



## Attachment C

### GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is made and effective as of the \_\_\_ day of \_\_\_\_\_ (“**Effective Date**”), by and between the COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter called “**County**”) and [TAIT ENTITY, TBD] (hereinafter called “**Tenant**”) (each a “**Party**” and collectively, the “**Parties**”).

#### Recitals

- A. County is the fee owner of the Premises (as hereinafter defined).
- B. The Parties have executed an Option Agreement, dated \_\_\_\_\_, 2019 (“**Option Agreement**”), pursuant to which the County 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 County desire that Tenant shall ground lease the Premises from County on the terms set forth herein.
- D. County and Tenant have jointly agreed to enter into this Lease as of the date set forth above.

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

#### ARTICLE I DEFINITIONS

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

1.1.1. “**Additional Rent**” shall have the meaning set forth in Section 3.9.

1.1.2. “**Adjustment Date**” shall have the meaning set forth in Section 3.2.6.

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

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

1.1.5. “**Annual Percentage Rent**” shall have the meaning set forth in Section 3.2.3.

1.1.6. “**Auditor-Controller**” means the Auditor-Controller, County of Orange, or designee, or upon written notice to Tenant, such other person as may be designated by the Board of Supervisors.

1.1.7. “**Basic Rent**” means the annual rent payable commencing on the Stabilization Date consisting of both Minimum Annual Rent and Annual Percentage Rent, each payable monthly as provided in Article III.

1.1.8. “**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. Except as otherwise provided herein, an interest in Tenant or this Lease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Tenant and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the Beneficial Residual Interest in Tenant or this Lease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Tenant shall have any liability to County under this Lease.

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

1.1.10. “**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, or any portion thereof.

1.1.11. “**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.

1.1.12. “**City**” means the City of Newport Beach, State of California.

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

1.1.14. “**Commencement Date**” means the same as the Effective Date.

1.1.15. “**Construction Budget**” means the detailed line-item budget for all hard and soft costs to be incurred by Tenant in connection with the design and construction of the Initial Improvements and approved by Chief Real Estate Officer prior to the exercise of the Option, a copy of which is attached hereto as Exhibit \_\_\_\_, as same may be revised from time to time in accordance with this Agreement.

1.1.16. “**Construction Drawings**” means the set of construction, landscaping and engineering drawings prepared by or for the architect of record for the Initial Improvements, approved by

Chief Real Estate Officer prior to Tenant's exercise of the Option and referenced on Exhibit attached hereto, as same may be revised from time to time in accordance with this Agreement.

1.1.17. "**Construction Period**" shall mean the earlier of the date construction permits are issued by the City after request by Tenant or when visible modifications to the site are made by the Tenant and shall terminate at the earlier of the date a Certificate of Occupancy or Temporary Certificate of Occupancy is issued for any portion of the Initial Improvements, or 24 months from the Effective Date.

1.1.18. "**Construction Period Rent**" shall mean an amount equal to SIX THOUSAND TWO HUNDRED AND FIFTY Dollars (\$6,250.00) per month, which shall be paid by Tenant commencing on the Effective Date and continuing through the Construction Rent Period.

1.1.19. "**Construction Rent Period**" means the twelve (12) month period commencing on the Effective Date.

1.1.20. "**Construction Schedule**" means that certain schedule for construction of the Initial Improvements approved by the Chief Real Estate Officer prior to Tenant's exercise of the Option, a copy of which is attached hereto as **Exhibit C**.

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

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

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

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

1.1.25. "**CPI Index**" means the CPI Index for All Urban Consumers, All Items (1982-84=100) for Los Angeles-Anaheim-Riverside, as published by the United States Department of Labor, Bureau of Labor Statistics. If the base year is changed, the CPI Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If, for any reason, there is a major change in the method of calculation or formulation of the CPI Index, or the CPI Index is no longer published, then County shall select such other commodity index that produces substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

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

1.1.27. "**Environmental Deed Restrictions**" include, but is not limited to, the requirements to operate and maintain the groundwater protection, monitoring and extraction, Landfill Gas, landfill final cover, and other systems related to the Former Coyote Canyon Landfill performed by Tenant as part of this Lease, as more fully set forth herein.

1.1.28. "**Environmental Disclosure Statements**" means the environmental risks and hazards related to residing near a closed landfill, including the need to maintain the various safety systems already in place on the Former Coyote Canyon Landfill by Tenant as part of this Lease, and the need to operate and maintain the groundwater protection, monitoring and extraction, Landfill Gas, landfill final cover, and other systems put in place by Tenant pursuant to this Lease, as more fully set forth herein.

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

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

- (a) Any Financing Event that occurs in connection with a simultaneous Tenant Ownership Change; or
- (b) With respect to a Financing Event secured by Ownership Interests, any Financing Event, the foreclosure of the security interests of which would not result in an Aggregate Transfer.

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

- (a) A transfer by any direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date or the date on which a Tenant Ownership Change occurred as to the interest transferred, to any other direct or indirect partner, shareholder, or member of Tenant (or of a limited partnership, corporation, or limited liability company that is a direct or indirect owner in Tenant's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the 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, and 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 (i) – (iv) above; or
- (f) Any assignment of the Lease by Tenant to an Affiliate of Tenant in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

1.1.32. “**Facility**” is defined in Section 4.2

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

1.1.34. “**Former Coyote Canyon Landfill**” shall mean the approximately 369 acres of property, of which the Premises is a portion, that was used as a Class III municipal solid waste landfill located at 20661 Newport Coast Drive, Between Bonita Canyon and San Joaquin Hills Road, in the City of Newport Beach, California..

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

1.1.36. “**Gross Transfer Proceeds**” shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (without deduction for costs or any other amounts), but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Tenant Ownership Change that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred.

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

1.1.38. “**Improvements**” means and includes the golf course, club house, pro shop and all other buildings and improvements (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 by Tenant. The term Improvements means the Initial Improvements and any replacement improvements constructed in accordance with the terms of this Lease.

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

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

1.1.41. “**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).

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

1.1.43. **“Post Closure Maintenance Plan”** means a plan, that has been approved by applicable regulatory agencies, for the periodic inspection and maintenance of the landfill, including final cover, in order to minimize the infiltration of water into the waste, thereby minimizing the production of leachate and gas.

1.1.44. **“Landfill Final Cover”** means an integral component to controlling landfill gas migration and limiting water intrusion, consisting of random soils, barrier layer of low-permeability soils, separator layer of geotextile filter fabric, and a vegetative layer of random soils (**Exhibit F**).

1.1.45. **“Landfill Gas” or “LFG”** means gaseous emissions produced by organic waste decomposition, which may contain various chemical components in widely fluctuating quantities including, without limitation, methane, carbon dioxide, hydrogen sulfide, carbon monoxide, benzene, ethyl-benzene, toluene, vinyl chloride, dichloromethane, trichloroethylene, 1,2-dichloroethylene, tetrachloroethylene, and ammonia.

1.1.46. **“Landfill Gas Collection and Control System” or “Collection System”** means the County-owned infrastructure used to: control LFG migration, LFG emissions, LFG odor, and non-methanogenic organic compound releases to the atmosphere, subsurface soil, and groundwater; collect and process condensate; deliver LFG to the Conversion Facility and Flare Station; and meet applicable Laws. This includes the wellfield LFG collection system, flare station, condensate system, associated monitoring controls, backup power and monitoring probes.

1.1.47. **“Landfill Gas Plans”** means any engineering plans for the landfill environmental infrastructure improvements related to the Landfill Gas collection and control system and groundwater protection, extraction and monitoring system at the Former Coyote Canyon Landfill.

1.1.48. **“Laws”** means all laws, codes, ordinances, statutes, orders and regulations, standards, rules, permits, orders and notices of regulatory agencies having jurisdiction over landfills 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. Without limitation, Laws shall include, but not be limited to, the requirements in the Natural Community Conservation Plan (“NCCP”) for the Central/Coastal Orange County Sub region as described in section 16.2.16, and any all laws and regulations related to closed landfills.

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

1.1.50. **“Leasehold Estate”** is defined in Section 18.1.1.

1.1.51. **“Leasehold Estate Value”** means, as of any particular date during the Term, the then fair market “as-is” value of the Leasehold Estate, as improved by the Improvements, determined by a licensed MAI Appraiser reasonably acceptable to both Parties and with at least ten years of experience appraising commercial ground leases in Orange County, assuming a willing buyer and willing seller of the Leasehold Estate after reasonable time to market the Leasehold Estate for sale, and taking into consideration such factors as (i) the length of time remaining in the Term, (ii) the availability of options to extend the Term, if any, and (iii) the then condition of the Improvements.

1.1.52. **“Leasehold Foreclosure Transferee”** is defined in Section 18.1.2.

1.1.53. **“Leasehold Mortgage”** is defined in Section 18.1.3.

1.1.54. “**Leasehold Mortgagee**” is defined in Section 18.1.4.

1.1.55. “**Local Enforcement Agency**” shall mean the Division of Orange County Environmental Health designated by the Orange County Board of Supervisors and California Department of Resources Recycling and Recovery (“**CalRecycle**”) to be responsible for ensuring correct operation and closure of solid waste facilities.

1.1.56. “**Memorandum**” is defined in Section 19.22.

1.1.57. “**Monthly Rent**” means the monthly payment of Construction Period Rent or Basic Rent, as applicable, as provided in Article III.

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

(a) “**Improvement Costs**” shall mean the final 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, 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 County’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. County 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, 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 County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County the Value Appreciation Rent.

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

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

(a) “**Successor’s Basis**” shall mean the greatest of (a) the purchase price such successor Tenant paid to Tenant or such successor Tenant’s seller for the interest acquired, or (b) the original

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

(b) **“Successor's Improvement Costs”** shall mean actual costs of Improvements 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; and

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

1.1.60. **“Net Refinancing Proceeds”** shall mean the gross principal amount of any Financing Event after the Effective Date (plus, in the case of secondary financing, the original principal balance of any existing financing that is not repaid as a part of such secondary financing), minus (i) the greatest of (A) the Improvement Costs, (B) the original principal amount of any subsequent refinancing by Tenant in connection with which County was paid Value Appreciation Rent plus, if the financing described in this clause (B) was secondary financing, the original principal 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.

1.1.61. **“New Lease”** is defined in Section 18.17.1.

1.1.62. **“OC Waste & Recycling”** or **“OCWR”** means the OC Waste & Recycling Department.

1.1.63. **“Operating Costs”** shall have the meaning set forth in Section 3.9.5.

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

1.1.65. **“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.

1.1.66. **“Premises”** means that certain real property containing approximately 237 acres with an address of 20661 Newport Coast Dr. in the City, together with all easements, rights and privileges appurtenant thereto, to be leased to Tenant pursuant to this Lease and on which Tenant intends to construct the Improvements. The legal description of the Premises is attached hereto as Exhibit A. The Premises is associated with Assessor Parcel Numbers 120-571-11, 120-571-12, 120-571-13, 478-032-05, 461-061-43, 478-031-83, 478-032-03. A rendering showing the approximate boundaries of the Premises is attached hereto as Exhibit A-1. For avoidance of doubt, the Premises' final acreage and boundaries shall be based on the legal description attached hereto as Exhibit A.



1.1.67. "**Regional Water Quality Control Board**" or "**RWQCB**" means the Regional Water Quality Control Board, Santa Ana Region.

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

1.1.69. "**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 Chief Real Estate Officer.

1.1.70. "**Security Deposit**" means a security deposit in the amount of SEVENTY-FIVE THOUSAND Dollars (\$75,000).

1.1.71. "**Stabilization Date**" means the first day of the Stabilized Period.

1.1.72. "**Stabilized Period**" has the meaning set forth in Section 3.2.

1.1.73. "**Sublease(s)**" shall mean any sublease, license, concession or other occupancy agreement between Tenant and any Sublessee which allows such Sublessee to occupy and operate any business upon any portion of the Premises.

1.1.74. "**Sublessee**" shall mean any sublessee, licensee, concessionaire or other third party entitled to occupy and operate any business upon any portion of the Premises pursuant to a Sublease with Tenant.

1.1.75. "**Taxes**" has the meaning set forth in Section 3.9.2.

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

1.1.77. "**Term**" has the meaning set forth in Section 2.2.

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

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

1.1.80. "**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.

1.1.81. "**Utility Costs**" shall have the meaning set forth in Section 3.9.6.

1.1.82. "**Value Appreciation Rent**" shall have the meaning set forth in Section 3.3.

1.1.83. "**Work**" means both Tenant's construction activity with respect to the Improvements, including permitted future changes, alterations and renovations thereto and also including,

without limiting the generality of the foregoing, site preparation, landscaping, installation of utilities, street construction or improvement and grading or filling in or on the Premises.

## ARTICLE II LEASE OF PREMISES

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

2.2 **Term.** The “**Term**” of this Lease shall be seventy five (75) years, commencing on the Effective Date of this Lease, and shall expire at 12:00 midnight Pacific Time on the seventy fifth (75<sup>th</sup>) anniversary of the Effective Date, unless sooner terminated as a result of non-compliance with any term or condition of this Lease as hereinafter provided.

2.3 **Access and Common Areas.** The Tenant’s use of the Premises hereunder also will include the non-exclusive, in common, use of any County driveways (whether situated on or appurtenant to the Premises) for vehicle ingress and egress, pedestrian walkways, and common areas appurtenant to the Premises created by this Lease, but only as such areas may be identified prior to the Commencement Date or from time-to-time in writing by the Chief Real Estate Officer.

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

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

2.6 **Limitations of the Leasehold.** This Lease and the rights and privileges granted Tenant in and to the Premises are subject and subordinate 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 a leasehold in any rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County’s interest therein. Tenant acknowledges that Tenant has conducted a complete and adequate investigation of the condition of the Premises and condition of County’s interest therein and that Tenant has accepted the Premises in its “as is” condition.

Tenant shall at all times maintain a “good neighbor policy” with adjacent property owners such that negative effects resulting from light and glare, noise or aesthetics shall be avoided. Tenant shall, to the satisfaction of the County, use its best efforts to establish and maintain operational practices, so as to mitigate issues of concern brought forth by residents adjacent to the Premises.

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

### **ARTICLE III RENT**

3.1 **Construction Period Rent.** Commencing on the Effective Date and continuing through the Construction Rent Period, Tenant shall pay to County the Construction Period Rent, of SIX THOUSAND TWO HUNDRED AND FIFTY Dollars (\$6,250) per month. The Construction Period Rent shall be payable on or before the first (1<sup>st</sup>) day of each calendar month during the Construction Rent Period pursuant to Section 3.4.1, below.

3.2 **Stabilized Period Rent.** Commencing on the expiration of the Construction Period, and expiring upon the last day of the Term (the "**Stabilized Period**"), Tenant shall pay annual Basic Rent, calculated and payable as provided in this Section 3.2.

3.2.1. **Basic Annual Rent.** Commencing on the Stabilization Date, and continuing until the first Adjustment Date, as defined in Section 3.2.4, the annual Basic Rent shall consist of the Minimum Annual Rent and the Annual Percentage Rent, as defined hereafter. Tenant shall pay to County for each accounting year, either the Minimum Annual Rent or the Annual Percentage Rent, whichever is greater.

3.2.2. **Minimum Annual Rent.** For purposes of this Lease, the term "**Minimum Annual Rent**" means ONE HUNDRED FIFTY THOUSAND Dollars (\$150,000) per year, which amount shall automatically increase in accordance with Section 3.2.4. The Minimum Annual Rent shall be payable in twelve (12) equal monthly installments, in advance, on or before the first (1<sup>st</sup>) day of each calendar month during the Stabilized Period as provided in Section 3.2 below.

3.2.3. **Annual Percent Rent.** The term "**Annual Percentage Rent**" means an amount equal to [To be determined by a fair market value study prior to the signing of this lease, with a minimum of 2.5% and not to exceed 4%.] of Tenant's annual Gross Receipts, as defined below, realized by Tenant during each year of the Stabilized Period.

3.2.4. **Minimum Annual Rent Adjustments.** The Minimum Annual Rent shall increase at the expiration of the five (5) year period immediately following the Stabilization Date, and at the expiration of each successive five (5) year period thereafter during the remainder of the Stabilized Period (each such date on which such an adjustment takes effect under this Section 3.2.4 is referred to as an "**Adjustment Date**"). On each Adjustment Date, the Minimum Annual Rent in effect during the five (5) year period immediately prior to such Adjustment Date shall be increased by an amount proportionate to the percentage increase, if any, in the CPI Index (as defined above) during the period from the third (3<sup>rd</sup>) month prior to the commencement of each five (5) year period through the third (3<sup>rd</sup>) month prior to the expiration of such prior five (5) year period; provided, however, that no such increase shall be less than ten percent (10%). Tenant shall notify County in writing of the increased Minimum Annual Rent thirty (30) days prior to the applicable Adjustment Date (or following such later date on which the necessary CPI Index figures have been published), and shall set forth in such notice the basis for the amount of the increased Minimum Annual Rent. Tenant shall commence paying the increased Minimum Annual Rent (or Annual Percentage Rent, whichever is greater, in accordance with Section 3.2.1) upon commencement of the new five (5) year period, and in the event that such notice is delivered after commencement of such five (5) year period, shall pay County a lump

sum payment equal to any unpaid amount of increased Monthly Rent that has accrued from the Adjustment Date to the date of such payment regardless of the amount of time between the date of payment and the applicable Adjustment Date. The failure of Tenant to deliver timely notice of any adjustment to Minimum Annual Rent under this Section shall not constitute a waiver by County of its rights under this Section.

3.2.5 Definition of Gross Receipts. As used in this Section, the term “**Tenant**” shall include Tenant, Tenant’s agents, sublessee concessionaires, or licensees, or any person acting under contract with Tenant. The term “**Gross Receipts**” upon which the Annual Percentage Rent is based, shall include:

(1) The sale price of all goods, wares, merchandise, and products sold on or from the Premises by Tenant, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted at, on or from the Premises, whether delivery of the items sold is made from the Premises and whether title to such items is transferred, including:

- a. entry, rental, and other fees of any nature or kind charged by Tenant (including but not limited to deposits accepted by Tenant);
- b. sales of merchandise, food, beverages and services;
- c. gift certificates;
- d. any sums deposited into any coin-operated vending machine or other device maintained on the Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by Tenant or others, and regardless of what percentage thereof Tenant is entitled to receive except for pay telephones and newspaper racks;
- e. any commission or surcharge received by Tenant from the operation of any automatic teller machines on the Premises;
- f. all sums received for officer and employee meals, including meals, snacks and drinks from vending machines provided solely for use by employees, the actual charge, if any, paid by officers or employees for food and beverage while on duty; and,
- g. all other funds received by Tenant from sales by any sublessee, concessionaire or licensee of Tenant on the Premises, subject to the exclusions set forth in subsection (b) below.

(2) In the event that Tenant, in its discretion, chooses to utilize a franchisee or concessionaire to provide food sales or any other services on which Gross Receipts are calculated, Gross Receipts shall be calculated based upon the sum received by Tenant under any such franchise or concession agreement.

(3) Gross Receipts shall exclude the following (but Tenant shall keep separate records as part of its records): (i) any and all customer refunds, including any cash or credit refunds upon any sale made in or from the Premises, (ii) merchandise returns to shippers or manufacturers, (iii) proceeds from the sale of used equipment or trade fixtures, (iv) sales and excise taxes and fees payable by Tenant to federal, state, county, or municipal governments as a direct result of operations under this Lease, (v) the exchange of tickets or merchandise between Tenant’s different waterpark locations, when such exchange is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale that has theretofore been made in or from the Premises or for the purpose of depriving County of the benefit of a sale that otherwise would be made in or from the Premises.

(4) The term “Gross Receipts” also includes the fair rental value of facilities used by Tenant or its employees for purposes other than the business purposes for which the Premises are leased and the value of all consideration including consideration other than cash received by Tenant or his employees in exchange for the items sold or services rendered.

(5) Bad debt losses shall not be deducted or excluded from Gross Receipts.

3.3 **Value Appreciation Rent.** In the event of a Tenant Ownership Change or a Financing Event, Tenant shall pay to County, concurrent with the closing of such transaction, an amount (“**Value Appreciation Rent**”) equal to one percent (1%) of the Gross Transfer Proceeds in connection with such Tenant Ownership Change or one percent (1%) of the Loan Amount of such Financing Event. In the event a Tenant Ownership Change and Financing Event occur concurrently, Tenant shall pay the greater of the two foregoing calculations. Before any Tenant Ownership Change or Financing Event for which Value Appreciation Rent may be due, Tenant shall provide County with its detailed calculation of the Value Appreciation Rent. No Tenant Ownership Change or Financing Event shall occur until agreement is reached on the calculation of Value Appreciation Rent; provided, however, that such Tenant Ownership Change or Financing Event shall be permitted to occur without such agreement as long as County and Tenant make mutually acceptable arrangements for the preservation of any additional Value Appreciation Rent plus interest at the Interest Rate that might be due to County over and above that reflected in the Tenant’s calculation should any such dispute be resolved in favor of County. Value Appreciation Rent shall be due and payable concurrently with the Tenant Ownership Change or Financing Event giving rise to the obligation to pay Value Appreciation Rent (or, with respect to any disputed amount, on resolution of the dispute) and, in the situation of a Tenant Ownership Change, shall be the joint and several obligation of the transferee and transferor.

3.4 **Payment of Rent.**

3.4.1. **Monthly Rent Generally.** Monthly Rent shall be payable in advance and without any deduction, offset, prior demand or notice, commencing upon the Commencement Date and thereafter on the first day of each month during the Term, and Annual Percentage Rent shall be payable as more particularly described in Section 3.4.2, below. 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 and Percentage Rent or other amounts owing to County under this Lease shall be paid, in lawful currency of the United States of America, by check delivered to County or by electronic payment as County shall direct. All monetary payments owing by Tenant to County under this Lease other than Monthly Rent shall be deemed additional rent owing under this Lease. Rent payments shall be delivered to, and statements required by this Lease shall be filed with the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P.O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 11 Civic Center Plaza, Room G58, Santa Ana 92702). The designated place of payment and filing may be changed at any time by the 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 County offers electronic payment for any payments hereunder, thus the Tenant shall utilize such County electronic payment system for any payments under this Lease, unless otherwise directed in writing by the 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: \_\_\_\_\_

3.4.2. Payment of Percentage Rent; Gross Receipts Statement. On or before the twentieth (20<sup>th</sup>) day of each month during the Stabilized Period, Tenant shall deliver to Auditor-Controller a correct statement of all applicable Gross Receipts for the immediately preceding calendar month and for that portion of the accounting year which ends with and includes the last day of the preceding calendar month for which Gross Receipts have been reported (“**Gross Receipts Statement**”). The Gross Receipts Statement shall be signed by Tenant or Tenant’s responsible agent certifying as to its truthfulness and accuracy and shall be in the form reasonably prescribed by the Auditor-Controller. Each Gross Receipts Statement shall indicate:

(a) The total Gross Receipts for such immediately preceding calendar month and said portion of the accounting year showing Gross Receipts for each month in such period, itemized as to each category of Gross Receipts, including a breakdown each separate concession conducted on the Premises where the concessions are run by more than one business operator;

(b) An itemized accounting of any exclusions from Gross Receipts claimed by Tenant for such immediately preceding calendar month and said portion of the accounting year;

(c) The total Annual Percentage Rent calculated based on the total Gross Receipts for said portion of the accounting year to date;

(d) The amount by which the Annual Percentage Rent exceeds the Minimum Annual Rent for said portion of the accounting year (if any) calculated by Tenant based on the total Gross Receipts received less the Minimum Annual Rent paid by Tenant for said portion of the accounting year (such excess, if any, is referred to herein as the “**Excess Percentage Rent**”);

(e) The total Excess Percentage Rent previously paid by Tenant for the accounting year ending in the month prior to the immediately preceding calendar month and;

(f) The total amount of any Excess Percentage Rent which is payable by Tenant for that portion of the accounting year which ends with and includes the last day of the preceding calendar month and the amount of total Excess Percentage Rent which Tenant has paid for such portion of the accounting year to date.

3.4.3. Payment of Excess Percentage Rent. Concurrently with Tenant’s payment of Monthly Rent, Tenant shall pay to County any Excess Percentage Rent owed by Tenant (if any) for the immediately preceding calendar month in question based on the Gross Receipts Statement for the accounting period ending the last day of the preceding calendar month as provided in Section 3.4.2, above, if any.

3.4.4. Annual Reconciliation. Within sixty (60) days following the expiration of each calendar year remaining in the Term, Tenant shall calculate the total Gross Receipts for the preceding calendar year and the total Excess Percentage Rent payable by Tenant for such calendar year. If based on Tenant’s actual payments of Excess Percentage Rent pursuant to Section 3.4.3 above Tenant shall have paid more Excess Percentage Rent for such calendar year than is owed by Tenant, County shall either refund such overpaid Excess Percentage Rent to Tenant or Tenant shall be entitled to credit such overpaid Excess Percentage Rent against Excess Percentage Rent next coming due under this Lease in the following year until

such excess shall have been fully applied to Excess Percentage Rent. If Tenant shall have underpaid Excess Percentage Rent for such prior calendar year, Tenant shall pay County such shortfall within thirty (30) days of determination of such shortfall.

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

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

3.7 **Processing Fee.** Within thirty (30) days of the Execution Date of this Lease, Tenant shall pay to County a processing fee of five thousand dollars (\$5,000) for issuance of this Lease. Said processing fee is deemed earned by County and is not refundable. County shall provide Tenant with an invoice for the processing fee and Tenant shall promptly pay the total processing fee amount within thirty (30) days after receipt of invoice and delivered to County at the address provided in Section 19.18 (Notices), below.

3.8 **Charge for Late Payment.**

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

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

3.8.3. Tenant and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of

Tenant's default with respect to such overdue payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

### 3.9 **Security Deposit**

3.9.1. Upon the execution of this Lease, Tenant shall provide to County the Security Deposit, as defined in 1.164, which shall be held by County as security for the full and faithful performance of each of the terms hereof by Tenant, subject to use and application as set forth below. The Security Deposit may be applied by County towards (i) the payment of any Rent or any other sum in default under this Lease, (ii) the cost of performing any Tenant obligation which Tenant has failed to perform and which County has a right to cure under this Lease, or (iii) any other amounts or damages to which County is entitled under this Lease. If County applies the Security Deposit as described in the immediately preceding sentence, County shall immediately notify Tenant in writing of the amount so applied, and Tenant shall, within ten (10) days after receipt of such written notice (provided that County's application of such amount is not in violation of this Lease or applicable Laws), deposit with County an amount sufficient to restore the Security Deposit to its full amount. The Security Deposit may be commingled by County with County's other funds, and no interest shall be paid thereon.

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

- (a) Cash
- (b) The assignment to County of Orange, of a savings deposit held in a financial institution in Orange County acceptable to 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 County of Orange, 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 County of Orange, 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 County of Orange, or order upon demand by County of Orange. Both the financial institution(s) and the form of the instrument(s) must be approved by 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 Chief Real Estate Officer for correcting any default or breach of this Lease by Tenant, Tenant's successors or assigns, or for payment of expenses incurred by County as a result of an Event of Default hereunder by Tenant, Tenant's successors or assigns.

Should Tenant elect to assign a savings deposit, provide a Time Certificate of Deposit, or provide an instrument of credit to fulfill the security deposit requirements of this Lease, said assignment, certificate, or instrument shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of



the principal sum to County of Orange, or order upon demand by 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.

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

The security deposit shall be rebated, reassigned, released, or endorsed by 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.

### 3.10 **Additional Rent.**

3.10.1. **Additional Rent.** During the Term, the annual Basic Rent shall be absolutely net to County so that this Lease shall yield to County the rental amounts specified above in each year of the Term, and that all costs (including but not limited to Operating Costs and Utility Costs, as defined below), fees, taxes (including but not limited to Real Estate Taxes and Equipment Taxes, as defined below), charges, expenses, impositions, reimbursements, and obligations of every kind relating to the Premises shall be paid or discharged by Tenant as additional rent (“**Additional Rent**”). Tenant may pay, under protest, any impositions, and/or contest and defend against same. Any imposition rebates shall belong to Tenant.

3.10.2. **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, charge, possessory interest tax, tax or similar imposition (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, flood control, water pollution control, public transit or other special district thereof, as against any legal or equitable interest of County in the Premises or any payments in lieu of taxes required to be made by County, including, but not limited to, the following:

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

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

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

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

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

3.10.3. **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 before the Taxes or other charge at which it is directed becomes delinquent. Furthermore, no such contest, opposition or objection shall be continued or maintained after the date the tax, assessment or other charge at which it is directed becomes delinquent unless Tenant has either: (i) paid such tax, assessment or other charge under protest prior to its becoming delinquent; or (ii) obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment or other charge by posting such bond or other matter required by law for such a stay; or (iii) delivered to County a good and sufficient undertaking in an amount specified by County and issued by a bonding corporation authorized to issue undertakings in California conditioned on the payment by Tenant of the tax, assessments or charge, together with any fines, interest, penalties, costs and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Tenant's contest, opposition or objection to such tax, assessment or other charge.

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

3.10.5. **Operating Costs.** As between Tenant and County, Tenant shall pay all Operating Costs during the Term. As used in this Lease, the term "**Operating Costs**" shall mean all charges, costs and expenses related to the Premises, including, but not limited to, management, operation, maintenance, overhaul, improvement or repair of the Improvements and/or the Premises. Tenant may be reimbursed for some or all Operating Costs by Sublessees.

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

**ARTICLE IV**  
**USE OF PREMISES**

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

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

4.2.1. **Required Services and Uses.** County's primary purpose for entering into this Lease is to promote the development of an eighteen-hole golf course facility. In furtherance of that purpose, upon completion of construction of the Initial Improvements as defined by **Exhibit B**, Tenant shall, during the entire Lease term, maintain and operate the Initial Improvements, hereinafter referred to as "**Facility.**"

4.2.2. **Optional Services and Uses.** Subject to the prior written approval of the Chief Real Estate Officer, Tenant is granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses for the Facility. Said optional services and uses may include but are not limited to the following:

- (1) Golf
- (2) Food/Beverage Sales
- (3) Merchandise Sales
- (4) Golf Equipment and Cart Rental
- (5) Golf Equipment Repair
- (6) Golf Lessons
- (7) Golf Tournaments, Banquets, Meetings, Conferences
- (8) Wedding Receptions and other similar functions
- (9) Hospitality Facilities
- (10) Residential – multifamily, single family housing, senior- housing
- (11) Public Park Space, Public Trail Systems
- (12) Any other uses approved in writing by the Chief Real Estate Officer that are acceptable to the City of Newport Beach and which are in compliance with applicable Law

NO TOBACCO PRODUCTS SHALL BE SOLD FROM THE PREMISES. SMOKING IS PROHIBITED INSIDE ANY BUILDING ON THE PREMISES.

4.2.3. Ancillary Services and Uses. Subject to the prior written approval of Chief Real Estate Officer, Tenant may provide those additional services and uses which are ancillary to and compatible with the required services and uses herein.

4.2.4. Additional Concessions or Services. Tenant may establish, maintain, and operate such other additional facilities, concessions, and services as Tenant and Chief Real Estate Officer may jointly from time to time determine to be reasonably necessary for the use of the Premises and which are otherwise permitted by Law.

4.2.5. Restricted Use. The services and uses listed in this Article IV, both required and optional, shall be the only services and uses permitted. Tenant agrees not to use the Premises for any other purpose or engage in or permit any other activity within or from the Premises except as approved in writing by the Chief Real Estate Officer as set forth herein, which approval may be granted or withheld in the sole discretion of the Chief Real Estate Officer.

4.2.6. Alcohol Restrictions. Tenant may permit the sale or service of any beer, wine or alcoholic beverages on the Premises, 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. Any such sales shall be included in Gross Receipts.

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

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

4.5 Hazardous Materials.

4.5.1. Definition of Hazardous Materials. For purposes of this Lease, the term "**Hazardous Material**" or "**Hazardous Materials**" shall mean any hazardous or toxic substance, material, product, byproduct, or waste, 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

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 real or personal property wherever situated, Tenant, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any cleanup or remedial work performed on, under or about the Premises as required by this Lease or by applicable Laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials 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 County. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by County.

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 acceptable to County) County, its elected officials, officers, employees, agents, independent contractors, and the Premises, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable, 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.

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

4.6 Access by County. County reserves the right for County and County's authorized representatives to enter the Premises at any reasonable time during business hours, in order to (i) determine whether Tenant is complying with Tenant's obligations hereunder, or (ii) enforce any rights given to County under this Lease. County shall take all necessary measures not to unreasonably interfere with Tenant's or any subtenant's business at the Premises in exercising its rights under this Section.

**ARTICLE V**  
**CONSTRUCTION OF IMPROVEMENTS**

**5.1 Construction of Improvements.**

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

5.1.2. **Preconditions.** No work for development of the Initial Improvements shall be commenced, and no building or other materials shall be delivered to the Premises, until:

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

(b) Tenant shall have provided to County evidence that (i) Tenant has entered into a Construction Contract with a contractor in accordance with Section 5.1.9 below, (ii) Tenant has secured the construction funding required under Section 5.1.4 below, and (iii) Tenant has obtained the bonds required by Section 5.3 below, as applicable.

5.1.3. **Minimum Construction and Timing.** Tenant shall cause to be designed, constructed, and installed within the Premises, at no cost to County, the Initial Improvements including all appropriate improvements to adequately accommodate those services and uses required and any optional services and uses approved pursuant to Article IV, Required and Optional Facilities and Services.

5.1.4. **Development Plan and Construction Standards.** The schematic plans prepared by Tenant and approved by the Chief Real Estate Officer during the Option period preceding execution of this Lease shall be a master plan for development of the Premises, and the working drawings prepared by Tenant and approved by the Chief Real Estate Officer during the same Option period shall be the plans, specifications, and time schedule for constructing the Initial Improvements. All design and construction shall conform with **Exhibit B** and shall meet all other requirements contained in this Lease.

5.1.5. **Minimum Cost of Improvements.** The minimum cost of Initial Improvements shall be [Shall be determined prior to signing this lease.].

5.1.6. **Utilities.** Tenant at no cost to County shall construct, or cause to be constructed, all utility lines, meters and support facilities within the Premises necessary for the operation required and optional uses. Tenant shall be responsible for and pay, prior to the delinquency date, all charges for utilities supplied to the Premises, excepting those separately metered and used by the County for its purposes.

**5.1.7. Construction and/or Alteration by Tenant:**

(a) **County's Consent.** No structures, improvements, or facilities other than those approved by the Chief Real Estate Officer shall be constructed, erected, altered, or made within the Premises without prior written consent of the Chief Real Estate Officer. Any conditions relating to the manner, method, design and construction of said structures, improvements, or facilities fixed by the Chief Real Estate Officer, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by Tenant.

(b) **Strict Compliance with Plans and Specifications.** All improvements constructed by Tenant within the Premises shall be constructed in the strict compliance with detailed plans and specifications approved by the Chief Real Estate Officer. Tenant shall not make any material modifications to the Construction Drawings, Specifications, Construction Schedule, Construction Budget, the contracts with the Construction and Architect (collectively, the “**Construction Documents**”) without the prior written approval of the Chief Real Estate Officer. All requests for approval of changes to the Construction Documents shall be submitted by Tenant to the Chief Real Estate Officer together with a reasonably detailed explanation of the reasons for the requested change and any impact that such change may have on the Construction Budget and/or Construction Schedule, if any. If the Chief Real Estate Officer approves the requested change, then Tenant shall provide the Chief Real Estate Officer with a copy of the approved revised Construction Documents and the Tenant shall be obligated to complete the Work in accordance with such revised Construction Documents. Chief Real Estate Officer shall have thirty (30) days following receipt of any requested material modifications to the Construction Documents within which to approve or disapprove such submission in writing. If Chief Real Estate Officer fails to approve or disapprove such submission within such thirty (30) day period, Tenant shall thereafter deliver to a transmittal letter to the Chief Real Estate Office containing the following text prominently displayed in bold-faced type on the first page:

“PURSUANT TO SUBSECTION 5.1.5 OF THE LEASE, YOU HAVE TWENTY (20) DAYS AFTER RECEIPT OF THIS LETTER TO APPROVE OR DISAPPROVE TENANT’S PROPOSED CHANGE(S) TO THE CONSTRUCTION SCHEDULE. YOUR FAILURE TO DISAPPROVE THE SAME IN WRITING WITHIN TWENTY (20) DAYS OF YOUR RECEIPT OF THIS LETTER WILL CONSTITUTE YOUR APPROVAL OF SUCH CHANGE(S) TO THE CONSTRUCTION SCHEDULE.”

Failure of Chief Real Estate Officer to approve or disapprove such requested change to the Construction Documents in writing within said additional twenty (20) day period shall be deemed approval of the same. Concurrently with any disapproval of such proposed change by Chief Real Estate Officer, Chief Real Estate Officer shall disclose to Tenant in writing Chief Real Estate Officer’s objections to the proposed change together with its proposed modification that will be necessary to obtain Chief Real Estate Officer’s approval. Chief Real Estate Officer’s approval of any changes to the Construction Documents shall not relieve or otherwise affect Tenant’s obligations under this Lease with respect to the commencement and completion of the Work on or before the respective required dates for such commencement and completion set forth in this Lease. Any subsequent material modifications to the Tenant’s Construction Documents shall require the written approval of the Chief Real Estate Officer in accordance with the procedure set forth in this Subsection 5.1.7.

5.1.8. **Ownership of Improvements.** All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Tenant must, upon completion, be free and clear of all liens, claims, or liability for the labor or material and, at County’s option, shall become the property of County at the expiration of this Lease or upon earlier termination hereof. County retains the right, however to require at Tenant’s cost, to remove some or all of Tenant’s improvements located on the Premises at the expiration or termination hereof.

5.1.9. **Construction Funding.** Prior to commencement of construction of the Initial Improvements, Tenant shall provide to County evidence reasonably satisfactory to County of funding available to Tenant that is sufficient to pay for Tenant’s estimated total cost of constructing the Initial Improvements, which evidence may consist of (i) a written commitment to Tenant from an Institutional Lender selected by Tenant to provide a construction loan to Tenant for the purpose of constructing the Initial Improvements (which may be secured by a Leasehold Mortgage encumbering Tenant’s leasehold interest under this Lease), (ii) actual equity funds then held by Tenant and set-aside for the purpose of constructing the Initial Improvements, or (iii) any combination of the foregoing. Tenant may from time to time change any of the foregoing funding

sources and the allocation thereof, so long as the aggregate available funding continues to be sufficient to pay for Tenant's estimated remaining cost of constructing the Initial Improvements, provided that Tenant shall promptly notify County of any such change.

5.1.10. **Compliance With Laws and Permits.** Tenant shall cause all Improvements made by Tenant to be constructed in substantial compliance with all applicable Laws, including all applicable grading permits, building permits, and other permits and approvals issued by governmental agencies and bodies having jurisdiction over the construction thereof.

5.1.11. **County Cooperation.** County, in its proprietary capacity, shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Tenant of the Work, as applicable. Such cooperative efforts may include the County's joinder in any application for such approval, consent, permit or variance, where joinder therein by the County is required. Notwithstanding the foregoing, Tenant and County acknowledge that (a) the approvals given by County under this Lease are approvals pursuant to its authority under the California Government Code in its proprietary capacity, (b) such approvals in no way release Tenant from obtaining, at Tenant's expense, all permits, licenses and other approvals required by law for the Work and alternations on the Property, or the operation and use of such Improvements, (c) the County's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease, and (d) the County's duty to cooperate shall be limited to those items or matters that the County has otherwise approved or consented to in accordance with the terms of the Lease, to the extent the County's approval or consent is required.

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

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

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

5.1.15. **Mechanic's Liens.**

(a) **Payment of Liens.** Tenant shall pay or cause to be paid the total cost and expense of all "Work of Improvement," as that phrase is defined in the California Mechanics' Lien law in effect and as amended from time to time. Tenant shall not suffer or permit to be enforced against the Premises or Improvements or any portion thereof, any mechanics', materialmen's, contractors' or subcontractors' liens arising from any work of improvement, however it may arise. Tenant may, however, in good faith and at Tenant's sole cost and expense contest the validity of any such asserted lien, claim, or demand, provided Tenant (or any contractor or subcontractor, as applicable) has furnished the release bond (if required by County or any construction lender) required in California Civil Code §3143 (or any comparable



statute hereafter enacted for providing a bond freeing the Premises from the effect of such lien claim). In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, Tenant shall either:

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

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

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

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

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

## 5.2 Construction Contracts.

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

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

5.3 Payment and Performance Bonds. Tenant shall provide or cause its general contractor (or major subcontractors for project costs of 15% or more of the total Project budget) to provide payment and/or performance bonds for major subcontracts for project costs of 15% or more of the total Project budget in connection with the construction of the Initial Improvements, and shall name County as an additional obligee on, with the right to enforce, any such bonds.

## 5.4 Ownership of Improvements.

5.4.1. During Term. Title to all Improvements constructed or placed on the Premises by Tenant and paid for by Tenant are and shall be vested in Tenant during the entire Term of this Lease, until the expiration or earlier termination thereof. The parties agree for themselves and all persons claiming under them that the Improvements are real property.

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

(a) County retains the right to require Tenant, at Tenant’s cost, to remove, demolish and clear all vertical above-ground Improvements and remediate any water features, sand traps or feature not buried beneath the surface of the Landfill Final Cover, located on the Premises at the expiration or termination hereof. Said removal shall include leveling the Premises, the removal of any underground obstructions, and the compaction of filled excavations to ninety percent (90%) compaction.

(b) In order to ensure that Tenant has sufficient funds reserved for such removal, demolition and clearing County, 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, County may request and 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 (the “**Restoration Fund**”) and Tenant shall have the right at such time to transfer all funds remaining in Tenant’s Capital Improvement Fund for application to such demolition and clearing costs. 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 County for such removal in the event that Tenant does not comply with the terms of this Section upon the time periods set forth herein. To the extent that Tenant does not comply with the terms of this Section upon the time periods set forth herein and the County 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. If there shall be any remaining funds in such Restoration Fund after Tenant completes such demolition and clearing, such remaining funds shall be released to Tenant.

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

#### 5.6 **Capital Improvement Fund**

5.6.1. Commencing with the month during which the fifth (5<sup>th</sup>) anniversary of the Stabilization Date occurs, and continuing until five (5) years prior to the expiration of the Term of the Lease, Tenant shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.6 designated to pay for Permitted Capital Expenditures (as defined below) for the Improvements. Tenant and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide sufficient funds to pay for the costs of major replacements, renovations or significant upgrades of or to the Improvements, including without limitation building facade or structure and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly affect the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Initial Improvements (“**Permitted Capital Expenditure(s)**”). The Capital Improvement Fund shall not be used to fund any portion of the cost of the Initial Improvements. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary maintenance expenditures or maintenance, repairs or replacements that keep the Improvements in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied or constitute qualifying aesthetic improvements. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Tenant. All specific purposes and costs for which Tenant desires to utilize amounts from the Capital Improvement Fund shall be at Tenant’s reasonable discretion and subject to Chief Real Estate Officer's approval as provided for in Sub-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 County, into which deposits shall be made by Tenant pursuant to this Section 5.7. Tenant shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of

this Section 5.7 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 (5<sup>th</sup>) anniversary of the Stabilization 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 County (but only up to the amount of such expenditure set forth in the Capital Improvement Plan) for the duration of the upcoming year. Tenant shall have the right during the course of each year to submit to the 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 County 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 County of its decision.

5.6.5. All amounts then-existing in the Capital Improvement Fund shall either be expended for Permitted Capital Expenditures not later than five (5) years prior to the expiration of the Term of the Lease or Tenant may transfer such Capital Improvement Fund to the Restoration Fund required under Section 5.4.2.

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

## **ARTICLE VI**

### **REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION**

6.1 **Maintenance by Tenant.** Tenant shall, to the satisfaction of County, keep and maintain the Premises and all Improvements of any kind which may be erected, installed, or made thereon in a first class

condition and repair (comparable to other comparable golf facilities in Orange County) making such replacements as necessary or appropriate, free of debris, and maintaining the greens and pond, if any, on the golf course. All repairs and Improvements made by the Tenant to the Premises shall be in compliance with all Federal, State, Local Ordinances and Building Codes (“Codes”). The Codes encompass all fire, life and structural safety aspects and apply to the construction, alternations, moving demolition, repair and use of the Premises. Any additions, alterations, repairs and changes of use or occupancy in the Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards which are required by the Codes shall be maintained in the conformance with the edition of the Codes under which it was installed.

Tenant shall maintain all equipment and Improvements located within the Premises including but not limited to, trade fixtures, wiring, software and communications equipment in good condition. Tenant agrees that all repairs will be conducted within twenty four (24) hours of notification by the Chief Real Estate Officer or designee unless a longer period of time is approved by the Chief Real Estate Officer or designee.

Tenant shall immediately notify the Chief Real Estate Officer of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or release are those that require notification to a government entity by any fire code or Environmental law as defined herein in Article IV.

Tenant shall be responsible for cleaning and providing maintenance services on a regular basis to the Premises and/or Improvements. Cleaning by Tenant shall include collection of any trash and cleanup of spills in the area immediately adjacent to the Premises entrances and exits. The Chief Real Estate Officer shall have the right to enter upon and inspect the Tenant’s Premises at any time for cleanliness, safety and maintenance inspections.

Tenant shall designate in writing to the Chief Real Estate Officer and OCWR an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If Tenant fails to maintain or make repairs or replacements as required herein, the Chief Real Estate Officer shall notify or attempt to notify the Tenant in writing of said failure. Should Tenant fail to correct the situation within the time specified in the notice, the Chief Real Estate Officer may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to Tenant. Thereafter, an administrative fee equal of fifteen percent (15%) of the sum of such items shall be paid by Tenant within ten (10) days of receipt of a statement of said cost from the Chief Real Estate Officer. The Chief Real Estate Officer may, at their option, choose other remedies available herein, or as provided by law.

Tenant expressly waives any and all claims against the County for compensation for any and all loss or damage to Tenant’s property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Premises, except to the extent caused by the County’s sole negligence or willful misconduct.

**6.2 Interior Improvements, Additions and Reconstruction of Improvements.** Following the completion of construction of the Initial Improvements, Tenant shall have the right from time to time, without County’s prior written consent, but with prior written notice to the County: (i) to make any interior improvements to the Improvements that are consistent with the County approved use of the Premises as reflected in this Lease; (ii) to restore and reconstruct the Improvements, and in that process make any modifications otherwise required by changes in Laws, following any damage or destruction thereto (whether or not required to do so under Article VII); and/or (iii) to make changes, revisions or improvements to the

Improvements for uses consistent with the County approved use of the Premises as reflected in this Lease, including as to the golf course, fairways, greens, ponds and golf cart paths, parking areas, landscaping, signage and exterior visible elements of the Improvements to maintain them in good and clean condition, to the extent that such changes, revisions or improvements do not increase or reduce the square footage of the buildings and structures (except for minor variations in the square footage) absent prior written consent of the Chief Real Estate Officer. Tenant shall perform all work authorized by this Section at its sole cost and expense and in compliance with all applicable Laws in all material respects.

6.3 **All Other Construction, Demolition, Alterations, Improvements and Reconstruction.**

Following the completion of construction of the Initial Improvements, and except as specified in Sections 6.1 and 6.2, any construction, alterations, additions, repairs, maintenance, demolition, improvements or reconstruction of any kind shall require the prior written consent of the County, which consent shall not be unreasonably conditioned, delayed or withheld 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: (i) make all alterations, improvements, demolitions, additions or repairs to the Premises and/or the Improvements required to be made by any law, ordinance, statute, order or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; (ii) observe and comply in all material respects with all Laws now or hereafter made or issued respecting the Premises and/or the Improvements (subject to Tenant's right to contest such Laws in accordance with Section 4.4); (iv) indemnify, defend and hold County, the Premises and the Improvements free and harmless from any and all liability, loss, damages, fines, penalties, claims, actions, and regulatory orders resulting from Tenant's failure to comply with and perform the requirements of this Article VI.

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

## ARTICLE VII DAMAGE AND RESTORATION

7.1 **Damage and Restoration.** In the event the whole or any part of the Improvements shall be damaged or destroyed by fire or other casualty, damage or action of the elements which is covered by insurance required to be carried by Tenant pursuant to this Lease or in fact caused by Tenant, at any time during the Term, Tenant shall with all due diligence, at Tenant's sole cost and expense, repair, restore and rebuild the Improvements on substantially the same plan and design as existed immediately prior to such damage or destruction and to substantially the same condition that existed immediately prior to such damage, with any changes made by Tenant to comply with then applicable Laws and with any upgrades or improvements that Tenant may determine in its reasonable discretion. If Tenant desires to change the use of the Premises following such casualty, then Tenant may make appropriate changes to the Premises to accommodate such changed use after approval of such change of use by the County pursuant to Article IV above. This Article shall not apply to cosmetic damage or alterations.

7.2 **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.

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

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

7.5 **Exclusive Remedies.** Notwithstanding any destruction or damage to the Premises and/or the Improvements, Tenant shall not be released from any of its obligations under this Lease, except to the extent and upon the conditions expressly stated in this Article VII. County and Tenant hereby expressly waive the provisions of California Civil Code Sections 1932(2) and 1933(4) with respect to any damage or destruction of the Premises and/or the Improvements and agree that their rights shall be exclusively governed by the provisions of this Article 7.

## **ARTICLE VIII INSURANCE AND INDEMNITY**

### **8.1 Tenant Insurance Requirements.**

8.1.1. Tenant agrees to purchase all required insurance at Tenant's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this Lease. It shall constitute an Event of Default hereunder if Tenant's insurance coverage is terminated and not reinstated within ten (10) business days after notice from County of such termination.

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

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

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

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 zero (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 the County Executive Office (CEO)/Office of Risk Management.

If the Tenant fails to maintain insurance acceptable to the County for the full term of this Lease, it shall be an Event of Default hereunder and, in addition to any other remedies set forth herein, the County may obtain such insurance at Tenant's cost and Tenant shall reimburse the County within thirty (30) days of written demand for any such insurance premiums.

8.1.6. **Qualified Insurer.**

(a) The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and 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 CEO /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:

**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.**

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Environmental/Pollution Liability	\$1,000,000 per claims made or per occurrence
Commercial Property Insurance on an “All Risk” or “Special Causes of Loss” basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision.

The following endorsements must be submitted with the Certificate of Insurance:

(a) The Commercial General Liability policy and the Environmental/Pollution Liability policy shall contain an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds.

(b) The Commercial General Liability policy and the Environmental/Pollution Liability policy shall contain a primary non-contributing endorsement evidencing that the Tenant’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

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.

All insurance policies required by this contract shall give the County of Orange thirty (30) days' notice in the event of cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

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

Insurance certificates should be forwarded to the County address provided in the Clause (*Notices*) below or to an address provided by Chief Real Estate Officer. Tenant has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

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

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

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

8.2 **Indemnification**. Tenant hereby releases and waives all claims and recourse against County, 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 claims arising from the concurrent active or sole negligence of County, its officers, agents, employees and contractors. Tenant hereby agrees to indemnify, defend (with counsel approved in writing by County), and hold harmless, County, its 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 the operation or maintenance of the Premises, and/or Tenant's exercise of the rights under this Lease, except for liability arising out of the concurrent active or sole negligence of County, its elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. Tenant shall assume liability for any and all notices of violation, fees, fines, orders or requirements imposed by any regulatory agency arising from the operation or maintenance of the Premises and/or Tenant's exercise of the rights under this Lease, and shall indemnify County and assume liability for County's costs associated with any such regulatory action, including those related to surface condition, groundwater or air quality. If County is named as co-defendant in a lawsuit, Tenant shall notify County of such fact and shall represent County in such legal action unless

County undertakes to represent itself as co-defendant in such legal action, in which event, Tenant shall pay to County its litigation costs, expenses, and attorneys' fees. If judgment is entered against County and Tenant by a court of competent jurisdiction because of the concurrent active negligence of County and Tenant, County and Tenant agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

8.3 **Damage to Tenant's Premises.** County shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Improvements caused by or resulting from any peril which may affect the Premises or Improvements, including fire, steam, electricity, gas (including Landfill 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. Tenant assumes the risks of operating in proximity to the Former Coyote Canyon Landfill, and County shall not be liable for any injury, damage, loss of income, or suspension of business incurred by Tenant, its employees, invitees or customers, due to any peril related to the landfill or maintenance and operation of its environmental infrastructure improvements, except to the extent of the sole negligence or willful misconduct of County or OCWR in the performance of such maintenance or operation.

## ARTICLE IX CONDEMNATION

### 9.1 **Definitions.**

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

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

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

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

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

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

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

9.1.8. “**Notice of Intended Condemnation**” means any notice or notification on which a reasonably prudent person would rely and which he would interpret as expressing an existing intention of Condemnation as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to service of a Condemnation summons and complaint on a party hereto. The notice is considered to have been received when a party receives from the Condemnor a notice of intent to condemn, in writing, containing a description or map reasonably defining the extent of the Condemnation.

## 9.2 **Notice and Representation.**

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

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

## 9.3 **Total or Substantial Taking.**

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

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

9.3.3. **Early Delivery of Possession.** Tenant may continue to occupy the Premises and Improvements until the Condemnor takes physical possession. At any time following Notice of Intended Condemnation, Tenant may in its sole discretion elect to relinquish possession of the Premises to County before the actual Taking. The election shall be made by notice declaring the election and agreeing to pay all

Rent required under this Lease to the Date of Taking. Tenant's right to apportionment of or compensation from the Award shall then accrue as of the date that the Tenant relinquishes possession.

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

#### 9.4 **Partial Taking.**

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

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

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

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

## **ARTICLE X ASSIGNMENT AND ENCUMBERING**

10.1 **General.** Prior to the Stabilization Date, and except as otherwise provided herein (and except that Tenant may acquire a Leasehold Mortgage as set forth in Article XVII), Tenant shall not assign (including an assignment by operation of law), transfer or encumber this Lease, or any interest therein, nor sublet the Premises or Improvements. After the Stabilization Date, Tenant may assign or sublet this Lease without County's consent to a Permitted Transferee (as defined below). All other assignments and transfers shall require the consent of County, which may not be unreasonably withheld, conditioned or delayed. Pursuant to Section 3.5, 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 XVII and transfers to a Permitted Transferee and to permitted Subleases under Section 10.8 below, any mortgage, pledge, hypothecation, encumbrance, transfer, sublease of Tenant's entire Lease interest or assignment (hereinafter in this section referred to collectively as "**Transfer**") of Tenant's interest in the Premises, or assignment of any

part or portion thereof, shall first be approved in writing by Chief Real Estate Officer, 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 County shall constitute an Event of Default.

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

10.1.3. Should County consent to any Transfer, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease nor be construed as County's consent to any further Transfer. Such terms, covenant or conditions shall apply to each and every Transfer hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

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

10.2 **Leasehold Mortgage Only**. Under no circumstances may Tenant mortgage, encumber or hypothecate County's Fee Interest.

10.3 **Permitted Transfers**. Following the Stabilization Date, County's consent shall not be required to any of the following Transfers (each party to whom a Permitted Transfer may be made is a "**Permitted Transferee**"): (i) an Excluded Transfer, or (ii) any encumbrance to a Leasehold Mortgagee, or (iii) permitted Subleases under Section 10.8 below; provided, however, that in each case (1) Tenant shall notify County of such Transfer at least sixty (60) days prior to the consummation of such Transfer, and shall provide County with complete information regarding the transferee and information evidencing that the Transfer falls within the parameters of this paragraph, and (2) if such Transfer involves an assignment of Tenant's rights under this Lease, Tenant or such transferee shall provide County with a written assumption of Tenant's obligations under this Lease executed by such transferee in a form approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed in the event that the assignment is consistent with the terms of this Lease.

10.4 **Transfer Procedure**. If Tenant desires at any time to enter into a Transfer for which County's consent is required hereunder, Tenant shall provide County with written notice ("**Transfer Notice**") at least ninety (90) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name and address of the proposed transferee, (ii) the nature of the Transfer (*i.e.*, whether an assignment, sublease or encumbrance), (iii) the proposed effective date of the Transfer, (iv) income statements and "fair market" balance sheets of the proposed transferee for the two (2) most recently completed fiscal or calendar years (provided however, if the proposed transferee is a newly formed entity and has not been in existence for such two (2) year period, the financial statements submitted shall be those of its principals), (v) a detailed description of the proposed transferees qualifications and experience that demonstrates the transferee meets the criteria for a Tenant as established by this Lease, (vi) a bank or other credit reference, and (viii) whether any Value Appreciation Rent is due pursuant to Section 3.5, above. Thereafter, Tenant shall furnish such

supplemental information as County may reasonably request concerning the proposed transferee. County shall, no later than ninety (90) days after County's receipt of the information specified above, deliver written notice to Tenant which shall (i) indicate whether County gives or withholds its consents to the proposed Transfer, and (ii) if County withholds its consent to the proposed Transfer, setting forth a detailed explanation of County's grounds for doing so. If County consents to a proposed Transfer, then Tenant may thereafter effectuate such Transfer to the proposed transferee based upon the specific terms of the County's approval and after execution of a consent to assignment, in a form approved by the County.

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. Any transferor of any interest in this Lease or the Premises or Improvements shall remain liable for all obligations hereunder and shall be subject to the terms and provisions of this Lease.

10.6 **Conditions of Certain County Approvals.**

10.6.1. County may withhold consent to a Transfer at its and absolute sole discretion if any of the following conditions exist:

- (a) An Event of Default exists under this Lease.
- (b) The prospective Transferee has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.
- (c) The Stabilization Date has not passed.
- (d) Any construction required of Tenant as a condition of this Lease has not been completed.
- (e) All the material terms, covenants, and conditions of the Transfer that are relevant to the County approval of the Transfer have not been revealed in writing to County.
- (f) The processing fee required by County and set out below has not been paid to County by delivery of said fee to County.
  - (1) A fee of \$3,000 shall be paid to County for processing each consent to Transfer submitted to County as required by this Lease. This processing fee shall be deemed earned by County when paid and shall not be refundable.
  - (2) If a processing fee has been paid by Tenant for another phase of the same transaction, a second fee will not be charged. Such fee shall be increased every ten years during the Lease term based on any increase in the CPI Index. Under no circumstances shall the fee decrease.

10.7 **Renter Subleases.** The Parties recognize that the Tenant will be subleasing space to certain renters ("Sublessees") for space within the Premises or portions of the Premises for stand-alone sub-ground leases (each a "Sublease"). Sections 10.7.2 through and including 10.7.5 below shall only apply to Sublessees of commercial or retail premises within the Project and have no application to Sublessees of residential premises within the Project.

10.7.1. Tenant may enter into subleases with Sublessees of residential premises within the Project on terms and conditions that are satisfactory to Tenant and without the consent of County.

10.7.2. Tenant may enter into subleases with Sublessees of commercial or retail premises within the Project to Sublessees that have been approved in advance by County in accordance with the requirements of this Section; provided, however, Tenant shall not be required to obtain County's prior approval for any Sublease (or series of Subleases to one Sublessee or affiliates of one Sublessee) if (i) such Sublease or series of Subleases covers no more than seven thousand five hundred (7,500) rentable square feet of the Improvements, (ii) the term of the such Sublease or series of Subleases, including Sublessee options to extend, does not exceed ten (10) years, and (iii) the Sublease or series of Subleases conforms, in all material respects, with the form of sublease previously approved by Chief Real Estate Officer in writing. Prior to entering into any Sublease for which Tenant requires Chief Real Estate Officer's prior written approval pursuant to this Section, Tenant shall provide Chief Real Estate Officer with a Sublease, letter of intent or similar term sheet, signed by Tenant and the proposed Sublessee, and setting forth the terms upon which such Sublessee has agreed to sublease space within the Premises from Tenant. The approval by the Chief Real Estate Officer shall not be unreasonably withheld, conditioned or delayed and shall be given (or not) within thirty (30) days of receipt thereof. If Chief Real Estate Officer disapproves of a proposed Sublease and/or Sublessee, then he shall provide Tenant with a written notice of disapproval setting forth specific reasons for such disapproval.

10.7.3. Tenant shall cause all Subleases to include at a minimum:

- (a) an express acknowledgment by the Sublessee that the Sublease is subject and subordinate to this Lease, and that the Sublessee is bound by all applicable provisions of this Lease, and that the County is not responsible for any performance or breach by Tenant, including the return of any Security Deposit.
- (b) Sublessee shall not prepay rent in excess of thirty (30) days, unless approved by any Leasehold Mortgagee and County.
- (c) Sublessee shall maintain insurance naming County as an additional insured to Sublessee's liability policies.
- (d) Sublessee's obligations with respect to Hazardous Materials will be consistent with those of Tenant under this Lease, including the requirement that Sublessee indemnifies County and County for any failure of Sublessee to comply with such obligations.
- (e) Sublessee shall agree to attorn to County pursuant to Section 10.8 below.
- (f) The Sublease shall specifically provide for Tenant's (in its capacity as sublessor) remedies pursuant to California Civil Code Sections 1951.2 and 1951.4 without modifications detrimental to Tenant.
- (g) The term of any Sublease shall not extend beyond the expiration of the Term of this Lease.

10.7.4. All Subleases must be for Permitted Uses, and shall expressly provide that they are subject and subordinate to this Lease, and the Sublessee is bound by all provisions of this Lease applicable to the use and occupation of the portion of the Premises subleased to Sublessee.



10.7.5. Except pursuant to Subleases as provided in this Section, Tenant shall not suffer or permit the use or occupancy of all or any portion of the Premises by any person or entity, without the prior approval of County, which shall not be unreasonably withheld, conditioned, or delayed.

10.7.6. If requested in writing by County, Tenant will provide County with a copy of any rules, regulations or other standards of operation developed by Tenant and distributed to Sublessees and Tenants.

10.7.7. If Tenant obtains any security deposits under any sublease, all such funds shall be kept in a separate deposit account (and not comingled with any other accounts of Tenant) and shall be used only for the purposes set forth in the applicable sublease governing the use of such deposit.

10.8 **Attornment**. All subleases entered into by Tenant will be subject to all terms and conditions of this Lease, and each sublease will specifically state this fact. If this Lease terminates for any reason, all Sublessees will recognize County as the successor to Tenant under their respective subleases, and will render performance thereunder to County as if the sublease were executed directly between County and the Sublessees; provided, however, County agrees that, upon such termination, so long as a Sublessee has entered into an approved form sublease and is not in default under its sublease, County agrees to be bound by all of the terms and conditions of each such sublease. All subleases entered into by Tenant will contain the following provision:

If the underlying Lease and the leasehold estate of tenant thereunder is terminated for any reason, Sublessee will attorn to the County and recognize County as lessor under this sublease; provided, however, County agrees that so long as Sublessee has entered into an approved form sublease and the Sublessee is not in default under the sublease, County agrees to be bound by all the terms and conditions of this sublease.

In the event this Lease is terminated for any reason, all Sublessees will be liable to County for their payment of rents and fees and will be subject to all the provisions and terms contained in their subleases.

In the event of a termination of this Lease as a result of the default of Tenant hereunder, County hereby agrees that any sublease or other occupant of the Improvements now or hereafter located on the Premises shall not be disturbed so long as any such sublease or other occupant is not then in default under the terms of the applicable sublease or other agreement after the expiration of applicable notice and cure periods. At Tenant's request, County hereby agrees to provide a non-disturbance agreement in the form attached hereto as **Exhibit F** to any such subtenant or occupant within five (5) business days of written request therefor.

10.9 **Conditions Deemed Reasonable**. Tenant acknowledges that each of the conditions to a Transfer, and the rights of County set forth in this **Article X** in the event of a Transfer is a reasonable restriction for the purposes of California Civil Code Section 1951.4.

## **ARTICLE XI DEFAULT AND REMEDIES**

11.1 **Event of Default**. Each of the following events shall constitute an "**Event of Default**" by Tenant:

11.1.1. **Miscellaneous Events of Default**. Any event or circumstance expressly referenced to elsewhere in this Lease as an "Event of Default," or which the violation of is specified as a default.

11.1.2. **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 three (3) business days after written notice thereof from County to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure §1161 *et seq.*

11.1.3. **Failure to Perform.** The failure or inability by Tenant to observe or perform any of the provisions of this Lease to be observed or performed by Tenant, other than specified in Sub-Sections 11.1.1 or 11.1.3 herein, where such failure shall continue for a period of thirty (30) days after written notice thereof from County to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure 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 thirty (30) 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 thirty (30) days, and thereafter diligently prosecutes such cure to completion.

11.1.4. **Abandonment.** The abandonment (as defined in California Civil Code Section 1951.3) or vacation of the Premises by Tenant.

11.1.5. **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;
- (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 County hereunder or by law; provided, it shall be lawful for the County to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and Tenant and its creditors (other than County) shall have no further claim thereon or hereunder.

11.2 **County's Remedies.** If an Event of Default occurs and remains uncured as prescribed in this Lease, then subject to the rights of any Leasehold Mortgagees under Article XVII below, if any, County shall have the following remedies in addition to all rights and remedies provided by law or equity to which County may resort cumulatively or in the alternative:

11.2.1. **Termination of Lease.** County shall have the right to terminate this Lease and all rights of Tenant hereunder including Tenant's right to possession of the Premises. In the event that County shall elect to so terminate this Lease then County may recover from Tenant:

- (a) The worth at the time of award of the unpaid 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 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 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 County for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; plus

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

The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in Sub-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 Sub-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 ten percent (10%) per annum.

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 all of County's rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that County may at any time thereafter elect to terminate this Lease for such previous breach by notifying Tenant in writing that Tenant's right to possession of the Premises has been terminated.

11.2.3. **Removal of Personal Property Following Termination of Lease.** County shall have the right, following a termination of this Lease and Tenant's rights of possession of the Premises under Section 11.2.1 above, to re-enter the Premises and, subject to applicable Law, to remove Tenant's personal property from the Premises, but not the personal property of any Sublessees as to whom County has provided recognition and non-disturbance protection pursuant to Sections 10.7 and 10.8. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant in accordance with applicable California law.

11.3 **County's Right to Cure Tenant Defaults.** If Tenant shall have failed to cure, after expiration of the applicable time for curing, a particular default under this Lease, County may at its election, but is not obligated to, make any payment required of Tenant under this Lease or perform or comply with any term, agreement or condition imposed on Tenant hereunder, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Interest Rate from the date of payment, performance or compliance until reimbursed shall be deemed to be additional rent payable by Tenant on

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

11.4 **County's Default.** County shall not be considered to be in default under this Lease unless Tenant has given County written notice specifying the default, and either (i) as to monetary defaults, County has failed to cure the same within ten (10) business days after written notice from Tenant, or (ii) as to nonmonetary defaults, County has failed to cure the same within thirty (30) days after written notice from Tenant, or if the nature of Tenant's nonmonetary default is such that more than thirty (30) days are reasonably required for its cure, then such thirty (30) period shall be extended automatically so long as County commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion. Tenant shall have no right to offset or abate alleged amounts owing by County under this Lease against Monthly Rent owing by Tenant under this Lease.

11.5 **Remedies Cumulative.** All rights and remedies of County contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and County shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

11.6 **Waiver by County.** No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by Tenant hereunder. The acceptance by County of rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by Tenant of any provision thereof, other than the failure of Tenant to pay the particular rent or sum accepted, regardless of County's knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of County's right to exercise any remedy available to County by virtue of such breach or default. No act or thing done by County or County's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by County.

11.7 **Waiver by Tenant.** Tenant's waiver of any breach by County of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

11.8 **Interest.** Any installment or rent due under this Lease or any other sums not paid to County when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

11.9 **Tenant Covenants and Agreements.** All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expenses and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by Tenant, then in addition to any other remedies provided herein, County may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by County on Tenant's behalf shall not give rise to any responsibility of County to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by County in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by County shall be deemed to be

additional rent hereunder and shall be paid by Tenant with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

**11.10 Liquidation Damages (Violation and Amount)**. In addition to all other remedies available to County for violations or breaches of this Lease, County shall have the right to demand and Tenant agrees to pay liquidated damages in the sum of One Thousand (\$1,000) of the Security Deposit required by this Lease for each day Tenant violates the requirements of the following clauses of this Lease:

LEASE CLAUSE:

Article IV USE OF PREMISES

Article XV RECORD AND ACCOUNTS

Section 3.9 SECURITY DEPOSIT

Article V CONSTRUCTION OF IMPROVEMENTS

Article VI REPAIRS, MAINTENANCE, ADDITIONS AND RECONSTRUCTION

Article VIII INSURANCE AND INDEMNITY

Such damages shall not be payable by the Tenant for any period preceding written notice to the Tenant from the Chief Real Estate Officer that a violation exists.

## **ARTICLE XII HOLDING OVER**

If Tenant holds over after the expiration or earlier termination of the Term hereof without the express written consent of County, Tenant shall become a Tenant at sufferance only, at a monthly rental rate equal to the greater of (i) one hundred fifty percent (150%) of the last Monthly Rental in effect, or (ii) the then fair market rental value of the Premises, and otherwise subject to the terms, covenants and conditions herein specified. Acceptance by County of Rent after such expiration or earlier termination shall not result in an extension of this Lease. If Tenant fails to surrender the Premises and the Improvements upon the expiration of this Lease despite demand to do so by County, Tenant shall indemnify and hold County harmless from all loss or liability, including any claim made by any succeeding tenant founded on or resulting from such failure to surrender and any attorneys' fees and costs incurred by County.

## **ARTICLE XIII ESTOPPEL CERTIFICATES**

At any time and from time to time, within ten (10) business days after written request by either County or Tenant (the "**requesting party**"), the other party (the "**responding party**") shall execute, acknowledge and deliver an estoppel certificate addressed to the requesting party, and/or to such other beneficiary (as described below) as the requesting party shall request, certifying (i) that this Lease is in full force and effect, (ii) that this Lease is unmodified, or, if there have been modifications, identifying the same, (iii) the dates to which Rent has been paid in advance, (iv) that, to the actual knowledge of the responding party, there are no then existing and uncured defaults under the Lease by either County or Tenant, or, if any such defaults are known, identifying the same, and (v) any other factual matters (which shall be limited to the actual knowledge of the

responding party) as may be reasonably requested by the requesting party. Such certificate may designate as the beneficiary thereof the requesting party, and/or any third party having a reasonable need for such a certificate (such as, but not limited to, a prospective purchaser, transferee or lender).

#### **ARTICLE XIV FORCE MAJEURE**

Unless otherwise specifically provided herein, the period for performance of any nonmonetary obligation by either party shall be extended by the period of any delay in performance caused by Acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of electric power, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency, weather that could not have reasonably been anticipated, changes in the Laws which would prevent the Premise from being operated in accordance with this Lease, or other reasons beyond the reasonable control of County, Tenant, or their respective agents or representatives, and specifically as to unreasonable delays caused by County in connection with delays in granting approvals or permits (collectively, “**Force Majeure Events**”). In no event, however, shall Force Majeure Events include the financial inability of a party to this Lease to pay or perform its obligations hereunder. Further, nothing herein shall extend the time for performance of any monetary obligation owing under this Lease (including Tenant’s obligation to pay Rent owing hereunder).

#### **ARTICLE XV RECORDS AND ACCOUNTS**

15.1 Records. Tenant shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

15.1.1. Except as otherwise provided herein, all retail sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded by Tenant at the beginning and end of each business day.

15.1.2. In the event of admission charges or rentals, Tenant shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

15.1.3. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided said system is approved by Auditor-Controller.

15.2 The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by Tenant, provided Tenant notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to Tenant’s selection in writing within sixty days of Tenant’s written notification.

15.2.1. In the event Tenant fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

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

15.2.3. Once an accounting year is established, it shall be continued through the term of the lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the Tenant or County, and because of mere convenience or inconvenience.

15.3 Financial Statements. Within ninety (90) days after the end of each accounting year, Tenant shall at his own expense submit to Auditor-Controller a balance sheet and income statement prepared by a Certified Public Accountant who is a member of AICPA and the California Society of CPAs, reflecting business transacted on or from the Premises during the preceding accounting year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of Tenant's records as reported to the United States of America for income tax purposes. At the same time, Tenant shall submit to Auditor-Controller a statement certified as to accuracy by a Public Accountant who is a member of AICPA and the California Society of CPAs, wherein the total Gross Receipts for the accounting year are classified according to the categories of business established for percentage rent and listed in Section 3.4.2(d) and for any other business conducted on or from the Premises. Tenant shall provide County with copies of any Certified Public Accountant's ("CPA") management letters prepared in conjunction with their audits of Tenant's operations from the Premises. Copies of management letters shall be provided directly to County by the CPA at the same time Tenant's copy is provided to Tenant.

15.3.1. Tenant acknowledges its understanding that any and all of the Financial Statement submitted to the County pursuant to this Lease become Public Records and are subject to public inspection pursuant to §§ 6250 *et. seq.* of the California Government Code.

15.3.2. All Tenant's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Premises shall be kept and made available at one location within the limits of the County of Orange. County shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received.

15.3.3. Auditor-Controller, upon request of Tenant and at said Auditor-Controller's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided Tenant shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for Auditor-Controller to send a representative to audit said books and records. Said right shall not be exercised by Auditor-Controller more than once each accounting year.

15.3.4. The full cost of said audit, as determined by Auditor-Controller, shall be borne by Tenant if either or both of the following conditions exist:

(a) The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by Tenant in accordance with this Lease and the rent due as determined by said audit;

(b) Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section 15.1 "Records" above. The adequacy of records shall be determined at the sole discretion of Auditor-Controller.

Otherwise, County shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

15.3.5. Upon the request of Auditor-Controller, Tenant shall promptly provide, at Tenant's expense, necessary data to enable County to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to Tenant's use of the Premises. Such data shall include, if required, a detailed breakdown of Tenant's receipts and expenses.

15.3.6. In addition to any other remedies available to County at law or in equity or under this Lease, in the event the Tenant fails to maintain and keep books, records, and accounts from the Premises and/or source documents relating thereto, or to make the same available to County for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to County regarding gross sales as required by this Lease, County, at County's option, may:

(a) Perform such examinations, audits, and/or investigations itself or through agents or employees as County and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by Tenant under this Lease and any and all costs and/or expenses incurred by County in connection therewith shall be promptly reimbursed to County by Tenant upon demand.

(b) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by Tenant in business transactions upon or from the Premises, and, at County's option, maintain personnel on the Premises to observe and/or record such sales during Tenant's business hours, or from time to time, all at Tenant's sole cost and expense and, in such event, Tenant shall promptly reimburse County for any and all costs incurred by County in connection therewith; and/or

(c) Require that Tenant pay percentage rents based on County's best good faith estimate of Tenant's gross receipts from business operations conducted on or from the premises and any such determination made by County shall be conclusive and binding upon Tenant.

15.3.7. The above costs payable by Tenant shall include reimbursement to County of County-provided services at such rates as County may from time to time, in good faith, establish for such services. In the case of services provided by County's employees, such rates shall be sufficient to reimburse County for employees' salaries, including employee taxes and benefits and County's overhead or, at County's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by County, if engaged by County to perform such services.

## **ARTICLE XVI**

### **OPERATIONAL OBLIGATIONS OF TENANT**

#### **16.1 Standards of Operation.**

16.1.1. Tenant shall operate the Premises in a manner reasonably comparable to other comparable facilities or businesses within the County of Orange. Tenant shall at all times during the Term



provide adequate security measures to reasonably protect persons and property on the Premises, including a patrol of all areas in the Premises for the purpose of preserving order and preventing theft, vandalism, or other improper or unlawful use of the Premises or any of the facilities.

16.1.2. The ultimate purpose of this Lease is to provide a public 18-hole golf course and related facilities and/or such other facilities and improvements as are approved for the Premises by the County and the City of Newport Beach. Accordingly, Tenant covenants and agrees to operate said Premises fully and continuously to accomplish said purposes.

16.1.3. The facilities on the Premises shall be operated during normal business hours, subject to any temporary interruptions in operations or closures due to ordinary maintenance and repair and any Force Majeure Event, defined in Article XIV below.

16.2 **Protection of Environment**. Tenant shall take all reasonable measures available to:

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

16.2.2. 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.

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

16.2.4. 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. 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.

16.2.5. County may enter the Premises and/or review Tenant records at any time to assure that activities conducted on the Premises comply with the requirements of this Lease and any applicable Laws. In the event of a default or an emergency related to the Landfill Gas system, County may enter upon the Premises to address such default or emergency at such time and under such circumstances as it deems necessary in its sole discretion.

16.2.6. Tenant will provide County with a 30-day review and comment period on all plans, designs and specifications of the site development prior to commencing construction.

16.2.7. Tenant shall be solely responsible for all costs associated with maintaining the Premises subject to the Post Closure Maintenance Plan jointly developed by County and OCWR with input from Tenant pursuant to the Option Agreement (the "PCMP"), including any reasonable future amendments or modifications thereto. If any damage to the Landfill Final Cover or Collection System developed by County and OCWR with input from Tenant pursuant to the Option Agreement occurs as a direct result of Tenant operations, maintenance or repair of Tenant's Improvements, Tenant shall reimburse County for any repair or replacement costs caused by any such damage.

16.2.8. If Tenant's use under this Lease causes the LEA, the RWQCB, or any other regulatory agency exercising jurisdiction over the Premises mandating that the Collection System be expanded or modified due to Landfill Gas migration, emissions, or contamination of groundwater underlying the Premises, Tenant will assume responsibility for any and all costs associated with any such Collection System expansion or modifications that may be required due to the change in land use. Notwithstanding its ownership and operation of the Collection System, County shall not be liable for any injury, damage, loss of income, or suspension of business incurred by Tenant or its subtenants, employees, invitees, customers, or any other person due to the maintenance and operation of these environmental infrastructure improvements.

16.2.9. In the event that the LEA, the RWQCB, or any other regulatory agency exercising jurisdiction over the Premises mandates by regulatory notice, directive or order that the Collection System must be expanded or modified, whether due to Landfill Gas contamination of groundwater underlying the Premises, or any other adverse environmental impact from Landfill Gas, County assumes full responsibility for such regulatory compliance, unless the impact is a result of on-site activities performed by Tenant, including PCMP implementation, insufficient Landfill Gas system design and installation, releases of materials associated with on-site activities, and/or construction or operation of Improvements.

16.2.10. A right of entry license agreement will be entered into between the parties to allow County and regulatory agencies within its jurisdiction to discharge their responsibilities on the Premises pursuant to the terms of this Lease.

16.2.11. Tenant acknowledges that the Premises is the site of a former landfill and as a result the land may be subject to differential settlement and generation of landfill gas. Tenant hereby assumes the risk of designing Tenant's Improvements to address any such settlement and landfill gas and agrees to indemnify and defend County and to hold County, its officers, employees, and contractors harmless from any loss, claims, liability, or costs arising out of or which may result from differential settlement, generation of landfill gas, or any other damage or liability arising as a result of Tenant's use of the former landfill.

16.2.12. Prior to initiating any Improvements, Tenant shall coordinate with United States Fish and Wildlife Service, California Department of Fish and Wildlife, and Nature Reserve of Orange County regarding the existing conservation easement for 122 acres of coastal sage scrub and compliance with California Department of Fish and Wildlife's NCCP requirements. Further, Tenant shall, upon request of County, provide to County written confirmation from any and all relevant governmental agencies that Tenant's plans and activities carried out pursuant to this Lease are in compliance with the NCCP. Tenant will assist County, if necessary, in providing access and information that may be necessary for any reporting requirements County may need to provide to assure all NCCP requirements are satisfied.

16.3 **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. 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 County 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 County in writing of the name of the Manager currently so employed as provided in Section 19.3 of this Lease.

16.4 **Policies and Procedures to be Established by Tenant.** Prior to the commencement of the Stabilized Period, Tenant shall submit to Chief Real Estate Officer proposed policies and procedures pertinent

to the operation of the Project and manner of providing the permitted services and uses required by this Lease (“**Policies and Procedures**”). Should Chief Real Estate Officer, upon review and conference with Tenant, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, Tenant, upon written notice from Chief Real Estate Officer, shall modify said schedules or procedures to the satisfaction of said Chief of Real Estate. Said Policies and Procedures shall include, but are not limited to, the following:

16.4.1. Tenant shall at all times retain active, qualified, competent, and experienced personnel to supervise Tenant’s operation and to represent and act for Tenant.

16.4.2. Tenant shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Tenant shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

16.4.3. Tenant shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public.

16.4.4. Tenant shall sell or provide or cause or permit to be sold or provided only high quality goods, wares, merchandise, food, beverages, and services.

16.4.5. Tenant shall keep the Premises adequately and properly lighted after daylight hours and at such other times as public safety or convenience requires.

16.4.6. Tenant shall establish an appropriate maintenance schedule for all public rest rooms on said Premises to be inspected for cleanliness and supplies several times each day and shall maintain the highest standards of cleanliness therein.

16.5 **Landfill Modifications**. Tenant shall comply with all laws and regulatory requirements, including but not limited to those related to the Natural Community Conservation Plan (NCCP) for the Central/Coastal Orange County Sub region and requirements related to the Premises as a closed Landfill, as well as coordinate as well as coordinate, as necessary, with any relevant regulatory agencies to uphold such regulatory requirements as to development, use and occupancy of the Premises. Tenant agrees that it will not construct Improvements or make any other changes to the Premises that adversely affect the effectiveness, capacity or design of any Landfill Gas Plans, PCMP, and/or any other County-approved environmental protections developed with input from Tenant pursuant to the Option Agreement prior to the Commencement Date without County approval. The County reserves the right to require Tenant to correct any material changes or modifications to the Premises that adversely affect the effectiveness, capacity or design of any Landfill Gas Plans, PCMP, or other environmental protections developed with input from Tenant pursuant to the Option Agreement prior to the Commencement Date, other than as expressly approved in writing by County which are not corrected by Tenant after written notice to Tenant and a reasonable opportunity for Tenant to correct such adverse changes or modifications.

16.6 **Disclosures**. Tenant will provide Environmental Deed Restrictions and Environmental Disclosure Statements (collectively “**Disclosures**”) to all future occupants who are located within the property. Tenant shall have no obligation to provide Disclosures to any person or entity located outside of the Premises.

16.6.1 Tenant will provide an Environmental Disclosure Statement that will be distributed to all future subtenants operating within the Premises. The County has the right to review and approve all

Environmental Disclosure Statements prepared by Tenant. Tenant will take all necessary steps to assure that the County has an opportunity to perform such a review, if the County so chooses, and that any and all Environmental Disclosure Statements are recorded with the County.

16.6.2 Tenant will include in the Environmental Deed Restriction language that holds each tenant within the Premises responsible for the proper maintenance and operation of commercial methane monitoring alarms and ensures that any improvements installed on the Premises to protect against Landfill Gas are not removed or otherwise modified so as to reduce their effectiveness. The County has the right to review and approve all Environmental Deed Restrictions prepared by or on behalf of Tenant.

16.6.3 The Chief Real Estate Officer shall have thirty (30) calendar days to review, approve or comment on the Disclosures, at no cost to Tenant. Thereafter, Tenant and County will have up to fifteen (15) calendar days to respond to and/or amend the Disclosures. If no comments are received by Tenant by the expiration of this period, it may proceed with the Disclosures as written.

16.6.4 The Parties understand that the law and custom for disclosure of hazards changes from time to time and that third parties, including but not limited to the California Department of Real Estate, the California Water Resources Control Board, the Regional Water Quality Control Board, Department of Toxic Substances Control, and insurance and title companies, may require changes to the Disclosures. The County shall have the opportunity to review any changes to Disclosures prior to the use of any revised language.

## **ARTICLE XVII**

### **LANDFILL GAS COLLECTION AND CONTROL SYSTEM**

17.1 **Regulatory Compliance is Paramount.** The Parties agree that compliance with applicable Law (including Landfill related compliance) is a material obligation of this Lease and shall take precedence over Tenant's operations, subject to the provisions of this Lease.

17.2 **County-owned Infrastructure.** The Premises are located on the closed Coyote Canyon landfill and contain County-owned infrastructure used to control LFG migration, LFG emissions, LFG odor, and non-methanogenic organic compound releases to the atmosphere, subsurface soil, and groundwater; collect and process condensate; deliver LFG to conversion and flare facilities to produce energy and/or comply with regulatory requirements and applicable Law (Collection System). Subject to Section 17.4, County will assume full responsibility for, and all costs associated with, the ownership, operation, maintenance, monitoring, and regulatory compliance obligations of the LFG Collection System.

17.2.1. Notwithstanding its ownership and operation of the Collection System, County shall not be liable for any injury, damage, loss of income, or suspension of business incurred by Tenant or its subtenants, employees, invitees, customers, or any other person due to the maintenance and operation of these environmental infrastructure improvements, except to the extent of the sole negligence or willful misconduct of County or OCWR in the performance of such maintenance or operation.

17.3 **Tenant Agrees to Cooperate with County.** In the event that Tenant's activities on the Premises results in changes to LFG generation, or other issues at the site that implicate County's ability to comply with applicable Law, Tenant agrees to cooperate with County in adjusting activities at the site to resolve the issue. (For example, if irrigation of playing surface or other landscape features results in increased LFG generation, surface ponding or impacts to groundwater quality, Tenant shall adjust its irrigation practices accordingly.)

17.4 **Collection System Alterations or Upgrades.** Tenant shall be financially responsible for LFG Collection System alterations or upgrades that may be required to meet the requirements of applicable Law which are required as a result of Tenant's Improvements or Tenant's activities on the Premises. Tenant's financial responsibility under this section include costs associated with the design, permitting and construction of necessary alterations or upgrades. County shall be listed as the "owner" and "operator" on any required Collection System permits. All Collection System alterations or upgrades will be performed by County.

17.5 **Regulatory Fines or Penalties.** Tenant shall be solely responsible for regulatory fines or penalties that may be imposed by regulatory bodies, if violations are the result of Tenant Improvements or Tenant's use under this Lease or its activities conducted on the Premises.

## ARTICLE XVIII LEASEHOLD MORTGAGES

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

18.1.1. "**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.

18.1.2. "**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.

18.1.3. "**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.

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

18.1.5. "**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 County under this Lease; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to County under this Lease.

18.2 **Tenant's Right to Encumber Leasehold Estate; No Right to Encumber County's Fee Interest.** Tenant shall not encumber the Leasehold Estate without the prior written consent of the Chief Real Estate Officer and then only with a Leasehold Mortgage that complies with the following requirements:

18.2.1. the principal balance of the debt secured by such Leasehold Mortgage(s) (as of the date recorded) shall not exceed (i) 80% of the costs of the Improvements if recorded during construction, or (ii) 80% of the Leasehold Estate Value if recorded after the Rent Commencement Date in each case, as determined in accordance with the appraisal report prepared for the applicable Leasehold Mortgage in connection with such Leasehold Mortgage(s);

18.2.2. the Leasehold Mortgage shall not encumber County's Fee Interest;

18.2.3. The Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of County hereunder, except as otherwise provided in this Lease;

18.2.4. Nothing in this Lease shall be construed so as to require or result in a subordination in whole or in part in any way of the County's Fee Interest to any Leasehold Mortgage, and:

18.2.5. 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.

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

18.4 **Notice and Cure Rights of Leasehold Mortgagees With Respect to Tenant Defaults.** County, upon delivery to Tenant of any notice of a default under this Lease or a matter as to which County may predicate or claim a default, 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). County shall accept any and all performance by or on behalf of any Leasehold Mortgagee(s), including by any receiver obtained by any Leasehold Mortgagee(s), as if the same had been done by Tenant. 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.

18.5 **Limitation on County's Termination Right.** If any Event of Default occurs and is continuing (and is not cured by any Leasehold Mortgagee under Section 1818.4 above) which entitles County to terminate this Lease, County shall have no right to terminate this Lease unless County shall notify each and every Leasehold Mortgagee who has complied with Section 1818.3 of County'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 County 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 18.6 shall apply.

18.5.1. Should any Event of Default under this Lease occur (other than an Event of Default relating to the non-payment of Rent), any Leasehold Mortgagee shall have sixty (60) days after receipt of written notice from County setting forth the nature of such Event of Default, within which to cure the Event of Default; provided that in the case of an Event of Default which cannot with due diligence be cured within such sixty-day (60) period, the Leasehold Mortgagee shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Leasehold Mortgagee has commenced the curing within such sixty (60) days and (ii) thereafter diligently prosecutes the cure to completion. If the Event of Default is such that possession of the Premises may be reasonably necessary to cure the Event of Default, the Leasehold Mortgagee shall have a reasonable additional time after the expiration of such sixty (60) day period within which to cure such Event of default, provided that (I) the Leasehold Mortgagee shall have fully cured any

Event of Default in the payment of any monetary obligations of Tenant under this Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations as and when the same are due and (II) the Leasehold Mortgagee shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings.

18.5.2. Any Event of Default under this Lease which is not susceptible to remedy by a Leasehold Mortgagee shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from County setting forth the nature of such Event of Default, or prior thereto, a Leasehold Mortgagee shall have acquired Tenant's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) such Leasehold Mortgagee shall have diligently prosecuted such proceedings to completion, and (iii) such Leasehold Mortgagee shall have fully cured all Events of Default relating to the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the Premises within such sixty (60)-day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, such Leasehold Mortgagee shall have performed all other obligations of Tenant hereunder as and when the same are due.

18.5.3. If a Leasehold Mortgagee is prohibited by any stay, order, judgment or decree issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings and said Leasehold Mortgagee diligently seeks release from or reversal of such stay, order, judgment or decree, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that the Leasehold Mortgagee shall have fully cured any Event of Default relating to the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same are due and prior to delinquency.

18.6 **Leasehold Mortgagee Foreclosure Period.** If any Leasehold Mortgagee gives to County the notice and makes the payment described in the last sentence of Section 18.5 above, then the following provisions shall apply:

18.6.1. If County's notice under Section 18.5 specified as the basis for County's election to terminate only monetary Events of Default, and Leasehold Mortgagee has fully paid the monetary amount designed by County in its notice, then such payment shall be deemed to have cured the Event of Default. If any remaining Event of Default specified in County's notice is continuing notwithstanding any such payment, then the date of termination specified in County's notice shall be extended for a period of twelve (12) months, provided that such Leasehold Mortgagee shall, during such twelve (12) month period:

- (a) pay or cause to be paid all Rent under this Lease as the same becomes due; and
- (b) continue (subject to any stay as described in Section 18.6.2 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 18.6.2 below) a judicial or nonjudicial foreclosure or other enforcement of remedies under its Leasehold Mortgagee.

18.6.2. The twelve (12) month period described in Section 18.6.1 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 18.6.1(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.

18.6.3. So long as any Leasehold Mortgagee is complying with Sections 18.6.1 and 18.6.2 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.

18.6.4. 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.

18.6.5. 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 County’s consent, shall have a one-time right to assign the Leasehold Estate to an assignee having a net worth equal to or greater than 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 County a written agreement assuming Tenant’s obligations under the Lease thereafter accruing. Any subsequent Transfers occurring after the one-time assignment permitted under this Section shall be subject to Article X.

## 18.7 Leasehold Mortgagee’s Right to New Lease.

18.7.1. 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, County shall give prompt notice thereof to any Leasehold Mortgagee of whom County has received notice pursuant to Section 18.3 above. Such Leasehold Mortgagee (subject to Section 18.8 below if more than one Leasehold Mortgagee then exists) shall then have the right, exercisable by written notice to County at any time within thirty (30) days following receipt of such notice, to require County to enter into a new lease of the Premises with such Leasehold Mortgagee, or its designee, which new lease (a “New Lease”) shall commence as of the date of such termination of this Lease and shall continue for the remainder of the scheduled term of this Lease, at the same Rent that is payable



under this Lease, and on the same terms, covenants, conditions and agreements that are contained in this Lease (including any extension options, purchase options and rights of first refusal, if any, provided for in this Lease), and subject to the rights of any residents under resident agreements or other subtenants then in valid occupancy of the Premises and Improvements and further subject to any then existing senior Leasehold Mortgagees, provided that, substantially concurrently with the delivery of such notice requiring County to enter into a New Lease, Leasehold Mortgage shall pay to County all Rent or any other amounts payable by Tenant hereunder which is then due and shall commence and proceed with diligence to cure all nonmonetary defaults under this Lease, other than those nonmonetary defaults which are personal to the foreclosed tenant and impossible for the Leasehold Mortgagee to remedy.

18.7.2. If such Leasehold Mortgagee elects to enter into a New Lease pursuant to Section 18.7.1 above, then County and the Leasehold Mortgagee (or its designee) shall promptly prepare and enter into a written New Lease, but until such written New Lease is mutually executed and delivered, this Lease shall be deemed to constitute the New Lease, as modified by this Section 18.7, and Leasehold Mortgagee (or its designee) shall, from and after the giving of notice pursuant to Section 18.7.1, (i) be entitled to possession of the Premises and to exercise all rights of Tenant hereunder, (ii) pay to County all Rent accruing under the New Lease as it becomes owing, and (iii) perform or cause to be performed all of the other covenants and agreements under the New Lease on Tenant's part to be performed. Further, at such time as the written New Lease is mutually executed and delivered, Leasehold Mortgagee (or its designee) shall pay to County its reasonable expenses, including reasonable attorneys' fees, incurred in connection with the termination of this Lease and with the preparation, execution and delivery of such written New Lease.

18.7.3. In the event that County receives any net income (*i.e.*, gross income less gross expenses on a cash basis), if any, from the Premises and Improvements during any period that County may control the same, then the tenant under the New Lease shall be entitled to an offset against the next Rent then owing under the New Lease in the amount of such net income received by County except to the extent that it was applied to cure any default of Tenant.

18.7.4. 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.

18.8 **Multiple Leasehold Mortgages.** If more than one Leasehold Mortgagee shall make a written request upon County for a New Lease in accordance with the provisions of Section 18.7, 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 18.7 18.8 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 County) shall have received endorsements or other assurances satisfactory to such senior Leasehold Mortgagees from their respective title insurers insuring that their respective senior Leasehold Mortgages (and any assignment of rents and other security instruments executed in connection therewith) will continue as a Leasehold Mortgage with respect to such New Lease in

the same manner and order of priority of lien as existed with respect to this Lease; and thereupon the leasehold estate of the new tenant under the New Lease shall be subject to the lien of each of the senior Leasehold Mortgages in the same manner and order of priority of lien as existed with respect to this Lease.

In the event that not all of the foregoing provisions shall have been satisfied by or with respect to any such junior Leasehold Mortgagee, the Leasehold Mortgagee next senior in priority to such junior Leasehold Mortgagee shall have paramount rights to the benefits set forth in Section 18.7 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, County may rely on the affidavit of the most senior Leasehold Mortgagee as to compliance by any junior Leasehold Mortgagee. County's obligation to enter into a New Lease with any junior Leasehold Mortgagee shall be subject to the receipt by County of evidence reasonably satisfactory to it that the conditions set forth in clauses (a), (b) and (c) in the paragraph immediately above in this Section have been satisfied with respect to each senior Leasehold Mortgagee.

The right of a senior Leasehold Mortgagee under Section 18.7 above to request a New Lease may, notwithstanding any limitation of time set forth above in this Section 18.7, 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 County of termination of this Lease as set forth in Section 18.7 above.

If a junior Leasehold Mortgagee shall fail or refuse to exercise the rights set forth in this Section 18.8, 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, County shall have no duty or obligation to resolve any disputes or conflicting demands between Leasehold Mortgagees. In the event of any conflicting demands made upon County by multiple Leasehold Mortgagees, County may (subject to any applicable court orders to the contrary) rely on the direction of the Leasehold Mortgagee whose Leasehold Mortgage is recorded first in time in the Official Records of the County, as determined by any national title company.

**18.9 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(b) following a casualty and in Section 9.4.3 following a condemnation). The handling and disbursement of any such proceeds used to repair or restore the Improvements to the Premises shall be subject to the requirements of any Leasehold Mortgage, so long as such proceeds are used towards repair or reconstruction of the Improvements to the Premises to the extent required by this Lease.

**18.10 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.

**18.11 No Waiver.** No payment made to County by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee

having made any payment to County pursuant to County's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

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

## **ARTICLE XIX BEST MANAGEMENT PRACTICES**

19.1 TENANT and all of TENANT's, subtenant, agents, employees and contractors shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems ("**Stormwater Drainage System**"), and to ensure that pollutants do not directly impact "**Receiving Waters**" (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

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

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

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

19.5 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.

19.6 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 with the requirements of this section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

## **ARTICLE XX**

### **GENERAL CONDITIONS & MISCELLANEOUS PROVISIONS**

20.1 **Nondiscrimination.** Tenant agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease.

20.2 **Taxes and Assessments.** Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that this Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly.

20.3 **Quitclaim of Interest upon Termination.** Upon termination of this Lease for any reason, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County excluding any of Tenants property, chattel, or improvements. Should Tenant fail or refuse to deliver the required deed to County, County may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of Tenant or those claiming under Tenant in and to the Premises.

20.4 **Public Records.** County acknowledges Tenant's contention that financial statements and records (not including Gross Receipts Statements) are intended to constitute corporate financial records, corporate proprietary information including trade secrets, and information relating to siting within the state furnished to a government agency by a private company for the purpose of permitting the agency to work with the company in retaining, locating, or expanding a facility within California, and shall be exempt from public disclosure as authorized by §6254.15 of the California Government Code. In the event that a public records act request is made for such financial statements and records (not including Gross Receipts Statements) and the County determines that he records must be turned over, the County will give Tenant fifteen (15) days written notice prior to turning over such records so that Tenant can take any necessary action. Tenant acknowledges that any other written information (other than the foregoing corporate financial statements and trade secrets) submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at the option of County, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code §6250, *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public, unless such information is exempt from disclosure pursuant to the applicable sections of the California Records Act.

20.5 **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.

20.6 **Payment Card Compliance.** Should Tenant conduct credit/debit card transactions in conjunction with Tenant's business with the County, on behalf of the County, or as part of the business that Tenant conducts on the Premises, Tenant covenants and warrants that it will during the course of such activities be Payment Card Industry Data Security Standard ("PCI/DSS") and Payment Application Data Security Standard ("PA/DSS") compliant and will remain compliant during the entire duration of its conduct of such activities. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant at a time when compliance is required hereunder, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption. Upon demand by County, Tenant shall provide to County written certification of Tenant's PCI/DSS and/or PA/DSS compliance.

20.7 **Right to Work and Minimum Wage Laws.**

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

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

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

20.8 **Declaration of Knowledge by Tenant.** Tenant warrants that Tenant has carefully examined this Lease and by investigation of the site and of all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and limitations affecting the construction of the Lease improvements and business practices required in the operation and management of the uses contemplated hereunder.

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

20.10 **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.

20.11 **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.

20.12 **Interpretation.** Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term “**Tenant**” shall include Tenant’s agents, employees, contractors, invitees, successors or others using the Premises with Tenant’s expressed or implied permission. In any provision relating to the conduct, acts or omissions of County, the term “**County**” shall include County’s agents, employees, contractors, invitees, successors or others using the Premises with County’s expressed or implied permission.

20.13 **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.

20.14 **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.

20.15 **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.

20.16 **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.

20.17 **Integration.** This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between County and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both County and Tenant. County and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

20.18 **Notices.** All notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be sent through the United States mail in the State of California, duly registered or certified, return receipt requested, with postage prepaid. If any notice is sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, County may also provide notices to Tenant by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.:

If to County:

County of Orange, CEO Real Estate  
333 W Santa Ana Blvd. 3<sup>rd</sup> Floor  
Santa Ana, CA 92701  
Attn: Thomas A. Miller, Chief Real Estate  
Officer  
Email: thomas.miller@ocgov.com

With a copy to:

OC Waste and Recycling  
601 North Ross Street  
Santa Ana, CA 92702  
Attn: Director

If to Tenant:

Tait Development LLC [or other Tait entity  
TBD]  
c/o Tait & Associates  
701 N. Parkcenter Drive, Santa Ana, CA 92705  
Attn: Trevor Tait  
Phone: 714-560-8653  
Email: [trevortait@tait.com](mailto:trevortait@tait.com)

With copy to:

Sean Matsler, Esq.  
Cox, Castle & Nicholson LLP  
3121 Michelson Drive, Ste. 200  
Irvine, CA 92612  
Phone: 949.260.4652  
[smatsler@coxcastle.com](mailto:smatsler@coxcastle.com)

20.19 **Brokers.** If Tenant has engaged a broker in this transaction pursuant to a separate agreement, Tenant shall be solely responsible for the payment of any broker commission or similar fee payable pursuant to such separate agreement. Tenant each hereby agree to indemnify and hold the County 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 County in connection with any claim or demand by a person or entity for any broker's, finder's or other commission or fee from the County in connection with the Tenant's entry into this Lease and the transactions contemplated hereby based upon any alleged statement or representation or agreement of the Tenant. No broker, finder or other agent of any party hereto shall be a third-party beneficiary of this Lease.

20.20 **No Partnership.** This Lease shall not be construed to constitute any form of partnership or joint venture between County and Tenant. County and Tenant mutually acknowledge that no business or

financial relationship exists between them other than as County and tenant, and that County is not responsible in any way for the debts of Tenant or any other party.

20.21 **Authorization.** County and Tenant (each, a “**signing party**”) each represents and warrants to the other that the person or persons signing this Lease on behalf of the signing party has full authority to do so and that this Lease binds the signing party. Concurrently with the execution of this Lease, each signing party shall deliver to the other a certified copy of a resolution of the signing party’s board of directors or other governing board authorizing the execution of this Lease by the signing party.

20.22 **Recording.** This Lease itself shall not be recorded, but in the event that the Tenant encumbers the leasehold as set forth in Article XVII, a memorandum hereof may be recorded in the form of **Exhibit E** attached hereto (the “**Memorandum**”). The Memorandum may be executed concurrently with this Lease and thereafter recorded in the Official Records of the County Recorder only after the Commencement Date of this Lease has occurred. Tenant shall be responsible for the payment of all charges imposed in connection with the recordation of the Memorandum, including, without limitation, any documentary transfer tax imposed in connection with this transaction and all recording fees and charges.

20.23 **Exhibits.** This Lease contains the following exhibits, schedules and addenda, each of which is attached to this Lease and incorporated herein in its entirety by this reference:

- Exhibit A: Legal Description of the Premises
- Exhibit A-1: Rendering of the Premises
- Exhibit B: Initial Improvements
- Exhibit C: Construction Schedule
- Exhibit D: Best Management Practices Fact Sheets
- Exhibit EE: Form of Memorandum of Lease
- Exhibit F: Form of Non-Disturbance Agreement

20.24 **Consent/Duty to Act Reasonably.** Except as otherwise expressly provided herein, whenever this Lease grants County or Tenant the right to take any action, grant any approval or consent, or exercise any discretion, County and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other party’s reasonable expectations concerning the benefits to be enjoyed under this Lease.

20.25 **Counterparts.** For the convenience of the parties to this Lease, this Lease may be executed in several original counterparts, each of which shall together constitute but one and the same agreement. Original executed pages may be assembled together into one fully executed document.

[Signatures On Following Pages]



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

APPROVED AS TO FORM:  
COUNTY COUNSEL

TENANT  
[TAIT TENANT ENTITY TBD]  
a California limited liability company

By: Michelle A. Hunt 9/14/19  
Deputy

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

Date \_\_\_\_\_

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

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

COUNTY

COUNTY OF ORANGE,  
a political subdivision of the State of California

\_\_\_\_\_  
Thomas A. Miller, Chief Real Estate Officer  
Orange County, California

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PREMISES**

[to be attached]

**EXHIBIT A-1**

**RENDERING OF THE PREMISES**

[County to provide]

## **EXHIBIT B**

### **INITIAL IMPROVEMENTS**

For purposes of the Lease, the “Initial Improvements” shall mean such of the following improvements and uses for the Property as are approved by the County under this Lease and the City of Newport Beach.

- 18-hole Golf Course;
- Practice Facility;
- Golf Clubhouse to accommodate of the golf course. Facilities shall include but not limited to a pro shop and rest room facilities;
- Landscape and irrigation improvements;
- Public drinking fountain;
- Adequate lighting for safety and security;
- Maintenance/repair area;
- Necessary mechanical, electrical, and plumbing installations;
- Adequate automobile parking designed to conform with the requirements of the County of Orange;
- Such other improvements as required to develop, maintain, and operate a successful 18-hole golf course with food and beverage services; or
- Such other improvements and uses as are acceptable to the City of Newport Beach which are in compliance with applicable Law.

**EXHIBIT C**  
**CONSTRUCTION SCHEDULE**

## **EXHIBIT D**

### **Best Management Practices (“BMPs”) Fact Sheets**

Best Management Practices can be found at <http://www.ocwatersheds.com/documents/bmp> 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://www.ocwatersheds.com/documents/bmp/industrialcommercialbusinessesactivities>

(which website may change from time to time):

[IC3 Building Maintenance](#)

[IC4 Carpet Cleaning](#)

[IC6 Contaminated or Erodible Surface Areas](#)

IC7. Landscape Maintenance

[IC9 Outdoor Drainage from Indoor Areas](#)

[IC10 Outdoor Loading/Unloading of Materials](#)

[IC12 Outdoor Storage of Raw Materials, Products, and Containers](#)

IC15. Parking and Storage Area Maintenance

[IC17 Spill Prevention and Cleanup](#)

[IC21 Waste Handling and Disposal](#)

[IC22 Eating and Drinking Establishments](#)

[IC23 Fire Sprinkler Testing/Maintenance](#)

[IC24 Wastewater Disposal Guidelines](#)

**EXHIBIT E**

**FORM OF MEMORANDUM OF LEASE**

**MEMORANDUM OF LEASE**

This is a Memorandum of Lease ("**Memorandum**") made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), and \_\_\_\_\_, ("**Tenant**"), residing at \_\_\_\_\_, upon the following terms:

1. **Lease.** The provisions set forth in a written lease between the parties hereto dated \_\_\_\_\_ ("**Lease**"), are hereby incorporated by reference into this Memorandum.

2. **Subject Premises.** The Premises which are the subject of the Lease are more particularly described as on Exhibit A, attached hereto

3. **Commencement Date of Lease.** The Lease shall be deemed to have commenced \_\_\_\_\_ as set forth within the terms of the Lease.

4. **Term.** The Term of the Lease shall be \_\_\_\_\_ years from the Commencement Date as stated in the written Lease. The initial term shall commence on the date hereof and terminate on \_\_\_\_\_. Tenant shall have the right to extend the term of the Lease by \_\_\_\_\_ extension periods of \_\_\_\_\_ years each or in any other such manner as prescribed in the Lease.

5. **Duplicate Copies** of the originals of the Lease are in the possession of the County and Tenant and reference should be made thereto for a more detailed description thereof and for resolution of any questions pertaining thereto. The addresses for County and Tenant are as follows:

COUNTY:

TENANT:

6. **Purpose.** It is expressly understood and agreed by all parties that the sole purpose of this Memorandum o is to give record notice of the Lease; it being distinctly understood and agreed that said Lease constitutes the entire lease and agreement between County and Tenant with respect to the Premises and is hereby incorporated by reference. The Lease contains and sets forth additional rights, terms, conditions, duties, and obligations not enumerated within this instrument which govern the Lease. This Memorandum is for information purposes only and nothing contained herein may be deemed in any way to modify or vary any of the terms or conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall control. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

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

**COUNTY:**

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

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

**TENANT:**

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

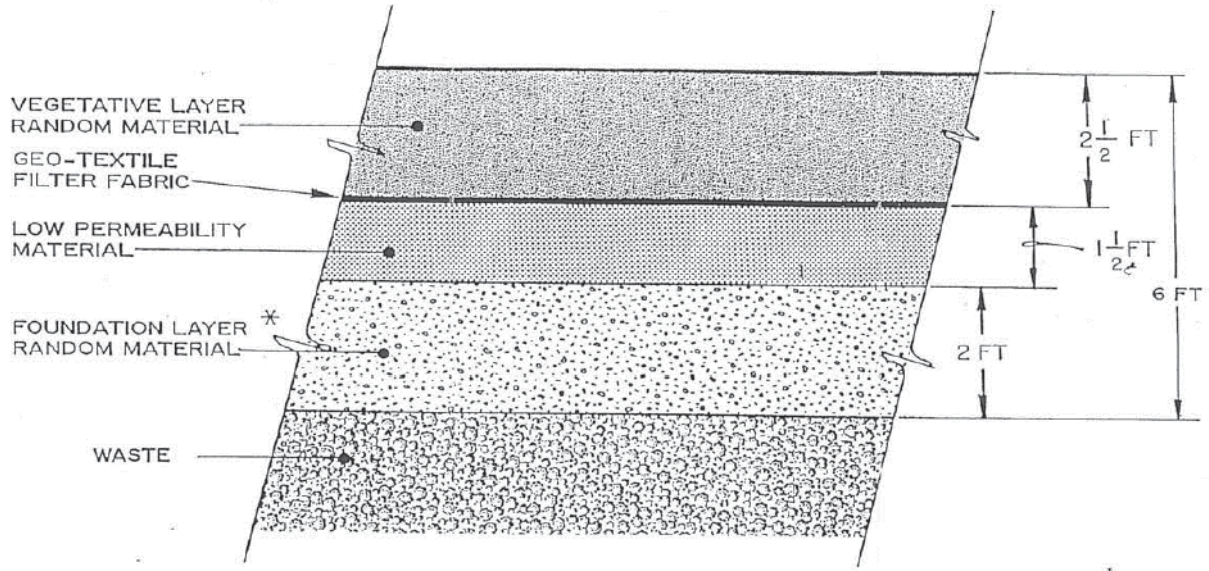
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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



**EXHIBIT F**






**NOTES :**

\* AN AVERAGE ONE FOOT OF FOUNDATION LAYER EXISTS AS LANDFILL INTERIM COVER. THEREFORE ONE FOOT OF ADDITIONAL RANDOM MATERIAL WAS REQUIRED .

IWMD DRAWING NO. CVR-1

NOT TO SCALE

 FLUOR DANIEL, INC.
 BRYAN A. STIRRAT & ASSOC.
 M&T AGRA, Inc.

COYOTE CANYON LANDFILL

FINAL COVER CROSS-SECTION

DECK AREA

( FOR NON-HABITAT AREA )

**EXHIBIT G**  
**New Landfill Gas System**