms of the Option.
4. **Term.** The Term of the Option shall be twelve (12) months from the Effective Date as stated in the written Option. The initial term shall commence on the Effective Date and terminate on April 29, 2015. Optionee shall have the right to extend the term of the Option in the manner as prescribed in the Option.
5. **Duplicate Copies** of the originals of the Option are in the possession of the District and Optionee and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for District and Optionee are as follows:

DISTRICT: Orange County Flood Control District  
c/o CEO/Corporate Real Estate  
ATTN: Scott Mayer, Chief Real Estate Officer  
333 W. Santa Ana Blvd, 3<sup>rd</sup> Floor

## Attachment B

Santa Ana, CA 92702  
Facsimile: 714/834-3046

OPTIONEE: Ganahl Lumber  
1220 East Ball Road  
Anaheim, CA 92805  
Attn: Peter Ganahl  
Facsimile: 714/772-0639

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum is to give record notice of the Option; it being distinctly understood and agreed that said Option constitutes the entire lease and agreement between District and Optionee with respect to the Premises and is hereby incorporated by reference. The Option contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Option. 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 Option. In the event of any inconsistency between the terms of the Option and this instrument, the terms of the Option 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.

[Signatures on Next page]





**Attachment B**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum pursuant to due authorization on the dates herein acknowledged.

**OPTIONEE**

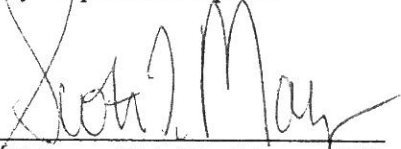
GANAHL LUMBER COMPANY  
a California corporation

By:   
Name: Peter Ganahl  
Title: CEO

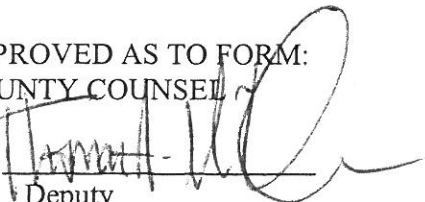
By:   
Name: BRAD SUTTERFIELD  
Title: VICE PRESIDENT/GM

**DISTRICT**

ORANGE COUNTY FLOOD  
CONTROL DISTRICT,  
a body corporate and politic

  
Scott Mayer, Chief Real Estate Officer  
Orange County, California

APPROVED AS TO FORM:  
COUNTY COUNSEL

By:   
Deputy

**Attachment B**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

[See attached]

**Attachment B**

**LEGAL DESCRIPTION**

Santa Ana Delhi Channel  
Facility No.: F01  
Parcel No.: 311.1

That portion of Lot 4 of Tract No. 456, in the City of Costa Mesa, County of Orange, State of California, as shown on a map recorded in book 17, page 9 of Miscellaneous Maps in the office of the County Recorder of said county and that portion of Lot 142 in Block 6 of Irvine's Subdivision, per map recorded in book 1, page 88 of said Miscellaneous Maps, all as described in the deeds to the Orange County Flood Control District, recorded February 24, 1975 in book 11344, page 1625, and recorded July 26, 1961 in book 5795, page 857 of Official Records in the office of said County Recorder.

**EXCEPT** that portion thereof included within a strip of land, 130.00 feet wide, the easterly line of said strip of land being the easterly line of the land described in the deed to the Orange County Flood Control District recorded July 26, 1961 in book 5795, page 857 of said Official Records.


**ALSO EXCEPT** those portions thereof lying southwesterly of the northeasterly line of Bristol Street (formerly Palisades Road) as described in deeds to the County of Orange recorded October 5, 1949 in book 1912, page 90 and recorded July 3, 1952 in book 2352, page 389, both of said Official Records.

**ALSO EXCEPT** that portion thereof lying northerly of the southerly line of the land described in the deed to the State of California recorded February 24, 1975 in book 11344, page 1617 of said Official Records.

Containing 4.279 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

  
\_\_\_\_\_  
John D. Pavlik            L.S. 5168  
Expiration Date:        June 30, 2007

Date: 2/23/06



**Attachment B**

**LEGAL DESCRIPTION**

Santa Ana Delhi Channel  
Facility No.: F01  
Parcel No.: 311.2

That portion of Lot 4 of Tract No. 456, in the City of Costa Mesa, County of Orange, State of California, as shown on a map recorded in book 17, page 9 of Miscellaneous Maps in the office of the County Recorder of said county and that portion of Lot 142 in Block 6 of Irvine's Subdivision, per map recorded in book 1, page 88 of said Miscellaneous Maps, all as described in the deeds to the Orange County Flood Control District, recorded February 24, 1975 in book 11344, page 1625, and recorded July 26, 1961 in book 5795, page 857 of Official Records in the office of said County Recorder; that is included within a strip of land, 130.00 feet wide, the easterly line of said strip of land being the easterly line of said land described in the deed to the Orange County Flood Control District recorded July 26, 1961 in book 5795, page 857 of said Official Records.

**EXCEPT** that portion thereof lying southwesterly of the northeasterly line of Bristol Street (formerly Palisades Road) as described in deed to the County of Orange recorded July 3, 1952 in book 2352, page 389 of said Official Records.

**ALSO EXCEPT** that portion thereof lying northeasterly of the following described line:

Commencing at the northerly terminus of that certain curve cited as being a curve concave westerly and having a radius of 500.00 feet in said deed to the Orange County Flood Control District, recorded July 26, 1961 in book 5795, page 857; thence N.78°57'25"E. along a line radial to said curve, 75.00 feet to said easterly line of the land described in said deed; thence N.11°02'35"W., 320.47 feet along said easterly line to the TRUE POINT OF BEGINNING; thence S.78°57'25"W., 122.00 feet; thence N.11°02'35"W., 197.05 feet to a point on the southerly line of the land described in the deed to the State of California recorded February 24, 1975 in book 11344, page 1617 of said Official Records, said southerly line being a curve concave southerly and having a radius of 800.00 feet, a radial line of said curve to said point, bears N.23°51'08"E.; thence Westerly 9.71 feet along said curve and said southerly line through a central angle of 0°41'44" to the westerly line of said 130.00 foot strip.

Containing 1.658 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

*John D. Pavlik*  
John D. Pavlik L.S. 5168  
Expiration Date: June 30, 2007

Date: 2/23/06



**Attachment B**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On 4-15-14, 2014, before me, SHARILYN MALLONEE, NOTARY PUBLIC, Notary Public, personally appeared Bradley Jay Satterfield who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharilyn Mallonee (Seal)  
SHARILYN MALLONEE, NOTARY PUBLIC



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On 4-15-14, 2014, before me, SHARILYN MALLONEE, NOTARY PUBLIC, Notary Public, personally appeared Peter J. Gornahl who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Sharilyn Mallonee (Seal)  
SHARILYN MALLONEE, NOTARY PUBLIC



**Attachment B**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On April 29, 2014, before me, Catherine Lapid,  
Notary Public, personally appeared Scott Meyer who  
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Catherine Lapid (Seal)

